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As filed with the Securities and Exchange Commission on November 5, 2020

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT
Under
The Securities Act of 1933

Twilio Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**26-2574840**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

101 Spear Street, First Floor
San Francisco, California 94105
Tel: (415) 390-2337
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Jeffrey Lawson
Chief Executive Officer
101 Spear Street, First Floor
San Francisco, California 94105
(415) 390-2337
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Jon C. Avina **Seth J. Gottlieb** **Cooley LLP** **3175 Hanover Street** **Palo Alto, California 94304** **(650) 843-5000**	**Karyn Smith** **General Counsel** **Twilio Inc.** **101 Spear Street, First Floor** **San Francisco, California 94105** **(415) 390-2337**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: ☐

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☒

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		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 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	**Amount to be Registered**	**Proposed Maximum Offering Price Per Share(1)**	**Proposed Maximum Aggregate Offering Price(1)**	**Amount of Registration Fee(1)**
Class A Common Stock, par value $0.001 per share	9,522,489	$276.75	$2,635,348,830.75	$287,516.56

(1) Estimated solely for the purposes of calculating the registration fee. Pursuant to Rule 457(c) under the Securities Act, the registration fee has been calculated based upon the average of the high and low prices, as reported by the New York Stock Exchange, for our shares of Class A common stock on November 4, 2020.

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PROSPECTUS

Class A Common Stock

This prospectus relates to the proposed resale from time to time of up to 9,522,489 shares of our Class A common stock, par value $0.001 per share, by the selling stockholders named herein. The selling stockholders (which term as used herein, includes their respective transferees, pledgees, distributees, donees, and successors) acquired these shares from us pursuant to an Agreement and Plan of Reorganization, dated October 12, 2020, by and among us, Scorpio Merger Sub, Inc., Segment.io, Inc., and Shareholder Representative Services LLC, as the Stockholder Representative.

The selling stockholders may offer and sell or otherwise dispose of the shares of Class A common stock described in this prospectus from time to time through public or private transactions at prevailing market prices, at prices related to prevailing market prices, or at privately negotiated prices. The selling stockholders will bear all underwriting fees, commissions, and discounts, if any, attributable to the sales of shares and any transfer taxes. We will bear all other costs, expenses, and fees in connection with the registration of the shares. See "Plan of Distribution" for more information about how the selling stockholders may sell or dispose of their shares of Class A common stock.

We will not receive any proceeds from the sale of the shares by the selling stockholders.

Our Class A common stock is listed on the New York Stock Exchange under the trading symbol "TWLO." On November 4, 2020, the last reported sale price of our Class A common stock was $306.19 per share.

Investing in our Class A common stock involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" on page 4 of this prospectus, as well as under similar headings in the other documents that are incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is November 5, 2020.

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ABOUT THIS PROSPECTUS

This prospectus is part of an automatic registration statement on Form S-3 that we filed with the Securities and Exchange Commission ("SEC"), using a "shelf" registration process as a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act of 1933, as amended (the "Securities Act"). You should rely only on the information contained, or incorporated by reference, in this prospectus and any accompanying prospectus supplement, and any free writing prospectus we authorize for use in connection with the applicable offering. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information in this prospectus, any accompanying prospectus supplement, the documents incorporated by reference herein or therein, and any free writing prospectus we have authorized for use in connection with the applicable offering is accurate or complete only as of their respective dates, regardless of the time of delivery of this prospectus, the accompanying prospectus supplement, and any authorized free writing prospectus. Our business, financial condition, results of operations, and prospects may have changed since those dates.

In this prospectus, as permitted by law, we "incorporate by reference" information from other documents that we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus and any accompanying prospectus and should be read with the same care. When we update the information contained in documents that have been incorporated by reference by making future filings with the SEC, the information included or incorporated by reference in this prospectus is considered to be automatically updated and superseded. In other words, in case of a conflict or inconsistency between information contained in this prospectus and information in any accompanying prospectus supplement or incorporated by reference into this prospectus, you should rely on the information contained in the document that was filed later. See "Incorporation of Certain Information by Reference" in this prospectus.

This prospectus and the accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in the accompanying prospectus supplement or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful.

Unless the context otherwise requires, the terms "Twilio," "the Company," "we," "us," and "our" in this prospectus refer to Twilio Inc. and its consolidated subsidiaries.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus or incorporated by reference in this prospectus, and does not contain all of the information that you need to consider in making your investment decision. You should carefully read the entire prospectus and any related free writing prospectus, including the risks of investing in our securities discussed under the sections titled "Risk Factors" contained in this prospectus and any related free writing prospectus, and under similar sections in the other documents that are incorporated by reference into this prospectus. You should also carefully read the information incorporated by reference into this prospectus, including our financial statements, and the exhibits to the registration statement of which this prospectus is a part.

Twilio Inc.

We are the leader in the Cloud Communications Platform category. We enable developers to build, scale and operate real-time communications within their software applications via our simple-to-use Application Programming Interfaces ("APIs"). The power, flexibility, and reliability offered by our software building blocks empowers companies of virtually every shape and size to build world-class engagement into their customer experience.

We offer a Customer Engagement Platform with software designed to address specific use cases like account security and contact centers and a set of APIs that handles the higher level communication logic needed for nearly every type of customer engagement. These APIs are focused on the business challenges that a developer is looking to address, allowing our customers to more quickly and easily build better ways to engage with their customers throughout their journey. We also offer a set of APIs that enables developers to embed voice, messaging, video and email capabilities into their applications and are designed to support almost all the fundamental ways humans communicate, unlocking innovators to address just about any communication market. The Super Network is our software layer that allows our customers' software to communicate with connected devices globally. It interconnects with communications networks and inbox service providers around the world and continually analyzes data to optimize the quality and cost of communications that flow through our platform. The Super Network also contains a set of APIs that gives our customers access to more foundational components of our platform, like phone numbers.

Our customers' applications are able to reach users via voice, messaging, video and email in nearly every country in the world by utilizing our platform. We support our global business through over 25 cloud data centers across more than seven regions around the world and have developed contractual relationships with network service providers globally.

Our business model is primarily focused on reaching and serving the needs of software developers, who we believe are becoming increasingly influential in technology decisions in a wide variety of companies. We call this approach our Business Model for Innovators, which empowers developers by reducing friction and upfront costs, encouraging experimentation, and enabling developers to grow as customers as their ideas succeed. We established and maintain our leadership position by engaging directly with, and cultivating, our developer community, which has led to the rapid adoption of our platform. We reach developers through community events and conferences, including our SIGNAL customer and developer conference, to demonstrate how every developer can create differentiated applications incorporating communications using our products.

Once developers are introduced to our platform, we provide them with a low friction trial experience. By accessing our easy-to-adopt APIs, extensive self-service documentation and customer support team, developers build our products into their applications and then test such applications through free trial periods that we provide. Once they have decided to use our products beyond the initial free trial period, customers provide their credit card information and only pay for the actual usage of our products. Historically, we have acquired the

substantial majority of our customers through this self-service model. As customers expand their usage of our platform, our relationships with them often evolve to include business leaders within their organizations. Once our customers reach a certain spending level with us, we support them with account executives or customer success advocates within our sales organization to ensure their satisfaction and expand their usage of our products.

We also supplement our self-service model with a sales effort aimed at engaging larger potential customers, strategic leads and existing customers through a direct sales approach. To help increase awareness of our products in the enterprise, we have expanded our marketing efforts through programs like our Twilio Engage roadshow where we seek to bring business leaders and developers together to discuss the future of customer engagement. We have developed products to support this effort as well, like the Twilio Enterprise Plan, which provides capabilities for advanced security, access management and granular administration. Our sales organization targets technical leaders and business leaders who are seeking to leverage software to drive competitive differentiation. As we educate these leaders on the benefits of developing applications incorporating our products to differentiate their business, they often consult with their developers regarding implementation. We believe that developers are often advocates for our products as a result of our developer-focused approach. Our sales organization includes sales development, inside sales, field sales and sales engineering personnel.

Company Information

We were incorporated under the laws of the State of Delaware in March 2008. Our principal executive offices are located at 101 Spear Street, First Floor, San Francisco, California 94105, and our telephone number is (415) 390-2337. Our website address is www.twilio.com. Information contained on, or that can be accessed through, our website does not constitute part of this prospectus.

The Twilio logo and other trademarks or service marks of Twilio Inc. appearing in this prospectus are the property of Twilio Inc. Other trademarks, service marks, or trade names appearing in this prospectus are the property of their respective owners. We do not intend our use or display of other companies' trade names, trademarks, or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

Class A Common Stock

We may issue shares of our Class A common stock from time to time. The holders of Class A common stock are entitled to one vote per share on all matters to be voted on by the stockholders. Subject to the preferences that may be applicable to any outstanding shares of preferred stock, the holders of Class A common stock and Class B common stock are entitled to receive ratably any dividends our board of directors declares out of funds legally available for the payment of dividends. If we are liquidated, dissolved, or wound up, the holders of Class A common stock and Class B common stock are entitled to share pro rata all assets remaining after payment of liabilities and liquidation preferences of any outstanding shares of preferred stock. Holders of Class A common stock have no preemptive rights or rights to convert their Class A common stock into any other securities. There are no redemption or sinking fund provisions applicable to the Class A common stock. In this prospectus, we have summarized certain general features of the Class A common stock and Class B common stock under the heading "Description of Capital Stock-Class A and Class B Common Stock." We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to any Class A common stock being offered.

Selling Stockholders

Selling stockholders are persons or entities that, directly or indirectly, have acquired or will from time to time acquire from us, our securities. See the section entitled "Selling Stockholders" on page 13 of this prospectus.

Use of Proceeds

We will not receive any of the proceeds from the sale of shares of our Class A common stock in this offering. The selling stockholders will receive all of the proceeds from the sale of shares of Class A common stock hereunder.

The New York Stock Exchange Listing

Our Class A common stock is listed on the New York Stock Exchange under the symbol “TWLO.”

RISK FACTORS

Investing in our Class A common stock involves a high degree of risk. Before deciding whether to purchase our Class A common stock, you should consider carefully the risks and uncertainties discussed under the section titled "Risk Factors" contained in our most recent Annual Report on Form 10-K, as updated by our subsequent Quarterly Reports on Form 10-Q and other filings we make with the SEC, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus and the documents incorporated by reference. The risks described in these documents are not the only ones we face, but those that we consider to be material. There may be other unknown or unpredictable economic, business, competitive, regulatory, or other factors that could have material adverse effects on our future results. Past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. If any of these risks actually occurs, our business, financial condition, results of operations, or cash flow could be seriously harmed. This could cause the trading price of our securities to decline, resulting in a loss of all or part of your investment. Please also read carefully the section below titled "Special Note Regarding Forward-Looking Statements."

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, as well as the documents we have filed with the SEC that are incorporated by reference in this prospectus, contain "forward-looking statements" within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These statements relate to future events or to our future operating or financial performance and involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from any future results, performances, or achievements expressed or implied by the forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial condition, business strategy, and plans and objectives of management for future operations, are forward-looking statements. In some cases, forward-looking statements may be identified by words such as "anticipate," "believe," "continue," "could," "design," "estimate," "expect," "intend," "may," "plan," "potentially," "predict," "project," "should," "will," or the negative of these terms or other similar expressions.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, and financial needs. These forward-looking statements are subject to a number of known and unknown risks, uncertainties, and assumptions, including risks described in the section titled "Risk Factors" and elsewhere in this prospectus and in our most recent Annual Report on Form 10-K, as updated by our subsequent Quarterly Reports on Form 10-Q and other filings we make with the SEC, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus and the documents incorporated by reference. These factors include, among other things:

- the impact of the COVID-19 pandemic on the global economy, our customers, employees and business;
- our future financial performance, including our revenue, cost of revenue, gross margin and operating expenses, ability to generate positive cash flow and ability to achieve and sustain profitability;
- anticipated technology trends, such as the use of and demand for cloud communications;
- our ability to continue to build and maintain credibility with the global software developer community;
- our ability to attract and retain customers to use our products;
- the evolution of technology affecting our products and markets;
- our ability to introduce new products and enhance existing products;
- our ability to comply with modified or new industry standards, laws and regulations applying to our business, including the General Data Protection Regulation, the Schrems II decision invalidating the EU-US Privacy Shield, the California Consumer Privacy Act of 2018 and other privacy regulations that may be implemented in the future, and Signature-based Handling of Asserted Information Using toKENs and Secure Telephone Identity Revisited standards and other robocalling prevention and anti-spam standards and increased costs associated with such compliance;
- our ability to optimize our network service provider coverage and connectivity;
- our ability to manage changes in network service provider fees that we pay in connection with the delivery of communications on our platform;
- our ability to work closely with email inbox service providers to maintain deliverability rates;
- our ability to pass on our savings associated with our platform optimization efforts to our customers;
- the impact and expected results from changes in our relationship with our larger customers;
- our ability to attract and retain enterprises and international organizations as customers for our products;

- our ability to form and expand partnerships with technology partners and consulting partners;
- our ability to successfully enter into new markets and manage our international expansion;
- the attraction and retention of qualified employees and key personnel;
- our ability to effectively manage our growth and future expenses and maintain our corporate culture;
- our ability to compete effectively in an intensely competitive market;
- the sufficiency of our cash and cash equivalents to meet our liquidity needs;
- our anticipated investments in sales and marketing, research and development and additional systems and processes to support our growth;
- our ability to maintain, protect and enhance our intellectual property;
- our ability to successfully defend litigation brought against us;
- our ability to service the interest on our convertible notes and repay such notes, to the extent required;
- our customers' and other platform users' violation of our policies or other misuse of our platform;
- our expectations about the impact of natural disasters and public health epidemics, such as the coronavirus on our business, results of operations, financial condition and on our customers, employees, vendors and partners;
- our ability to successfully integrate and realize the benefits of our past or future strategic acquisitions or investments, including our acquisition of Segment.io, Inc. ("Segment"); and
- challenges that we may face as we integrate the Segment team and products with our own operations.

These risks are not exhaustive. Other sections of this prospectus may include additional factors that could harm our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in, or implied by, any forward-looking statements.

We intend to continue to evaluate and consider potential strategic transactions, including acquisitions of companies of similar or larger size than Segment, and such acquisitions may include the issuance of our Class A common stock as consideration, resulting in dilution to existing stockholders. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

You should not rely upon forward-looking statements as predictions of future events. We cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. Except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason after the date of this prospectus or to conform these statements to actual results or to changes in our expectations.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.

You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance, and achievements may be different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

USE OF PROCEEDS

All of the shares of Class A common stock being offered hereby are being sold by the selling stockholders identified in this prospectus. We will not receive any proceeds from the sale of the Class A common stock by the selling stockholders. We will bear the out-of-pocket costs, expenses and fees incurred in connection with the registration of the shares to be sold by the selling stockholders, including registration, listing fees, printers and accounting fees, and fees and disbursements of counsel (collectively, the "Registration Expenses"). Other than Registration Expenses, the selling stockholders will bear underwriting discounts, commissions, placement agent fees, or other similar expenses payable with respect to sales of shares.

DESCRIPTION OF CAPITAL STOCK

General

As of the date of this prospectus, our authorized capital stock consists of shares, all with a par value of $0.001 per share, of which:

- 1,000,000,000 shares are designated as Class A common stock;
- 100,000,000 shares are designated as Class B common stock; and
- 100,000,000 shares are designated as preferred stock.

A description of the material terms and provisions of our amended and restated certificate of incorporation and second amended and restated bylaws affecting the rights of holders of our capital stock is set forth below. The description is intended as a summary, and is qualified in its entirety by reference to our amended and restated certificate of incorporation and our second amended and restated bylaws which are incorporated by reference into the registration statement of which this prospectus is a part.

Class A and Class B Common Stock

Except with respect to voting, conversion, and transfer rights as described below and as otherwise expressly provided in our amended and restated certificate of incorporation or required by applicable law, shares of Class A common stock and Class B common stock have the same rights and privileges and rank equally, share ratably, and are identical in all respects as to all matters.

Dividend Rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of Class A and Class B common stock are entitled to receive dividends out of funds legally available if the board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that the board of directors may determine.

Voting Rights

Holders of our Class A common stock are entitled to one vote for each share of Class A common stock held on all matters submitted to a vote of stockholders and holders of our Class B common stock are entitled to 10 votes for each share of Class B common stock held on all matters submitted to a vote of stockholders. Holders of shares of our Class A common stock and Class B common stock vote together as a single class on all matters (including the election of directors) submitted to a vote of stockholders, unless otherwise required by law. We have not provided for cumulative voting for the election of directors in our amended and restated certificate of incorporation. Our amended and restated certificate of incorporation and second amended and restated bylaws provide for a classified board of directors consisting of three classes of approximately equal size, each serving staggered three-year terms.

No Preemptive or Similar Rights

Our Class A and Class B common stock are not entitled to preemptive rights, and are not subject to conversion, redemption or sinking fund provisions, except for the conversion provisions with respect to the Class B common stock described below.

Liquidation Rights

If we become subject to a liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our Class A and Class B common stock and

any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Fully Paid and Non-Assessable

All of the outstanding shares of our common stock are fully paid and non-assessable.

Subdivisions and Combinations

If we subdivide or combine in any manner outstanding shares of Class A common stock or Class B common stock, then the outstanding shares of all common stock will be subdivided or combined in the same proportion and manner.

Conversion

Each outstanding share of Class B common stock is convertible at any time at the option of the holder into one share of Class A common stock. In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon any transfer, whether or not for value, except for certain permitted transfers described in our amended and restated certificate of incorporation, including transfers to family members, trusts solely for the benefit of the stockholder or their family members, and partnerships, corporations, and other entities exclusively owned by the stockholder or their family members. Once converted or transferred and converted into Class A common stock, the Class B common stock will not be reissued.

All the outstanding shares of Class A and Class B common stock will convert automatically into shares of a single class of common stock on the earlier of June 28, 2023 or the date the holders of two-thirds of our Class B common stock elect to convert the Class B common stock to Class A common stock. Following such conversion, each share of common stock will have one vote per share and the rights of the holders of all outstanding common stock will be identical. Once converted into a single class of common stock, the Class A and Class B common stock may not be reissued.

Preferred Stock

The board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further vote or action by our stockholders. The board of directors can also increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. The board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our Class A or Class B common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of Twilio and might adversely affect the market price of Class A common stock and the voting and other rights of the holders of our Class A and Class B common stock. We have no current plan to issue any shares of preferred stock.

Registration Rights

Certain holders of our Class A common stock and Class B common stock are entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in our Amended and Restated Investors' Rights Agreement ("IRA"), dated as of April 24, 2015. The registration rights set forth in the IRA will expire on June 28, 2021, or, with respect to any particular stockholder, when such stockholder is able to

sell all of its shares pursuant to Rule 144(b)(1)(i) of the Securities Act or holds one percent or less of our common stock and is able to sell all of its Registrable Securities, as defined in the IRA, pursuant to Rule 144 of the Securities Act during any 90-day period. We will pay the registration expenses (other than underwriting discounts, selling commissions and stock transfer taxes) of the holders of the shares registered pursuant to the registrations described below. In an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares such holders may include.

Anti-Takeover Provisions

Anti-Takeover Statute

We are governed by the provisions of Section 203 of the Delaware General Corporations Law ("DGCL"), which generally prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a "business combination" to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge, or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges, or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

Amended and Restated Certificate of Incorporation and Second Amended and Restated Bylaws

Our amended and restated certificate of incorporation and second amended and restated bylaws include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of the Company, as well as changes in the board of directors or management team, including the following:

Board of Directors Vacancies. Our amended and restated certificate of incorporation and second amended and restated bylaws authorize only the board of directors to fill vacant directorships, including newly created seats. In

addition, the number of directors constituting the board of directors is permitted to be set only by a resolution adopted by a majority vote of the entire board of directors. These provisions prevent a stockholder from increasing the size of the board of directors and then gaining control of the board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of the board of directors and will promote continuity of management.

Dual Class Common Stock. As described above in "—Class A and Class B Common Stock—Voting Rights," our amended and restated certificate of incorporation provides for a dual class common stock structure pursuant to which holders of our Class B common stock have the ability to control the outcome of matters requiring stockholder approval, even if they own significantly less than a majority of the shares of the outstanding Class A and Class B common stock, including the election of directors and significant corporate transactions, such as a merger or other sale of the Company or its assets. Current investors, executives and employees have the ability to exercise significant influence over those matters.

Classified Board. Our amended and restated certificate of incorporation and second amended and restated bylaws provide that the board of directors be classified into three classes of directors, each of which hold office for a three-year term. In addition, directors may only be removed from the board of directors for cause. The existence of a classified board could delay a potential acquiror from obtaining majority control of the board of directors, and the prospect of that delay might deter a potential acquiror.

Stockholder Action; Special Meeting of Stockholders. Our amended and restated certificate of incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of stockholders. As a result, a holder controlling a majority of our capital stock would not be able to amend our second amended and restated bylaws or remove directors without holding a meeting of stockholders called in accordance with our second amended and restated bylaws. Our second amended and restated bylaws further provide that special meetings of stockholders may be called only by a majority of the board of directors, the chairman of the board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

Advance Notice Requirements for Stockholder Proposals and Director Nominations. Our second amended and restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our second amended and restated bylaws also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. These provisions may also discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of Twilio.

No Cumulative Voting. The DGCL provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation does not provide for cumulative voting.

Directors Removed Only for Cause. Our amended and restated certificate of incorporation provides that stockholders may remove directors only for cause.

Amendment of Charter Provisions. Any amendment of the above provisions in our amended and restated certificate of incorporation requires approval by holders of at least two-thirds of the then-outstanding capital stock.

Issuance of Undesignated Preferred Stock. The board of directors has the authority, without further action by our stockholders, to issue up to 100,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by the board of directors. The existence of authorized but unissued shares of preferred stock would enable the board of directors to render more difficult or to discourage an attempt to obtain control of Twilio by means of a merger, tender offer, proxy contest or other means.

Choice of Forum. Our second amended and restated bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum to bring any state law claims for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of, or a claim based on, breach of a fiduciary duty owed by any of our current or former directors, officers, or other employees or stockholders to us or our stockholders, (iii) any action asserting a claim against us or any of our current or former directors, officers, or other employees or stockholders arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation or second amended and restated bylaws, or (iv) any action asserting a claim against us or any of our current or former directors, officers, or other employees or stockholders governed by the internal affairs doctrine. Unless we consent in writing to the selection of an alternative forum, the United States District Court for the Northern District of California shall be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. Our second amended and restated bylaws also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to these choice of forum provisions.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is c/o: Shareholder Services, 462 South 4th Street, Suite 1600, Louisville KY 40202.

Listing

Our Class A common stock is listed on the New York Stock Exchange under the symbol "TWLO."

SELLING STOCKHOLDERS

We have prepared this prospectus to allow the selling stockholders to offer and sell from time to time up to 9,522,489 shares of our Class A common stock for their own account. We are registering the offer and sale of the shares beneficially owned by the selling stockholders to satisfy certain registration obligations in connection with our acquisition of Segment (the "Merger"). Pursuant to the Agreement and Plan of Reorganization, dated October 12, 2020 (the "Merger Agreement"), we have agreed to keep the registration statement of which this prospectus forms a part effective until the earlier of (i) November 2, 2021, (ii) the date on which all of the shares have been sold pursuant to the registration statement or otherwise, (iii) the date on which all of the shares may be transferred pursuant to Rule 144 under the Securities Act or another similar exemption under the Securities Act without manner of sale or volume restrictions, or (iv) the date on which all of the shares cease to be outstanding.

The following table sets forth (i) the name of each selling stockholder, (ii) the number of shares beneficially owned by each of the respective selling stockholders, including the shares over which the selling stockholder has sole or shared voting power or investment power and also any shares that the selling stockholder has the right to acquire within 60 days of such date through the exercise of any options or other rights, (iii) the number of shares that may be offered under this prospectus, and (iv) the number of shares of our Class A common stock beneficially owned by the selling stockholders assuming all of the shares covered hereby are sold. We do not know how long the selling stockholders will hold the shares before selling them, and we currently have no agreements, arrangements, or understandings with the selling stockholders regarding the sale or other disposition of any shares. Except as disclosed in the footnotes to the table below, to our knowledge, none of the selling stockholders listed in the table below has, or during the three years prior to the date of this prospectus has had, any position, office, or other material relationships with us or any of our affiliates.

The information set forth in the table below is based upon information obtained from the selling stockholders. Beneficial ownership of the selling stockholders is determined in accordance with Rule 13d-3(d) under the Exchange Act. The percentage of shares beneficially owned prior to, and after, the offering is based on 140,314,194 shares of Class A common stock and 10,697,598 shares of Class B common stock outstanding as of November 2, 2020, and includes the issuance of 9,522,489 shares of Class A common stock upon the closing of the Merger on November 2, 2020.

As used in this prospectus, the term "selling stockholders" includes the selling stockholders listed in the table below and any of their transferees, pledgees, distributees, donees and successors.

	Beneficial Ownership Prior to This Offering				Beneficial Ownership After This Offering		
Name of Selling Stockholder	Class A Shares	Class B Shares	% of Total Voting Power Before This Offering	Number of Class A Shares	Class A	Class B	% of Total Voting Power After This Offering
The Peter and Erika Reinhart Revocable Trust	673,875	—	*	673,875	—	—	*
Calvin French-Owen(1)	695,819	—	*	695,819	—	—	*
Ilya D. Volodarsky	609,523	—	*	609,523	—	—	*
Ian S. Taylor	450,236	—	*	450,236	—	—	*
Entities Affiliated with Accel(2)	1,666,772	—	*	1,666,772	—	—	*
Entities Affiliated with Y Combinator(3)	1,148,239	—	*	1,148,239	—	—	*
Entities Affiliated with Thrive Capital Partners(4)	856,622	—	*	856,622	—	—	*
KPCB Holdings, Inc., as nominee	752,640	—	*	752,640	—	—	*

Name of Selling Stockholder	Beneficial Ownership Prior to This Offering			Number of Class A Shares	Beneficial Ownership After This Offering		
	Class A Shares	Class B Shares	% of Total Voting Power Before This Offering		Class A	Class B	% of Total Voting Power After This Offering
Entities Affiliated with e.ventures(5)	553,487	—	*	553,487	—	—	*
Entities Affiliated with GV(6)	475,859	—	*	475,859	—	—	*
Entities Affiliated with Meritech Capital(7)	239,108	—	*	239,108	—	—	*
New View Capital Fund I, L.P.	198,864	—	*	198,864	—	—	*
Sapphire Ventures Fund III, L.P.	158,647	—	*	158,647	—	—	*
TGM Continuity I, LLC	82,500	—	*	82,500	—	—	*
Jesmond Investments Group II Limited	73,514	—	*	73,514	—	—	*
GC Innovation, LLC	60,945	—	*	60,945	—	—	*
Greycroft Growth II, L.P.	55,165	—	*	55,165	—	—	*
Entities Affiliated with Founders Circle(8)	49,717	—	*	49,717	—	—	*
SV Angel III, L.P.	44,513	—	*	44,513	—	—	*
All other selling stockholders (9)	676,444	—	*	676,444	—	—	*
All selling stockholders	9,522,489	—	3.71%	9,522,489	—	—	*

* Denotes less than 1%.

(1) Consists of (i) 678,832 shares of Class A common stock held of record by Calvin French-Owen Revocable Trust and (ii) 16,987 shares of Class A common stock held of record by Calvin J. French-Owen.

(2) Consists of (i) 25,992 shares of Class A common stock held of record by Accel Growth Fund V Investors (2019) L.L.C., (ii) 499,994 shares of Class A common stock held of record by Accel Growth Fund V L.P., (iii) 21,232 shares of Class A common stock held of record by Accel Growth Fund V Strategic Partners L.P., (iv) 65,829 shares of Class A common stock held of record by Accel Investors 2014 LLC, (v) 1,002,898 shares of Class A common stock held of record by Accel XII L.P. and (vi) 50,827 shares of Class A common stock held of record by Accel XII Strategic Partners L.P.

(3) Consists of (i) 923,995 shares of Class A common stock held of record by Y Combinator Continuity Holdings I, LLC and (ii) 224,244 shares of Class A common stock held of record by Y Combinator Fund II, LP.

(4) Consists of (i) 123,969 shares of Class A common stock held of record by Thrive Capital Partners IV Segment, LLC, (ii) 203,737 shares of Class A common stock held of record by Thrive Capital Partners IV Supplemental, L.P. and (iii) 528,916 shares of Class A common stock held of record by Thrive Capital Partners IV, L.P.

(5) Consists of (i) 533,670 shares of Class A common stock held of record by BV eVenture Fund II, LP and (ii) 19,817 shares of Class A common stock held of record by e.ventures Growth II, L.P.

(6) Consists of (i) 156,781 shares of Class A common stock held of record by GV 2017, L.P. and (ii) 319,078 shares of Class A common stock held of record by GV 2019, L.P.

(7) Consists of (i) 6,145 shares of Class A common stock held of record by Meritech Capital Affiliates VI, L.P., (ii) 3,108 shares of Class A common stock held of record by Meritech Capital Entrepreneurs VI, L.P. and (iii) 229,855 shares of Class A common stock held of record by Meritech Capital Partners VI, L.P.

(8) Consists of (i) 2,439 shares of Class A common stock held of record by Founders Circle Capital II Affiliates Fund, L.P. and (ii) 47,278 shares of Class A common stock held of record by Founders Circle Capital II, L.P.

(9) Certain of the selling stockholders are currently our employees following our acquisition of Segment.

PLAN OF DISTRIBUTION

We are registering the shares of Class A common stock held by the selling stockholders to be sold from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of Class A common stock.

Each selling stockholder of the Class A common stock and any of its transferees, pledgees, distributees, donees, and successors may, from time to time, sell any or all of their securities covered hereby on the principal trading market for the Class A common stock or any other stock exchange, market, or trading facility on which the Class A common stock is traded or in private transactions. These sales may be at fixed or negotiated prices. A selling stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the Class A common stock as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the selling stockholders to sell a specified number of such Class A common stock at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The selling stockholders may elect to make a pro rata in-kind distribution of their shares of Class A common stock to their respective members, partners, or stockholders. To the extent that such members, partners, or stockholders are not affiliates of ours, such members, partners, or stockholders would thereby receive freely tradeable shares of our Class A common stock pursuant to the distribution through a registration statement.

The selling stockholders may also sell the shares of Class A common stock under Rule 144 or any other exemption from registration under the Securities Act, if available, rather than under this prospectus.

The selling stockholders also may transfer the shares of Class A common stock in other circumstances, in which case the transferees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

Pursuant to joinder agreements entered into in connection with the Merger Agreement, each selling stockholder has agreed that through December 5, 2020, such selling stockholder will not, and will cause and direct each of its affiliates and permitted transferees not to, (i) offer, sell, contract to sell, pledge, grant any option to purchase, lend or otherwise dispose of more than fifty-percent (50%) of the Class A common stock issuable to such selling stockholder pursuant to the Merger Agreement (before deduction of any shares to be held in escrow pursuant to the escrow provisions thereunder) (such number of shares, the “Lock-Up Shares”), (ii) engage in any hedging or other transaction or arrangement which is designed to or which reasonably could be expected to lead to or result in a sale, loan, pledge or other disposition (whether by such selling stockholder or someone other than such selling stockholder), or transfer of any of the economic consequences of ownership, in whole or in part, directly or indirectly, of the Lock-Up Shares, whether any such transaction or arrangement (or instrument provided for

thereunder) would be settled by delivery of the Lock-Up Shares, in cash or otherwise, or (iii) otherwise publicly announce any intention to engage in or cause any action or activity described in clause (i) above or transaction or arrangement described in clause (ii) above.

Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of Class A common stock, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with Financial Industry Regulatory Authority ("FINRA") Rule 5110; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the Class A common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the Class A common stock in the course of hedging the positions they assume. The selling stockholders may also sell Class A common stock short and deliver these shares to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these shares. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The selling stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares of Class A common stock purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each selling stockholder has informed us that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the shares of Class A common stock.

We are required to pay certain fees and expenses incurred by us incident to the registration of the shares of Class A common stock. We have agreed to indemnify the selling stockholders against certain losses, claims, damages, and liabilities, including liabilities under the Securities Act.

The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale shares of Class A common stock may not simultaneously engage in market making activities with respect to the Class A common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the selling stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the Class A common stock by the selling stockholders or any other person. We will make copies of this prospectus available to the selling stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

LEGAL MATTERS

Cooley LLP, Palo Alto, California, will pass upon the validity of the shares of Class A common stock offered by this prospectus.

EXPERTS

The consolidated financial statements of Twilio Inc. as of December 31, 2019 and 2018, and for each of the years in the three-year period ended December 31, 2019, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2019 have been incorporated by reference herein in reliance on the reports of KPMG LLP, an independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audit report on the effectiveness of internal control over financial reporting as of December 31, 2019, contains an explanatory paragraph that states that the Company acquired SendGrid, Inc. ("SendGrid") during fiscal 2019, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2019, SendGrid's internal control over financial reporting associated with $271.4 million, or 5%, of the Company's total assets and $177.1 million, or 16%, of total revenues included in the consolidated financial statements as of and for the year ended December 31, 2019. KPMG LLP's audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of SendGrid.

KPMG LLP's report on the Company's consolidated financial statements refers to the change in method of accounting for leases on the adoption of Financial Accounting Standards Board's Accounting Standards Codification (ASC) Topic 842, Leases, as of January 1, 2019.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of the registration statement on Form S-3 we filed with the SEC under the Securities Act and does not contain all the information set forth or incorporated by reference in the registration statement. Whenever a reference is made in this prospectus to any of our contracts, agreements, or other documents, the reference may not be complete and you should refer to the exhibits that are a part of the registration statement or the exhibits to the reports or other documents incorporated by reference into this prospectus for a copy of such contract, agreement, or other document. Because we are subject to the information and reporting requirements of the Exchange Act, we file annual, quarterly, and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at http://www.sec.gov. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K, including any amendments to those reports, and other information that we file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act can also be accessed free of charge on the Investor Relations section of our website, which is located at www.investors.twilio.com. These filings will be available as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

Our website address is www.twilio.com. Information contained on or accessible through our website is not a part of this prospectus and is not incorporated by reference herein, and the inclusion of our website address in this prospectus is an inactive textual reference only.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to "incorporate by reference" information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus, while information that we file later with the SEC will automatically update and supersede the information in this

prospectus. We incorporate by reference into this prospectus and the registration statement of which this prospectus is a part the information or documents listed below that we have filed with the SEC (Commission File No. 001-37806):

- our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 2, 2020;
- our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2020, filed with the SEC on May 7, 2020, for the quarter ended June 30, 2020, filed with the SEC on August 4, 2020, and for the quarter ended September 30, 2020, filed with the SEC on October 29, 2020;
- our Current Reports on Form 8-K filed with the SEC on June 5, 2020, August 5, 2020, August 7, 2020, October 13, 2020, and November 2, 2020;
- the portions of our Proxy Statement pursuant to Section 14(a) of the Exchange Act for our 2020 Annual Meeting of Stockholders, filed with the SEC on April 22, 2020, that are incorporated by reference in the Form 10-K; and
- the description of our Class A common stock set forth in our registration statement on Form 8-A, filed with the SEC on June 17, 2016, including any amendments thereto or reports filed for the purposes of updating this description, and the description of our common stock and preferred stock as set forth in Exhibit 4.5 to our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 2, 2020.

All filings filed by us pursuant to the Exchange Act after the date of the initial filing of the registration statement of which this prospectus is a part effective upon filing shall be deemed to be incorporated by reference into this prospectus.

We also incorporate by reference any future filings (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items unless such Form 8-K expressly provides to the contrary) made with the SEC pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, until we file a post-effective amendment that indicates the termination of the offering of the securities made by this prospectus and will become a part of this prospectus from the date that such documents are filed with the SEC. Information in such future filings updates and supplements the information provided in this prospectus. Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements.

You can request a copy of these filings, at no cost, by writing or telephoning us at the following address or telephone number:

Twilio Inc.
Attn: General Counsel
101 Spear Street, First Floor
San Francisco, CA 94105
(415) 390-2337

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth an estimate of the fees and expenses, other than the underwriting discounts and commissions, payable by us in connection with the issuance and distribution of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee.

	Amount
SEC registration fee	$ 287,517
Accounting fees and expenses	15,000
Legal fees and expenses	50,000
Miscellaneous fees and expenses	47,483
Total	$ 400,000

Item 15. Indemnification of Directors and Officers

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. Our amended and restated certificate of incorporation provides for indemnification of our directors, officers, employees, and other agents to the maximum extent permitted by the DGCL, and our second amended and restated bylaws provide for indemnification of our directors, officers, employees, and other agents to the maximum extent permitted by the DGCL.

We have entered into indemnification agreements with our directors and officers, whereby we have agreed to indemnify our directors and officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or officer was, or is threatened to be made, a party by reason of the fact that such director or officer is or was a director, officer, employee or agent of Twilio provided that such director or officer acted in good faith and in a manner that the director or officer reasonably believed to be in, or not opposed to, the best interest of Twilio.

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act and the Exchange Act, that might be incurred by any director or officer in his or her capacity as such.

Item 16. Exhibits

		Incorporated by Reference			
Exhibit Number	Description	Schedule Form	File Number	Exhibit	Filing Date
2.1	Agreement and Plan of Reorganization, dated October 12, 2020.				
3.1	Amended and Restated Certificate of Incorporation of Twilio Inc.	S-1/A	333-211634	3.1	June 13, 2016
3.2	Second Amended and Restated Bylaws of Twilio Inc.	10-Q	001-37806	3.1	August 4, 2020
4.1	Reference is made to Exhibits 3.1 and 3.2 .				
4.2	Form of Class A Common Stock Certificate of Twilio Inc.	S-1	333-211634	4.1	May 26, 2016

Exhibit Number	Description	Incorporated by Reference			
		Schedule Form	File Number	Exhibit	Filing Date
5.1	Opinion of Cooley LLP.				
23.1	Consent of KPMG LLP, independent registered public accounting firm.				
23.2	Consent of Cooley LLP (included in Exhibit 5.1).				
24.1	Power of Attorney (see signature pages).				

Item 17. Undertakings

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, *however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by

Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for the purpose of determining liability of the registrant under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on November 5, 2020.

TWILIO INC.

By: /s/ Jeffrey Lawson
Jeffrey Lawson
Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jeffrey Lawson, Khozema Shipchandler and Karyn Smith, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such individual in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or the individual's substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons on behalf of the Company and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Jeffrey Lawson Jeffrey Lawson	Chief Executive Officer and Director (Principal Executive Officer)	November 5, 2020
/s/ Khozema Shipchandler Khozema Shipchandler	Chief Financial Officer (Principal Accounting and Financial Officer)	November 5, 2020
/s/ Byron Deeter Byron Deeter	Director	November 5, 2020
/s/ Donna Dubinsky Donna Dubinsky	Director	November 5, 2020
/s/ Elena Donio Elena Donio	Director	November 5, 2020
/s/ Erika Rottenberg Erika Rottenberg	Director	November 5, 2020
/s/ Jeff Epstein Jeff Epstein	Director	November 5, 2020
/s/ Jeff Immelt Jeff Immelt	Director	November 5, 2020
/s/ Rick Dalzell Rick Dalzell	Director	November 5, 2020

AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

TWILIO INC.,

SCORPIO MERGER SUB, INC.,

SEGMENT.IO, INC.,

AND

SHAREHOLDER REPRESENTATIVE SERVICES LLC,

AS STOCKHOLDER REPRESENTATIVE

OCTOBER 12, 2020

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AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (this "***Agreement***") is made and entered into as of October 12, 2020 (the "***Agreement Date***"), by and among **TWILIO INC.**, a Delaware corporation ("***Parent***"), **SCORPIO MERGER SUB, INC.**, a Delaware corporation and a wholly owned Subsidiary of Parent ("***Merger Sub***"), **SEGMENT.IO, INC.**, a Delaware corporation (the "***Company***"), and **SHAREHOLDER REPRESENTATIVE SERVICES LLC**, a Colorado limited liability company solely in its capacity as the representative of the Company Indemnitors (the "***Stockholder Representative***"). Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings ascribed to them in Annex A.

RECITALS

WHEREAS, the board of directors of Parent has (a) determined that this Agreement and the transactions contemplated by this Agreement, including (i) the acquisition of the Company by Parent, by means of a statutory merger of Merger Sub with and into the Company, pursuant to which the Company would survive and become a wholly owned Subsidiary of Parent (the "***Merger***"), on the terms and subject to the conditions set forth in this Agreement, and (ii) the issuance of Parent Class A Common Stock to the Accredited Stockholders pursuant to this Agreement (the "***Parent Stock Issuance***"), are advisable and in the best interests of Parent and its stockholders, and (b) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Merger and the Parent Stock Issuance;

WHEREAS, the board of directors of the Company (the "***Board***") has (a) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, are advisable and in the best interests of the Company and the Company Stockholders, (b) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (c) directed that this Agreement be submitted to the Company Stockholders for its adoption and (d) recommended that this Agreement be adopted by the Company Stockholders;

WHEREAS, each of the parties intends that (a) the Merger qualifies as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder and (b) this Agreement is, and is hereby adopted as, a "plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulation Section 1.368-2(g) and 1.368-3(a);

WHEREAS, it is currently anticipated that promptly after execution and delivery of this Agreement, the Company shall obtain and deliver to Parent and Merger Sub the written consent of the Company Stockholders representing not less than (a) a majority of the then-outstanding number of shares of Company Capital Stock (voting together as a single class and not as separate series, and on an as-converted to Company Common Stock basis), and (b) a majority of the then-outstanding number of shares of Company Preferred Stock (voting together as a single class and not as separate series, and on an as-converted to Company Common Stock basis) in favor of (i) this Agreement and the transactions contemplated by this Agreement, including the Merger, and (ii) a waiver of any prior written notice requirement in connection with an impending Liquidation Event (as defined in the Certificate of Incorporation) under Article IV(B)(2)(d)(iv) of the Certificate of Incorporation (the "***Company Stockholder Approval***"); and

WHEREAS, in connection with the execution of this Agreement and as an inducement for Parent to enter into this Agreement, (a) the Key Employee has executed a Key Employee Joinder Agreement and Suitability Documentation, (b) each Designated Employee has executed the agreement set forth next to such Designated Employee's name on Schedule G, (c) each Designated Equityholder has executed a Non-Competition and Non-Solicitation Agreement and (d) certain other Company Security Holders (the "***Identified Stockholders***") set forth on Schedule D attached hereto have executed a General Joinder Agreement and Suitability Documentation.

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

ARTICLE I

THE MERGER

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

1.2 Effective Time. At the Closing, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger in the form attached hereto as Exhibit A (the "***Certificate of Merger***"), with the Secretary of State of the State of Delaware, in accordance with the terms and conditions of the DGCL. The Merger shall become effective at the time that the Certificate of Merger is filed and accepted by the Secretary of State of the State of Delaware in accordance with the DGCL, or at such later time which the parties hereto shall have agreed and specified in the Certificate of Merger as the effective time of the Merger (the "***Effective Time***").

1.3 Effects of the Merger. At the Effective Time, the Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation, and the Surviving Corporation shall be a wholly owned Subsidiary of Parent.

1.4 Closing. Unless this Agreement is earlier terminated pursuant to Section 9.1, the closing of the Merger (the "***Closing***") shall take place on a date to be specified by Parent and the Company, which shall be no later than three (3) Business Days following satisfaction or waiver of the conditions set forth in Article VII hereof (except for those conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), by electronic means of communication. The date upon which the Closing actually occurs shall be referred to herein as the "***Closing Date***."

1.5 Closing Deliverables.

(a) At or prior to the Closing, as applicable, the Company will deliver (or cause to be delivered) to Parent:

(i) evidence reasonably satisfactory to Parent either that (A) any stockholder vote required pursuant to Section 6.6(a) was solicited in conformity with Section 280G of the Code and the regulations promulgated thereunder and the requisite stockholder approval was obtained with respect to any payments and benefits that were subject to the stockholder vote or (B) such stockholder approval was not obtained and as a consequence, that the Section 280G Payments waived pursuant to the Parachute Payment Waiver(s) executed in accordance with Section 6.6(a) and delivered to Parent shall not be made or provided (or shall be returned);

(ii) except as otherwise provided in Section 6.10, evidence reasonably satisfactory to Parent that any and all Company Employee Plans intended to include a Code Section 401(k) arrangement (each, a "***401(k) Plan***") have been terminated pursuant to resolution of the applicable governing body (the form and substance of which shall have been subject to review and approval of Parent, which approval shall not be unreasonably withheld, conditioned or delayed), effective as of no later than the day immediately preceding the Closing Date;

(iii) all necessary notices to parties, in a form reasonably acceptable to Parent, in each case, to any Contract set forth on Schedule A attached hereto;

(iv) evidence reasonably satisfactory to Parent that the Company has terminated each of those agreements listed on Schedule B attached hereto, in a form reasonably acceptable to Parent, with such termination to be effective at or prior to the Effective Time;

(v) a duly executed Director and Officer Resignation Letter in the form attached hereto as Exhibit C (the "***Director and Officer Resignation Letters***"), from each of the officers and directors of the Company effective as of the Closing;

(vi) a certificate, validly executed by the Secretary of the Company, certifying as to (A) the valid adoption of the Company Board Resolutions, and (B) the receipt of the Company Stockholder Approval, copies of which will be attached thereto (the "***Secretary Certificate***");

(vii) (A) executed payoff letters (including Tax Forms), in each case dated no more than three (3) Business Days prior to the Closing Date, with respect to all Indebtedness of the Company set forth on Section 1.5(a)(vii) of the Disclosure Schedule owed to the lender thereof and the amounts payable to such lender providing for (x) the full and final satisfaction of such Indebtedness as of the Closing Date and (y) the authorization of the filing of a termination and release of any Liens related thereto (each, a "***Payoff Letter***"); and (B) an invoice (including Tax Forms) from each advisor or other service provider to the Company (other than any employee, director or officer of the Company or any of its Subsidiaries), in each case dated no more than three (3) Business Days prior to the Closing Date, with respect to all Closing Third Party Expenses estimated to be due and payable to such advisor or other service provider as of the Closing Date, and an acknowledgment from such advisor or other service provider that such Closing Third Party Expenses are the only Third Party Expenses owed to such advisor or other service provider (each, an "***Invoice***");

(viii) General Joinder Agreements duly executed by Company Indemnitors collectively representing, together with the Joinder Agreements delivered by the Key Employee and the Identified Stockholders on the Agreement Date and the Warrant Cancellation Agreement, substantially in the form attached hereto as Exhibit J (the "***Warrant Cancellation Agreement***"), delivered by each Company Warrantholder, at least ninety-two and five tenths percent (92.5%) of the Company Indemnitor Share Number, which Joinder Agreements (including the Joinder Agreements delivered by the Key Employee and the Identified Stockholders on the Agreement Date) shall remain in full force and effect as of the Closing;

(ix) prior to the Closing Date, Suitability Documentation and Joinder Agreements duly executed and delivered (and not amended or revoked) by Company Stockholders representing, in the aggregate, at least ninety-five percent (95%) of the outstanding number of shares of Company Capital Stock, certifying pursuant to the Suitability Documentation that each such Company Stockholder is an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act);

(x) a properly executed statement, in accordance with Treasury Regulation Sections 1.897-2(h) and 1.1445-2(c)(3) and in the form attached hereto as Exhibit D, certifying that the Company is not and has not been a "United States real property holding corporation" (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, together with the required notice to the IRS and written authorization for Parent to deliver such notice and a copy of such statement to the IRS on behalf of the Company upon the Closing (the "***FIRPTA Compliance Certificate***");

(xi) a Warrant Cancellation Agreement, duly executed by each Company Warrantholder and the Company, and Suitability Documentation duly executed by each Company Warrantholder certifying that each such Company Warrantholder is an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act);

(xii) a duly executed counterpart to the Escrow Agreement from the Stockholder Representative, substantially in the form attached hereto as Exhibit G (the "***Escrow Agreement***");

(xiii) a long form certificate of good standing from the Secretary of State of the State of Delaware with respect to the Company dated no earlier than five (5) Business Days prior to the Closing Date; and

(xiv) duly executed counterpart to the Paying Agent Agreement from the Stockholder Representative, in the form attached hereto as Exhibit K (the "***Paying Agent Agreement***").

(b) At or prior to the Closing, Parent will deliver (or cause to be delivered) to the Company:

(i) a duly executed counterpart to the Escrow Agreement from Parent and the Escrow Agent;

(ii) a counterpart to each of the Joinder Agreements delivered to Parent in accordance with Section 1.5(a)(viii) prior to the Closing duly executed by Parent;

(iii) a duly executed counterpart to the Paying Agent Agreement from Parent and the Paying Agent;

(iv) a certificate, validly executed by the Secretary of Parent, certifying as to the Parent Board Approval; and

(v) a copy of the R&W Policy.

1.6 Certificate of Incorporation and Bylaws. The certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation in the Merger as of the Effective Time, and the bylaws of Merger Sub in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation in the Merger as of the Effective Time, until thereafter amended in accordance with applicable Law.

1.7 Directors and Officers of the Surviving Corporation. Unless otherwise determined by Parent prior to the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office in accordance with the provisions of the DGCL and the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected or appointed and qualified or their earlier death, resignation or removal. Unless otherwise determined by Parent prior to the Effective Time, the officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the DGCL and the bylaws of the Surviving Corporation.

ARTICLE II

PURCHASE PRICE; EFFECT ON SHARES

2.1 Effect of the Merger on the Capital Stock of the Constituent Corporations.

(a) **Effect on Company Capital Stock**. At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or the Company Stockholders, upon the terms and subject to the conditions set forth in Section 2.3 and throughout this Agreement, including the provisions set forth in Article VIII hereof, each share of Company Capital Stock (other than any Cancelled Shares and Dissenting Shares) that is issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished and shall be converted automatically into the right to receive upon the due surrender of duly executed Exchange Documents in the manner set forth in Section 2.3(b), (i) at the Closing, in accordance with Section 2.3, (A) if the holder thereof is an Accredited Stockholder, the Per Share Accredited Stock Consideration, or, if the holder thereof is an Unaccredited Stockholder, the Per Share Unaccredited Cash Consideration (in each case, without interest thereon), *minus* (B) the Per Share Adjustment Escrow Amount, *minus* (C) the Per Share Specific Indemnity Escrow Amount, *minus* (D) the Per Share Indemnity Escrow Amount, *minus* (E) the Per Share Expense Fund Amount, (ii) any disbursements of Escrow Cash, with respect to Unaccredited Stockholders, or Escrow Shares, with respect to Accredited Stockholders, required to be made from the Escrow Account with respect to such share of Company Capital Stock to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in each case in accordance with Section 2.9(f) and/or Section 8.4, as applicable, (iii) any cash disbursements required to be made in connection with the Post-Closing Excess Amount (if any) with respect to such share of Company Capital Stock to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 2.9(e) and (iv) any cash disbursements required to be made from the Expense Fund Account with respect to such share of Company Capital Stock to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 8.6(c). Each share of Parent Class A Common Stock issuable in the Merger, or any other securities issued in respect of such shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall be book-entry security entitlements. For purposes of calculating the aggregate amount of cash consideration payable at any time to each Company Stockholder in respect of all of such Company Stockholder's shares of Company Capital Stock held pursuant to any particular certificate evidencing such shares pursuant to this Section 2.1(a), (1) the consideration payable in respect of all shares of Company Capital Stock held by such Company Stockholder pursuant to any particular certificate evidencing such shares shall be aggregated and (2) the amount of cash to be paid to each such Company Stockholder after such aggregation shall be rounded to the nearest whole cent.

(b) **Treatment of Company Equity Awards**.

(i) Vested Company Options. No Vested Company Options shall be assumed or continued by Parent or the Company in connection with the Merger or the other transactions contemplated hereby. Except as set forth on Schedule 2.1(b)(i), each Vested Company Option outstanding as of immediately prior to the Effective Time shall be cancelled and converted automatically into the right to receive with respect to each share of Company Common Stock subject thereto, (A) an amount in cash, without interest, equal to (1) the Per Share Unaccredited Cash Consideration for each share of Company Common Stock issuable upon the exercise in full of such Vested Company Option, *minus* (2) an amount in cash equal to the per share exercise price of such Vested Company Option, *minus* (3) the Per Share Adjustment Escrow Amount, *minus* (4) the Per Share Specific Indemnity Escrow Amount, *minus* (5) the Per Share Indemnity Escrow Amount, *minus* (6) the Per Share Expense Fund Amount, (B) any disbursements of Escrow Cash required to be made from the Escrow Account with respect to such Vested Company Option to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in each case in accordance with Section 2.9(f) and/or Section 8.4, as applicable, (C) any cash disbursements required to be made in connection with the Post-Closing Excess Amount (if any) with respect to such Vested Company Option to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 2.9(e) and (D) any cash disbursements required to be made from the Expense Fund Account with respect to such Vested Company Option to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 8.6(c). Such payment in respect of any Vested Company Options that are Employee Options shall be made to the holders of Employee Options through the payroll processing system of Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation, as applicable, in accordance with standard payroll practices net of applicable Tax withholding and deductions, and such payment in respect of any Vested Company Options that are Non-Employee Options, shall be paid to the Paying Agent for further payment to such the holders of such Non-Employee Options; *provided* that, as a condition to payment of any amount owed to the holders of Non-Employee Options, each such holder of Non-Employee Options must have first delivered to the Paying Agent or Parent, as applicable, a properly completed Letter of Transmittal and a properly completed IRS Form W-9, or the appropriate version of IRS Form W-8, if applicable. For purposes of calculating the aggregate amount of consideration payable to each Company Vested Optionholder in respect of all of such holder's Vested Company Options issued pursuant to any particular grant pursuant to this Section 2.1(b)(i), (1) the consideration payable in respect of all Vested Company Options held by such Company Vested Optionholder pursuant to any particular grant shall be aggregated and (2) the amount of cash to be paid to each such Company Vested Optionholder after such aggregation shall be rounded to the nearest whole cent.

(ii) Unvested Company Options (Continuing Employees). At the Effective Time, each Unvested Company Option that is outstanding as of immediately prior to the Effective Time and held by a Continuing Employee shall, by virtue of the Merger and without any further action by Parent, Merger Sub, the Company, or the holder of such Unvested Company Option, be assumed by Parent and converted into, or terminated and substituted with, a stock option of Parent that represents the right to acquire a number of validly issued, fully paid and non-assessable shares of Parent Class A Common Stock, equal to the product of (A) the number of shares of Company Common Stock subject to such Unvested Company Option immediately prior to the Effective Time, *multiplied by* (B) the Equity Award Exchange Ratio (each, a "***Converted Option***"); *provided*, that any fractional share resulting from such multiplication shall be rounded down to the nearest whole share. Following the Effective Time, each Converted Option shall continue to be governed by the same material terms and conditions, including the vesting schedule, as were applicable immediately prior to the Effective Time to the Unvested Company Option from which it was converted or for which it is a substitute, in all cases subject to restrictions related to the issuance of shares under applicable Law, provided that any performance-based metrics will be assumed achieved at target levels (subject to the applicable time-vesting schedule). The exercise price of each Converted Option

shall be equal to (x) the exercise price of the Unvested Company Option from which it was converted or for which it is a substitute, *divided by* (y) the Equity Award Exchange Ratio, rounded up to the nearest whole cent (the "***Converted Option Exercise Price***"). It is the intention of the parties that each Converted Option shall qualify following the Effective Time as an incentive stock option (as defined in Section 422 of the Code) to the extent permitted under Section 422 of the Code and to the extent such corresponding Company Option qualified as an incentive stock option prior to the Effective Time, and that the adjustments in this Section 2.1(b)(ii) be performed in a manner that complies with or is exempt from Section 409A of the Code.

(iii) Unvested Company Options (Non-Continuing Employees). Each Unvested Company Option that is outstanding and unvested immediately prior to the Effective Time and held by a Person who is not a Continuing Employee (each a "***Cancelled Option***" and, collectively, the "***Cancelled Options***") shall be cancelled and terminated without consideration upon the Effective Time in accordance with the applicable Company Equity Plan.

(iv) Vested Company RSUs. No Vested Company RSUs shall be assumed or continued by Parent or the Company in connection with the Merger or the other transactions contemplated hereby. Each Vested Company RSU outstanding as of immediately prior to the Effective Time shall be cancelled and converted automatically into the right to receive with respect to each share of Company Common Stock subject thereto, (A) an amount in cash, without interest, equal to (1) the Per Share Unaccredited Cash Consideration for each share of Company Common Stock issuable upon the settlement of such Vested Company RSU, *minus* (2) the Per Share Adjustment Escrow Amount, *minus* (3) the Per Share Indemnity Escrow Amount, *minus* (4) the Per Share Expense Fund Amount, (B) any disbursements of Escrow Cash required to be made from the Escrow Account with respect to such Vested Company RSU to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in each case in accordance with Section 2.9(f) and/or Section 8.4, as applicable, (C) any cash disbursements required to be made in connection with the Post-Closing Excess Amount (if any) with respect to such Vested Company RSU to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 2.9(e) and (D) any cash disbursements required to be made from the Expense Fund Account with respect to such Vested Company RSU to the former holder thereof (based on such holder's Pro Rata Share of the released amount), without interest, in accordance with Section 8.6(c). Such payment in respect of Vested Company RSUs shall be made to the holders of such Vested Company RSUs through the payroll processing system of Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation, as applicable, in accordance with standard payroll practices net of applicable Tax withholding and deductions. For purposes of calculating the aggregate amount of consideration payable to each Company Vested RSU Holder in respect of all of such holder's Vested Company RSUs issued pursuant to any particular grant pursuant to this Section 2.1(b)(iv), (1) the consideration payable in respect of all Vested Company RSUs held by such Company Vested RSU Holder pursuant to any particular grant shall be aggregated and (2) the amount of cash to be paid to each such Company Vested RSU Holder after such aggregation shall be rounded to the nearest whole cent.

(v) Unvested Company RSUs. At the Effective Time, each Unvested Company RSU that is outstanding as of immediately prior to the Effective Time and held by a Continuing Employee shall, by virtue of the Merger and without any further action by Parent, Merger Sub, the Company, or the holder of such Unvested Company RSU, be assumed by Parent and converted into, or terminated and substituted with, a restricted stock unit of Parent that represents the right to acquire a number of validly issued, fully paid and non-assessable shares of Parent Class A Common Stock, equal to the product of (A) the number of shares of Company Common Stock subject to such Unvested Company RSU immediately prior to the Effective Time, *multiplied by* (B) the Equity Award Exchange Ratio (each, a "***Converted RSU***"); *provided*, that any fractional share resulting from such multiplication shall be rounded down to the nearest whole share. Following the Effective Time, each Converted RSU shall continue to be

governed by the same material terms and conditions, including the vesting schedule, as were applicable immediately prior to the Effective Time to the Unvested Company RSU from which it was converted or for which it is a substitute, in all cases subject to restrictions related to the issuance of shares under applicable Law. It is the intention of the parties that the adjustments in this Section 2.1(b)(v) be performed in a manner that complies with or is exempt from Section 409A of the Code. Each Unvested Company RSU that is outstanding as of immediately prior to the Effective Time and held by a Person who is not a Continuing Employee (each a "***Cancelled RSU***" and, collectively, the "***Cancelled RSUs***") shall be cancelled and terminated without consideration upon the Effective Time in accordance with the applicable Company Equity Plan.

(vi) Prior to the Effective Time, and subject to the prior review and approval of Parent (which approval shall not be unreasonably withheld, conditioned or delayed), the Company shall take all actions necessary to effect the transactions anticipated by this Section 2.1(b) under the applicable Company Equity Plan and any Contract applicable to any Company Option or Company RSU (whether written or oral, formal or informal), including delivering all required notices, obtaining all necessary approvals and consents, and delivering evidence satisfactory to Parent that all necessary determinations by the Board or applicable committee of the Board to effect the treatment of Company Options and Company RSUs in accordance with this Section 2.1(b) have been made. The Company shall take all actions necessary to terminate the applicable Company Equity Plan prior to the Effective Time. Without limiting the foregoing, the Company shall take all actions necessary to ensure that the Company will not at the Effective Time be bound by any options, stock appreciation rights, restricted stock units, warrants or other rights or agreements which would entitle any Person, other than Parent and its Subsidiaries, to own any capital stock of the Surviving Corporation or to receive any payment in respect thereof other than the payments provided for under this Agreement.

(vii) At or prior to the Effective Time, Parent shall take all actions reasonably necessary to reserve for issuance a sufficient number of shares of Parent Class A Common Stock for delivery upon exercise of the Converted Options and settlement of the Converted RSUs. Parent shall file with the SEC a registration statement on Form S-8 (or any successor form), relating to the Parent Class A Common Stock issuable pursuant to the exercise of Converted Options and Converted RSUs as promptly as is practical, but in any event by the later of (i) seven (7) Business Days following the Closing Date and (ii) the date the Resale Registration Statement is filed with the SEC, and will maintain the effectiveness of such registration statement for so long as such assumed Converted Options remain outstanding.

(c) **Treatment of Company Warrants**. The Company Warrants shall not be assumed or continued by Parent or the Company in connection with the Merger or the other transactions contemplated hereby. Immediately prior to the Effective Time, the Company Warrants shall be cancelled and extinguished and, subject to the execution and delivery by each Company Warrantholder of a Warrant Cancellation Agreement at or prior to the Closing, be converted automatically into the right to receive with respect to each share of Company Common Stock subject thereto, (i) at the Closing, subject to Section 2.3, (A) a number of shares of Parent Class A Common Stock equal to (1) the Per Share Consideration *minus* the per share exercise price of such Company Warrant *divided by* (2) the Parent Stock Price, *minus* (B) the Per Share Adjustment Escrow Amount, *minus* (C) the Per Share Specific Indemnity Escrow Amount, *minus* (D) the Per Share Indemnity Escrow Amount, *minus* (E) the Per Share Expense Fund Amount, (ii) any disbursements of Escrow Shares required to be made from the Escrow Account with respect to such Company Warrant to the Company Warrantholder thereof (based on such Company Warrantholder's Pro Rata Share of the released amount), without interest, in each case in accordance with Section 2.9(f) and/or Section 8.4, as applicable, (iii) any cash disbursements required to be made in connection with the Post-Closing Excess Amount (if any) with respect to the Company Warrant to the Company Warrantholder thereof (based on such Company Warrantholder's Pro Rata Share of the released amount), without interest, in accordance with Section 2.9(e) and (iv) any cash disbursements required to be made from the Expense Fund Account with respect to such Company Warrant to the Company Warrantholder thereof (based on such Company Warrantholder's Pro Rata Share of the released amount), without interest, in accordance with Section 8.6(c).

(d) **Effect on Capital Stock of Merger Sub**. At the Effective Time, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and non-assessable share of common stock, par value $0.001 per share, of the Surviving Corporation.

(e) **Treasury Stock and Parent Owned Stock**. At the Effective Time, by virtue of the Merger, each share of Company Capital Stock held by the Company or Parent (or any direct or indirect wholly owned Subsidiary of the Company or Parent) immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof or the right to receive any consideration therefor (such shares, the "***Cancelled Shares***").

2.2 Payments.

(a) As soon as reasonably practicable following the Closing, but in no event later than one (1) Business Day following the Closing, Parent shall transfer, by wire transfer of immediately available funds to the Paying Agent for exchange in accordance with this Article II, the cash portion of the Total Merger Consideration payable at the Closing to (i) the Company Stockholders who are Accredited Stockholders (solely in respect of any fractional shares) and Unaccredited Stockholders, in each case, pursuant to Section 2.1(a) in exchange for shares of Company Capital Stock outstanding as of immediately prior to the Effective Time, (ii) the Company Vested Optionholders who hold Non-Employee Options pursuant to Section 2.1(b)(i) in exchange for such Vested Company Options outstanding as of immediately prior to the Effective Time and (iii) the Company Warrantholders (solely in respect of any fractional shares) pursuant to Section 2.1(c) in exchange for Company Warrants outstanding as of immediately prior to the Effective Time, excluding, in each case, the portion of the Escrow Cash and Expense Fund applicable to such payments.

(b) As soon as reasonably practicable following the Closing, but in no event later than one (1) Business Day following the Closing, Parent, or the Paying Agent on behalf of Parent, shall pay, by wire transfer of immediately available funds, to the Surviving Corporation the cash portion of the Total Merger Consideration payable at Closing in respect of the Vested Company Options that are Employee Options pursuant to Section 2.1(b)(i) and Vested Company RSUs pursuant to Section 2.1(b)(iv) in exchange for such Employee Options and Vested Company RSUs outstanding as of immediately prior to the Effective Time, excluding, in each case, the portion of the Escrow Cash and Expense Fund applicable to such payments.

(c) Parent shall, or shall cause the Surviving Corporation or the applicable Subsidiary of the Surviving Corporation to, promptly (but in no event later than the second regular payroll cycle following the Closing) pay, through the payroll processing system of Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation, as applicable, in accordance with standard payroll practices, to each Company Vested Optionholder who holds Employee Options the cash amount payable at the Closing to such holder solely in respect of such Employee Options pursuant to Section 2.1(b)(i) as set forth opposite such holder's name in the Allocation Schedule (excluding such holder's contribution to the Escrow Cash and the Expense Fund as set forth on the Allocation Schedule).

(d) (i) At the Closing, Parent, or the Paying Agent on behalf of Parent, shall pay by wire transfer of immediately available funds, on behalf of the Company and as accounted for in the calculation of Total Merger Consideration, the amount of all Indebtedness described in clause (a) of the definition of "Indebtedness", to each holder thereof designated by the Company on the Allocation Schedule, to an account designated by such holder in the applicable Payoff Letter and by the Company in the Allocation Schedule and (ii) as promptly as practicable following the Closing (but in no event later than one (1) Business Day following the Closing), Parent, or the Paying Agent on behalf of Parent, shall pay by wire transfer of immediately available funds, on behalf of the Company and as accounted for in the calculation of Total Merger Consideration, the amount of Indebtedness (other than the Indebtedness described in the forgoing (i)) due at Closing to each holder thereof designated by the Company on the Allocation Schedule, to an account designated by such holder in the applicable Payoff Letter and by the Company in the Allocation Schedule.

(e) As promptly as practicable following the Closing (but in no event later than two (2) Business Days following the Closing), Parent, or the Paying Agent on behalf of Parent, shall pay by wire transfer of immediately available funds, on behalf of the Company and as accounted for in the calculation of Total Merger Consideration, all Third Party Expenses payable to any Company advisors or other service providers (other than any employee, director or officer of the Company or any of its Subsidiaries) that remain outstanding as of the Closing, to such account or accounts as are designated in the applicable Invoices and by the Company in the Allocation Schedule.

(f) No interest will be paid or will accrue for the benefit of the Company Security Holders or the Company's lenders, service providers or other creditors on any Total Merger Consideration or any other amounts payable under this Agreement.

2.3 Payment and Share Issuance Procedures.

(a) As promptly as practicable following the Agreement Date, Parent, the Company, the Stockholder Representative and the Paying Agent shall enter into the Paying Agent Agreement. Following execution of the Paying Agent Agreement, (i) the Company shall promptly (and not later than two (2) Business Days prior to the distribution of the Exchange Documents by the Paying Agent) deliver or cause to be delivered to the Paying Agent and Parent the information set forth in Section 1.2(a) of the Paying Agent Agreement in accordance therewith (the "***Required Information***"), (ii) as promptly as practicable following receipt of the Required Information, and in any event within two (2) Business Days thereafter, or at a later time as may be agreed between Parent and the Company, Parent shall cause the Paying Agent to set up the Paying Agent's electronic platform which allows the applicable Company Indemnitors to complete their Exchange Documents electronically and (iii) as promptly as practicable following receipt of the Required Information, and in any event within three (3) Business Days thereafter, or at a later time as may be agreed between Parent and the Company, Parent shall cause the Paying Agent to send an email (A) (x) to each Company Stockholder and (y) to each Company Vested Optionholder who holds Non-Employee Options, in each case at the email address for such Person set forth in the Required Information, to invite such Person to register and log into the Paying Agent's electronic platform to complete electronically a letter of transmittal in the form attached hereto as Exhibit I (the "***Letter of Transmittal***"), the Joinder Agreement and other required Exchange Documents and (B) to each Company Warrantholder at the email address for such Company Warrantholder set forth in the Required Information to invite such Company Warrantholder to register and log into the Paying Agent's electronic platform to complete electronically the Letter of Transmittal, the Warrant Cancellation Agreement and other required Exchange Documents; *provided* that if the Company has not provided the Required Information for any particular Company Indemnitor on or before the date that is three (3) Business Days prior to the Closing Date, Parent shall not be required to cause the Paying Agent to, and the Paying Agent shall not be required to, send the email described in the foregoing clause (iii) to such Company Indemnitor until the date that is three (3) business Days following the Closing.

(b) Subject to Section 2.6, as promptly as practicable following receipt by the Paying Agent of a Letter of Transmittal (and, with respect to each Company Warrantholder, a Warrant Cancellation Agreement) and any other documents (including a properly completed IRS Form W-9, or the appropriate version of IRS Form W-8, as applicable, and, with respect to any Accredited Stockholder, the Suitability Documentation) that Parent or the Paying Agent may reasonably require in connection therewith (collectively, the "***Exchange Documents***"), duly completed and validly executed in accordance with the instructions thereto, but for the avoidance of doubt in no event prior to the Effective Time, (i) Parent shall cause the Paying Agent to pay to each Company Stockholder that is not an Accredited Stockholder the cash amount payable to such holder at the Closing pursuant to Section 2.1(a) as set forth opposite such holder's name in the Allocation Schedule (such amount, for the avoidance of doubt, to exclude such holder's contribution to the Escrow Cash and the Expense Fund as set forth on the Allocation Schedule), (ii) Parent shall cause its transfer agent to issue to each Company Stockholder that is an Accredited Stockholder and each Company Warrantholder the number of shares of Parent Class A Common Stock issuable to such holder at the Closing pursuant to Section 2.1(a) or Section 2.1(c), as applicable, as set forth opposite such holder's name in the Allocation Schedule (such amount, for the avoidance of doubt, to exclude such holder's contribution to the Escrow Shares and the Expense Fund as set forth on the Allocation Schedule and provided that, with respect to the Key Employee, any shares of Parent Class A Common Stock issuable to the Key Employee that are Revested Stock Consideration (as defined in the Joinder Agreement to which each the Key Employee is a party) shall be deemed issued and outstanding and the Key Employee shall be the record owner thereof subject to the terms and conditions of the Joinder Agreement to which each the Key Employee is a party, but will be held in a restricted account for the benefit of the Key Employee to be released only subject to the terms of the Joinder Agreement to which the Key Employee is a party), and (iii) Parent shall cause the Paying Agent to pay to each Company Vested Optionholder (solely with respect to Non-Employee Options) the cash portion of the Total Merger Consideration payable to such holder at the Closing in respect of Non-Employee Options pursuant to Section 2.1(b)(i) as set forth opposite such holder's name in the Allocation Schedule (such amount, for the avoidance of doubt, to exclude such holder's contribution to the Escrow Cash and the Expense Fund as set forth on the Allocation Schedule). Notwithstanding the foregoing, if the Company has delivered the Allocation Schedule to Parent at least three (3) Business Days prior to the Closing Date in accordance with Section 5.2(a) and Schedule A to the Paying Agent Agreement to the Paying Agent and Parent in accordance with Section 1.2(a) and (b) of the Paying Agent Agreement, and a Company Indemnitor has delivered its Exchange Documents to the Paying Agent at least three (3) Business Days prior to the Closing Date, then Parent shall use its reasonable best efforts to (x) cause the Paying Agent to make payments to such Company Indemnitor in accordance with Section 2.3(b)(i) or (iii), as applicable, as soon as reasonably practicable following the Closing and (y) cause its transfer agent to issue shares of Parent Class A Common Stock issuable to such Company Indemnitor in accordance with Section 2.3(b)(ii), if applicable, on the Closing Date.

(c) At any time following the date that is one (1) year following the Effective Time, Parent shall be entitled to require the Paying Agent to deliver to Parent (or its designated successor or assign) all cash amounts that have been deposited with the Paying Agent pursuant to Section 2.2, and not disbursed to the Company Security Holders pursuant to this Section 2.3 (as well as any and all interest thereon or other income or proceeds thereof), and thereafter the Company Security Holders shall be entitled to look only to Parent as general creditors thereof with respect to any and all cash amounts that may be payable to such holders pursuant to Section 2.3(b) upon the due surrender of duly executed Exchange Documents in the manner set forth in Section 2.3(b). No interest shall be payable to the Company Security Holders for the cash amounts delivered to Parent pursuant to the provisions of this Section 2.3(c) and which are subsequently delivered to the Company Security Holders.

(d) Notwithstanding anything to the contrary in this Section 2.3, none of Parent, the Paying Agent, the Surviving Corporation nor any party hereto shall be liable to any Person for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any portion of the Total Merger Consideration that remains unclaimed immediately prior to the date on which it would otherwise become subject to any abandoned property, escheat or similar Law shall, to the extent permitted by applicable Law, shall become the property of Parent, free and clear of all claims or interest of any Person previously entitled thereto.

2.4 Escrow Arrangements.

(a) As soon as reasonably practicable following the Closing, Parent shall, or shall cause its transfer agent or the Paying Agent (as applicable) to, deposit with the Escrow Agent (on behalf of each Company Indemnitor) (i) the Adjustment Escrow Cash and the Adjustment Escrow Shares in the Adjustment Escrow Account and (ii) the Indemnity Escrow Cash and the Indemnity Escrow Shares in the Indemnity Escrow Account, in each case, under the terms of this Agreement and the Escrow Agreement.

(b) The Escrow Agreement shall be entered into at or prior to the Closing, by and among Parent, the Stockholder Representative, on behalf of the Company Indemnitors, and the Escrow Agent, and shall provide Parent with recourse against (i) the Escrow Cash and Escrow Shares with respect to any Post-Closing Deficit Amount under Section 2.9, (ii) the Indemnity Escrow Cash and Indemnity Escrow Shares with respect to the Company Indemnitors' obligations under Article VIII during the period through the twelve (12) month anniversary of the Closing Date and (iii) the Specific Indemnity Escrow Cash and Specific Indemnity Escrow Shares with respect to the Company Indemnitors' obligations under Article VIII during the period through the fifteen (15) month anniversary of the Closing Date. The Escrow Cash and Escrow Shares shall be distributed to the Company Indemnitors, in accordance with their applicable Pro Rata Shares, and to Parent at the times, and upon the terms and conditions, set forth in this Agreement and the Escrow Agreement. The terms and provisions of the Escrow Agreement and the transactions contemplated thereby are specific terms of the Merger, and the approval and adoption of this Agreement and approval of the Merger by the Company Indemnitors constitutes approval by such Company Indemnitors, as specific terms of the Merger, and the irrevocable agreement of such Company Indemnitors to be bound by and comply with, the Escrow Agreement and all of the arrangements and provisions of this Agreement relating thereto, including the deposit of (A) the Adjustment Escrow Cash and the Adjustment Escrow Shares into the Adjustment Escrow Account, (B) the Specific Indemnity Escrow Cash and the Specific Indemnity Escrow Shares into the Specific Indemnity Escrow Account and (C) the Indemnity Escrow Cash and the Indemnity Escrow Shares into the Indemnity Escrow Account, the obligations set forth in Article VIII and the appointment and sole authority of the Stockholder Representative to act on behalf of the Company Indemnitors, as provided for herein and in the Escrow Agreement. The Escrow Cash and Escrow Shares shall be held as a trust fund and shall not be subject to any Lien, attachment, trustee process or any other judicial process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of this Agreement and the Escrow Agreement.

(c) Parent, the Surviving Corporation and the Stockholder Representative agree that: (i) Parent shall be treated as the owner of the Escrow Cash solely for Tax purposes, and all interest and earnings earned from the investment and reinvestment of the Adjustment Escrow Cash, the Specific Indemnity Cash and the Indemnity Escrow Cash, or any portion thereof, shall be allocable for Tax purposes to Parent, (ii) within ten (10) days after the end of each calendar quarter and within ten (10) days after the final distribution of the Adjustment Escrow Cash, the Specific Indemnity Escrow Cash and the Indemnity Escrow Cash to the Company Indemnitors, Parent shall be entitled to a tax distribution in respect of any interest and earnings from the investment and reinvestment of the Adjustment Escrow Cash, the Specific Indemnity Escrow Cash and the Indemnity Escrow Cash for such calendar quarter or portion thereof ending on such final distribution of the Adjustment Escrow Cash, Specific Indemnity Escrow Cash, or the Indemnity Escrow Cash, as applicable, in accordance with the Escrow Agreement and (iii) the Company Indemnitors who are Accredited Stockholders shall be entitled to receive dividends on, and the Stockholder Representative shall be entitled to vote, the Escrow Shares, and for income Tax purposes, the Company Indemnitors who are Accredited Stockholders shall be treated as the owners of the Escrow Shares.

2.5 Dissenting Shares.

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and with respect to which the Company Stockholder thereof has properly demanded appraisal rights in accordance with Section 262 of the DGCL, and who has not effectively withdrawn or lost such holder's appraisal rights under the DGCL (collectively, the "***Dissenting Shares***"), shall not be converted into or represent the right to receive the payments set forth in Section 2.1, but such Company Stockholder shall only be entitled to such rights as are provided by the DGCL. Notwithstanding the provisions of this Section 2.5, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under the DGCL, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in Section 2.1, without interest thereon, and subject to the escrow provisions set forth in Section 2.1 and Article VIII and expense provisions in Section 8.6, upon the due surrender of duly executed Exchange Documents in the manner set forth in Section 2.3.

(b) The Company shall give Parent (i) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of the DGCL and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), make any payment with respect to any such demands or offer to settle or settle any such demands. Any communication to be made by the Company to any Company Stockholder with respect to such demands shall be submitted to Parent in advance and shall not be presented to any Company Stockholder prior to the Company receiving Parent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

2.6 No Fractional Shares. The number of shares of Parent Class A Common Stock to be issued to Accredited Stockholders (a) pursuant to Section 2.1(a) or Section 2.1(c) and (b) in connection with the release of any Escrow Shares from the Escrow Account, as applicable, shall be rounded down to the nearest whole number of shares of Parent Class A Common Stock. Notwithstanding anything to the contrary in this Agreement, no fractional shares of Parent Class A Common Stock will be issued, and if, after aggregating all shares of Parent Class A Common Stock (including fractional shares) that would be issued hereunder to an Accredited Stockholder, such aggregate number of shares of Parent Class A Common Stock includes a fraction of a share of Parent Class A Common Stock, no certificates or scrip for any such fractional shares shall be issued hereunder and such Accredited Stockholder shall receive an amount in cash equal to the product of (a) such fraction of a share of Parent Class A Common Stock *multiplied by* (b) the Parent Stock Price, rounded to the nearest cent, in each case, as set forth on the Allocation Schedule.

2.7 Withholding. Notwithstanding any other provision of this Agreement, Parent, the Surviving Corporation, the Escrow Agent, the Paying Agent and any Affiliate of the foregoing shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts that are required to be deducted or withheld therefrom under any provision of U.S. federal, state, local or non-U.S. Tax Law or under any applicable other Law, and to reasonably request and be provided any necessary tax forms to reduce or eliminate any such withholding or deduction, including IRS Form W-9 or the appropriate version of IRS Form W-8, as applicable, or any similar Tax information. To the extent any such amounts are so deducted or withheld and paid to the proper Governmental Entity, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

2.8 Taking of Necessary Action; Further Action. If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, Parent, Merger Sub, and the officers and directors of the Company, Parent and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and shall take, all such lawful and necessary action.

2.9 Post-Closing Reconciliation.

(a) At least three (3) Business Days prior to the Closing Date, the Company shall deliver to Parent its good faith calculation of (i) the estimated Closing Working Capital Adjustment Amount (the "***Estimated Closing Working Capital Adjustment Amount***"), (ii) the estimated Closing Indebtedness Amount (the "***Estimated Closing Indebtedness Amount***"), (iii) the estimated Closing Cash Amount (the "***Estimated Closing Cash Amount***"), (iv) the estimated Closing Third Party Expenses (the "***Estimated Closing Third Party Expenses***"), and (v) the Total Merger Consideration calculated based on such estimated amounts (including the component pieces thereof) (the "***Estimated Closing Statement***"), in each case, accompanied by reasonably detailed back-up documentation for such calculations. The Company shall prepare the Estimated Closing Statement in accordance with the applicable definitions in this Agreement and with GAAP and, solely to the extent consistent with GAAP, in accordance with the Company's past practices (including the methodologies applied in the preparation of the Financials); *provided* that if there is any inconsistency between GAAP and the definitions in this Agreement relating to the items to be set forth on the Estimated Closing Statement, the definitions shall control. The Company shall make available to Parent and its Representatives the books and records used in preparing the Estimated Closing Statement and reasonable access (on prior notice and during business hours) to employees of the Company as Parent may reasonably request in connection with its review of such statements, and will otherwise cooperate in good faith with Parent's and its Representatives review of such statements and shall take into consideration in good faith any comments of Parent on the Estimated Closing Statement, as applicable. The Company may revise the Estimated Closing Statement prior to the Closing to reflect any comments from Parent and to make any other changes thereto required to update or correct the information set forth therein. The Estimated Closing Working Capital Adjustment Amount, the Estimated Closing Indebtedness Amount, the Estimated Closing Cash Amount, and the Estimated Closing Third Party Expenses set forth in the Estimated Closing Statement, after giving effect to any revisions thereto contemplated by this Section 2.9, will be used for purposes of calculating the Total Merger Consideration at the Closing (which calculation shall be subject to adjustment pursuant to, and in accordance with, the terms of this Section 2.9). Notwithstanding the foregoing, in no event will any of Parent's rights be considered waived, impaired or otherwise limited as a result of Parent not making an objection prior to the Closing or its making an objection that is not fully implemented in a revised Estimated Closing Statement, as applicable.

(b) As soon as reasonably practicable after the Closing Date, and in any event within ninety (90) days after the Closing Date, Parent shall prepare and deliver to the Stockholder Representative a statement (the "***Post-Closing Statement***") that shall set forth a calculation of (i) the Closing Working Capital Adjustment Amount, (ii) the Closing Indebtedness Amount, (iii) the Closing Third Party Expenses, (iv) the Closing Cash Amount and (v) the Total Merger Consideration, in each case accompanied by reasonably detailed back-up documentation for such calculations. Parent shall prepare the Post-Closing Statement in accordance with the applicable definitions in this Agreement and with GAAP and, solely to the extent consistent with GAAP, in accordance with the Company's past practices (including the methodologies applied in the preparation of the Financials); provided that if there is any inconsistency between GAAP and the definitions in this Agreement relating to the items to be set forth on the Post-Closing

Statement, the definitions shall control. After the Stockholder Representative's receipt of the Post-Closing Statement, the Stockholder Representative and its Representatives shall be permitted to review Parent's working papers and the working papers of Parent's independent accountants, if any, relating to the preparation of the Post-Closing Statement and the calculation of the Closing Working Capital Adjustment Amount, Closing Indebtedness Amount, Closing Cash Amount and Closing Third Party Expenses after signing a customary confidentiality and non-reliance agreement relating to such access to working papers in form and substance reasonably acceptable to Parent's independent accountants, to the extent required by such accountants, which confidentiality and non-reliance agreement shall not prohibit the Stockholder Representative from communicating any such information with the Company Indemnitors who have a need to know such information, provided that any such recipients are subject to confidentiality obligations with respect thereto, as well as the relevant books and records of the Company, and Parent shall cause the Company and its Representatives to use commercially reasonable efforts to assist the Stockholder Representative and its Representatives in their reasonable review of the Post-Closing Statement. The Stockholder Representative shall notify Parent in writing (the "***Notice of Adjustment Disagreement***") within thirty (30) days of the Stockholder Representative's receipt of the Post-Closing Statement (the "***Adjustment Review Period***") if the Stockholder Representative disagrees with any portion of the Post-Closing Statement. The Notice of Adjustment Disagreement shall set forth in reasonable detail the basis for such disagreement, the amounts involved and the Stockholder Representative's proposed adjustments to the Post-Closing Statement with reasonably detailed supporting documentation. If no Notice of Adjustment Disagreement is received by Parent on or prior to the expiration date of the Adjustment Review Period, then the Post-Closing Statement and all amounts set forth therein shall be deemed to have been accepted by the Stockholder Representative and shall become final and binding upon the parties hereto and the Company Indemnitors for all purposes under this Agreement. During the thirty (30) days immediately following the delivery of a Notice of Adjustment Disagreement (the "***Adjustment Resolution Period***"), if any, the Stockholder Representative and Parent shall seek in good faith to resolve any disagreement that they may have with respect to the matters specified in the Notice of Adjustment Disagreement. Any items agreed to by the Stockholder Representative and Parent in a written agreement executed and delivered by each of the Stockholder Representative and Parent, together with any items not disputed or objected to by the Stockholder Representative in the Notice of Adjustment Disagreement, are collectively referred to herein as the "***Resolved Matters***." If at the end of the Adjustment Resolution Period, the parties have been unable to resolve any differences they may have with respect to the matters specified in the Notice of Adjustment Disagreement, the Stockholder Representative and Parent, or either of them, shall refer all matters in the Notice of Adjustment Disagreement other than the Resolved Matters (the "***Unresolved Matters***") to BDO (the "***Independent Accountant***"). In the event that BDO refuses or is otherwise unable to act as the Independent Accountant, the Stockholder Representative and Parent shall cooperate in good faith to appoint an independent certified public accounting firm in the United States of national recognition mutually agreeable to the Stockholder Representative and Parent, in which event "Independent Accountant" shall mean such firm. Within thirty (30) days after the submission of such matters to the Independent Accountant, the Independent Accountant, acting as an expert and not as an arbitrator, will make a final determination, binding on the parties hereto for all purposes under this Agreement, of the appropriate amount of each of the Unresolved Matters. With respect to each Unresolved Matter, such determination, if not in accordance with the position of either the Stockholder Representative or Parent, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by the Stockholder Representative in the Notice of Adjustment Disagreement or Parent in the Post-Closing Statement with respect to such Unresolved Matter. For the avoidance of doubt, the Independent Accountant shall not review any line items in the Post-Closing Statement or make any determination with respect to any matter other than the Unresolved Matters. During the review by the Independent Accountant, Parent and the Stockholder Representative shall each make available to the Independent Accountant such individuals and such information, books, records and work papers, as may be reasonably required by the Independent Accountant to fulfill its obligations under this Section 2.9(b); *provided*, that the independent accountants of Parent or the Company shall not be obligated to make any working papers available to the Independent Accountant

unless and until the Independent Accountant has signed a customary confidentiality and hold harmless agreement relating to such access to working papers in form and substance reasonably acceptable to such independent accountants. The fees and expenses of the Independent Accountant shall be borne by Parent and the Stockholder Representative (on behalf of the Company Indemnitors) based on the inverse of the percentage that the Independent Accountant's resolution of the disputed items covered by such Notice of Adjustment Disagreement (before such allocation) bears to the total amount of such disputed items as originally submitted to the Independent Accountant (for example, if the total amount of such disputed items as originally submitted to the Independent Accountant equals $1,000 and the Independent Accountant awards $600 in favor of the Stockholder Representative's position, sixty percent (60%) of the fees and expenses of the Independent Accountant would be borne by Parent and forty percent (40%) of the fees and expenses of the Independent Accountant would be borne by the Stockholder Representative (on behalf of the Company Indemnitors)).

(c) The "***Final Closing Statement***" shall be (i) in the event that no Notice of Adjustment Disagreement is delivered by the Stockholder Representative to Parent prior to the expiration of the Adjustment Review Period, the Post-Closing Statement delivered by Parent to the Stockholder Representative pursuant to Section 2.9(b), (ii) in the event that a Notice of Adjustment Disagreement is delivered by the Stockholder Representative to Parent prior to the expiration of the Adjustment Review Period and Parent and the Stockholder Representative are able to agree on all matters set forth in such Notice of Adjustment Disagreement, the Post-Closing Statement delivered by Parent to the Stockholder Representative pursuant to Section 2.9(b) as adjusted pursuant to the written agreement executed and delivered by Parent and the Stockholder Representative or (iii) in the event that a Notice of Adjustment Disagreement is delivered by the Stockholder Representative to Parent prior to the expiration of the Adjustment Review Period and Parent and the Stockholder Representative are unable to agree on all matters set forth in such Notice of Adjustment Disagreement, the Post-Closing Statement delivered by Parent to the Stockholder Representative pursuant to Section 2.9(b) as adjusted by the Independent Accountant to be consistent with the Resolved Matters and the final determination of the Independent Accountant of the Unresolved Matters in accordance with Section 2.9(b). The date on which the Final Closing Statement is finally determined in accordance with this Section 2.9(c) is hereinafter referred to as the "***Determination Date***." The Final Closing Statement and all amounts set forth therein shall be final and binding upon the parties hereto and the Company Indemnitors for all purposes under this Agreement.

(d) If the Total Merger Consideration set forth in the Final Closing Statement (as finally determined in accordance with this Section 2.9) is less than the Total Merger Consideration set forth in the Estimated Closing Statement (after giving effect to any revisions thereto in accordance with Section 2.9(a)) (such difference, the "***Post-Closing Deficit Amount***"), then Parent and the Stockholder Representative shall promptly (but in all events within five (5) Business Days after the Determination Date), instruct the Escrow Agent to promptly transfer and release to Parent (i) an aggregate amount of Adjustment Escrow Cash and Adjustment Escrow Shares from the Adjustment Escrow Account equal to the absolute value of the Post-Closing Deficit Amount (plus any costs allocated to the Stockholder Representative (on behalf of the Company Indemnitors) pursuant to Section 2.9(b)) and (ii) solely in the event that the Post-Closing Deficit Amount exceeds the then available amount of the Adjustment Escrow Account, an aggregate amount of Indemnity Escrow Cash and Indemnity Escrow Shares from the Indemnity Escrow Account equal to such deficiency and, in each case, Parent shall be entitled to permanently retain or cancel any such Escrow Shares so received from the Escrow Account. For avoidance of doubt, any recovery of any such Post-Closing Deficit Amount shall not be subject to any of the procedures for indemnification set forth in Section 8.2, it being understood that the sole recourse therefore shall be from the Escrow Account pursuant to the preceding sentence. Any Post-Closing Deficit Amount recovered from the Escrow Account shall reduce the amount of Escrow Cash and Escrow Shares in the Escrow Account in the same proportion as Escrow Cash and Escrow Shares were deposited in the Escrow Account at the Closing (as set forth on the Allocation Schedule). For purposes of determining the number of Escrow Shares required to satisfy any

Post-Closing Deficit Amount under this Section 2.9(d), each Escrow Share shall be deemed to have a value equal to the Parent Stock Price (and the parties hereto acknowledge that the Parent Stock Price only reflects an agreed-upon amount as to the value of a share of Parent Class A Common Stock for the limited purpose of this sentence and is not intended to be, nor is it, deemed to constitute the fair market value of a share of Parent Class A Common Stock at any given time).

(e) If the Total Merger Consideration set forth in the Final Closing Statement (as finally determined in accordance with this Section 2.9) is more than the Total Merger Consideration set forth in the Estimated Closing Statement (after giving effect to any revisions thereto in accordance with Section 2.9(a)) (such difference, the "***Post-Closing Excess Amount***"), then Parent shall promptly (but in all events within five (5) Business Days after the Determination Date), pay the Post-Closing Excess Amount in cash to (i) the Paying Agent for further distribution to the Company Indemnitors (other than the holders of Employee Options in respect of such Employee Options) the portion of such amount payable pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable, and (ii) to the Surviving Corporation for further payment to the holders of Employee Options pursuant to Section 2.1(b)(i) through the payroll processing system of Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation in accordance with standard payroll practices net of applicable Tax withholding and deductions; *provided*, *further*, that as a condition to Parent's and Paying Agent's obligation to make such payments, the Stockholder Representative shall first deliver to Parent an updated Allocation Schedule setting forth the portion of the Post-Closing Excess Amount payable to each Company Indemnitor.

(f) Following the payment of any Post-Closing Deficit Amount to Parent in accordance with Section 2.9(d) or, if there is a Post-Closing Excess Amount, the payment by Parent of such amount to the Company Indemnitors in accordance with Section 2.9(e), Parent and the Stockholder Representative shall deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to release from the Adjustment Escrow Account an aggregate amount equal to the then remaining Adjustment Escrow Cash and Adjustment Escrow Shares available in the Adjustment Escrow Account, if any, to (i) the Paying Agent for further distribution to the Company Indemnitors (other than the holders of Employee Options in respect of such Employee Options) the portion of such amount distributable pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable, and (ii) to the Surviving Corporation for further payment to the holders of Employee Options pursuant to Section 2.1(b)(i) through the payroll processing system of Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation in accordance with standard payroll practices net of applicable Tax withholding and deductions; *provided*, *further*, that as a condition to Parent's and Paying Agent's obligation to make such distributions, the Stockholder Representative shall first deliver to Parent an updated Allocation Schedule setting forth the portion of the remaining Adjustment Escrow Cash and Adjustment Escrow Shares to be distributed to each Company Indemnitor.

(g) Parent and the Surviving Corporation shall be entitled to conclusively rely upon the updated Allocation Schedule delivered by the Stockholder Representative, including with respect to whether any individual Company Indemnitor received the appropriate portion of any such distribution, and in no event will Parent, the Surviving Corporation or any of their Affiliates have any liability to any Person on account of payments or distributions made in accordance with the updated Allocation Schedule delivered by the Stockholder Representative.

2.10 Equitable Adjustments. If at any time during the period between the Agreement Date and the Effective Time (and with respect to the release of the Escrow Shares from the Escrow Accounts, on or prior to the release of the Escrow Shares from the Escrow Accounts pursuant to the terms of this Agreement and the Escrow Agreement), any change in the outstanding shares of Parent Class A Common Stock shall occur by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period, any number or amount contained in this Agreement which is based on the price of Parent Class A Common Stock or

the number of shares of Parent Class A Common Stock shall be equitably adjusted to the extent necessary to provide the parties the same economic effect with respect to the Parent Class A Common Stock as contemplated by this Agreement prior to such reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or stock dividend thereon.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure schedule of the Company dated as of the Agreement Date and delivered to Parent concurrently with the execution of this Agreement (the "***Disclosure Schedule***") (each of which disclosures shall clearly indicate the Section and, if applicable, the Subsection of this Article III to which it relates (unless and only to the extent the relevance to other representations and warranties is readily apparent from the actual text of the disclosures without any reference to extrinsic documentation or any independent knowledge on the part of the reader regarding the matter disclosed), and which disclosures shall be deemed for all purposes of this Agreement, including Section 7.2(a) and Article VIII, except as expressly set forth in Section 8.2(a)(iii), Section 8.2(a)(iv) and Section 8.2(a)(vi), to be an exception to, or qualification or modification of, the representations and warranties in each such Section, Subsection or other relevant representation and warranty), the Company represents and warrants to Parent and Merger Sub as follows:

3.1 Organization of the Company.

(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 corporate power to own, operate, distribute and lease its properties and to conduct its business as now being conducted and as currently proposed by it to be conducted and is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to result in a Material Adverse Effect to the Company. The Company is not in violation of any of the provisions of its Charter Documents.

(b) Section 3.1(b) of the Disclosure Schedule sets forth a correct and complete list of: (i) the names of the members of the board of directors of the Company and each of its Subsidiaries and (ii) the names and titles of the officers of the Company and each of its Subsidiaries, in each case as of the Agreement Date.

(c) Section 3.1(c) of the Disclosure Schedule sets forth a complete and accurate list of each jurisdiction where the Company and each of its Subsidiaries is qualified, licensed and admitted to do business. Each of the Company and each of its Subsidiaries is qualified, licensed or admitted to do business as a foreign corporation (or similar concept, as applicable), and is in good standing (or its equivalent), under the laws of all jurisdictions where the property owned, leased or operated by it or the nature of its businesses require such qualification, license or admission, except where the failure to qualify would not reasonably be expected to be material to the Company.

(d) The Company has made available correct and complete copies of its certificate of incorporation, as amended to date (the "***Certificate of Incorporation***"), bylaws, as amended to date, and other governing documents, as amended to date, each in full force and effect on the Agreement Date (collectively, the "***Charter Documents***"). The Board has not approved or proposed, nor has any Person proposed, any amendment to any of the current Charter Documents.

3.2 Company Capital Structure.

(a) As of the Agreement Date, the authorized capital stock of the Company consists of (i) 43,140,737 shares of Company Common Stock, $0.00001 par value, of which 12,478,335 shares are issued and outstanding and (ii) 19,494,460 shares of Company Preferred Stock, $0.00001 par value, (A) 3,818,087 shares of which are designated Series AA Preferred Stock and all of which are issued and outstanding, (B) 4,941,665 shares of which are designated Series A Preferred Stock and all of which are issued and outstanding, (C) 2,487,765 shares of which are designated Series B Preferred Stock and all of which are issued and outstanding, (D) 3,453,528 shares of which are designated Series C Preferred Stock and all of which are issued and outstanding and (E) 4,793,415 shares of which are designated Series D Preferred Stock and all of which are issued and outstanding. Each share of Company Preferred Stock is convertible on a one-share for one-share basis into Company Common Stock, and there are no other issued and outstanding shares of Company Capital Stock and no commitments or Contracts to issue any shares of Company Capital Stock other than pursuant to the conversion provisions related to the Company Preferred Stock pursuant to the Certificate of Incorporation, the exercise of Company Options and settlement of Company RSUs under the Company Equity Plan and the Company Warrants that are, in each case, outstanding as of the Agreement Date. Except as set forth in Section 3.2(a) of the Disclosure Schedule, the Company holds no treasury shares. Section 3.2(a) of the Disclosure Schedule sets forth, as of the Agreement Date, a correct and complete list of the Company Stockholders and the number and type of such shares so owned by each such Company Stockholder, and any beneficial holders thereof. All issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Liens, outstanding subscriptions, preemptive rights or "put" or "call" rights created by statute, the Charter Documents or any Contract to which the Company is a party or by which the Company or any of its assets is bound. The Company has never declared or paid any dividends on any shares of Company Capital Stock. There is no Liability for dividends accrued and unpaid by the Company. The Company is not under any obligation to register under the Securities Act or any other Law any shares of Company Capital Stock, any Company Securities or any other securities of the Company, whether currently outstanding or that may subsequently be issued. All issued and outstanding shares of Company Capital Stock and all Company Options were, in all material respects, issued in compliance with Law and all requirements set forth in the Charter Documents and any applicable Contracts to which the Company is a party or by which the Company or any of its assets is bound. No shares of Company Capital Stock are subject to vesting, reverse vesting, forfeiture, a right of repurchase or to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code, except for the shares of Company Common Stock set forth on Section 3.2(a)-1 (such shares set forth, or required to be set forth, in Section 3.2(a)-1 of the Disclosure Schedule, the "***Restricted Shares***"). Each Contract pursuant to which any Restricted Shares are subject to vesting or a right of repurchase or a substantial risk of forfeiture is set forth in Section 3.2(a)-1 of the Disclosure Schedule. Duly and properly completed elections under Section 83(b) of the Code were timely and properly filed with the IRS with respect to all of the Restricted Shares and any other shares of Company Capital Stock, if any, that at any time were subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code.

(b) As of the Agreement Date, the Company has reserved 11,875,374 shares of Company Common Stock for issuance to employees, non-employee directors and consultants pursuant to the Company Equity Plan, of which 8,769,736 shares are subject to outstanding and unexercised Company Options, and 2,104,082 shares remain available for issuance thereunder. Section 3.2(b)-1 of the Disclosure Schedule sets forth, as of the Agreement Date, a correct and complete list of all Company Optionholders, and each Company Option, whether or not granted under the Company Equity Plan, including the number of shares of Company Capital Stock subject to each Company Option, the number of such shares that are vested or unvested, the "date of grant" of such Company Option (as defined under Treasury Regulation 1.409A-1(b)(5)(vi)(B)), the vesting commencement date, the vesting schedule (and the terms of any acceleration thereof), the exercise price per share, the Tax status of such Company Option under Section

422 of the Code (or any applicable foreign Tax Law), the term of each Company Option, the plan from which such Company Option was granted (if any), whether such Company Option was granted with an "early exercise" right in favor of the holder, and the country and state of residence of such Company Optionholder. All Company Options listed on Section 3.2(b)-1 of the Disclosure Schedule that are denoted as incentive stock options under Section 422 of the Code so qualify. Section 3.2(b)-2 of the Disclosure Schedule indicates, as of the Agreement Date, which Company Optionholders are Persons that are not employees of the Company or any of its Subsidiaries (including non-employee directors, consultants, advisory board members, vendors, service providers or other similar Persons), including a description of the relationship between each such Person and the Company.

(c) With respect to the Company Options, (i) each grant of an option was duly authorized no later than the date on which the grant of such option was by its terms to be effective by all necessary corporate action, (ii) each award of Company Options has been made using the standard form award agreement under the Company Equity Plan, a correct and complete copy of which has been made available to Parent, (iii) no Company Options differ in any material respect from such form agreement (other than any vesting acceleration provisions contained therein as indicated in Section 3.2(c) of the Disclosure Schedule), and (iv) there is no agreement, arrangement or understanding (written or oral) to amend, modify or supplement any such award agreement in any case from the form made available to Parent. No shares of Company Capital Stock are subject to vesting as of the Agreement Date and no Company Options are "early exercisable" as of the Agreement Date. The treatment of Company Options and Company RSUs under Section 2.1 hereof is permitted under the Company Equity Plan, applicable Laws, and the underlying individual agreements for such equity awards. No Company Option that was granted so as to qualify as an incentive stock option as defined in Section 422 of the Code was early exercised by the holder of such Company Option.

(d) As of the Agreement Date, there are no authorized, issued or outstanding Company Securities other than shares of Company Capital Stock set forth on Section 3.2(a) of the Disclosure Schedule, Company Options set forth on Section 3.2(b)-1 of the Disclosure Schedule and the Company Warrants. Other than pursuant to the Company Warrants or as set forth on Section 3.2(a), Section 3.2(b)-1, Section 3.2(c) or Section 3.2(e) of the Disclosure Schedule, as of the Agreement Date, no Person holds any Company Securities, or is party to any Contract of any character to which the Company or an Company Security Holder is a party or by which it or its assets is bound, (i) obligating the Company or such Company Security Holder to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any Company Securities or other rights to purchase or otherwise acquire any Company Securities, whether vested or unvested, other than written Contracts granting the Company the right to purchase unvested Company Securities upon termination of employment or service (which Contracts have been made available), or (ii) obligating the Company to grant, extend, accelerate the vesting or repurchase rights of, change the price of, or otherwise amend or enter into any Company Option or other Company Security.

(e) Section 3.2(e) of the Disclosure Schedule identifies as of the Agreement Date each Person with an offer letter or other Contract that contemplates a grant of Company Options or grant or issuance of other securities of the Company (including the number, series and class of shares, intended exercise price (had such Company Option been granted in the Ordinary Course of Business based on the offer letter or other Contract contemplating such grant, as applicable, that was executed by the Company or the applicable Company Subsidiary or otherwise in the Ordinary Course of Business in the absence of this Agreement and the transactions contemplated hereby) and vesting schedule (including, any accelerated vesting) if applicable), or who has otherwise been promised Company Options or other securities of the Company, which Company Options have not been granted, or other securities have not been granted or issued, as of the Agreement Date (each such individual required to be set forth on Section 3.2(e) of the Disclosure Schedule, an "***Option Release Individual***").

(f) There is no Indebtedness of the Company (i) granting its holder the right to vote on any matters on which any Company Security Holder may vote (or that is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is in any way based upon or derived from capital or voting stock of the Company (collectively, "***Company Voting Debt***").

(g) There are no Contracts relating to voting of any Company Capital Stock (i) between or among the Company, on the one hand, and any Company Security Holder, on the other hand, and (ii) to the Knowledge of the Company, between or among any of the Company Security Holders. Except as set forth on Section 3.2(g) of the Disclosure Schedule, neither the Company Equity Plan nor any Contract of any character to which the Company is a party to or by which the Company or any of its assets is bound relating to any Company Options requires or otherwise provides for any accelerated vesting of any Company Options in connection with the transactions contemplated by this Agreement or upon termination of employment or service with the Company or Parent, or any other event, whether before, upon or following the Effective Time or otherwise.

3.3 Subsidiaries; Ownership Interests.

(a) Each Subsidiary of the Company is a legal entity duly organized and validly existing. Each Subsidiary of the Company has all requisite corporate or similar power and authority to own, operate, distribute and lease its properties and to conducts its business as now being conducted and as currently proposed by it to be conducted and is duly qualified to do business and, to the extent such concept is applicable, in good standing under the Laws in each jurisdiction where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to result in a Material Adverse Effect with respect to the Company.

(b) Section 3.2(b) of the Disclosure Schedule accurately lists the Equity Interests, whether direct or indirect, held by the Company in each of its Subsidiaries (collectively, the "***Subsidiary Ownership Interests***"), as well as the names of any other Persons who hold Equity Interests in such Subsidiaries and the Subsidiary Ownership Interests held by any such Persons. The Subsidiary Ownership Interests are duly authorized, validly issued, fully paid and non-assessable (to the extent such concepts are applicable to such Equity Interests) and are free of any Liens (other than Permitted Liens), outstanding subscriptions, preemptive rights or "put" or "call" rights created by statute, the Organizational Documents of any Subsidiary of the Company or any Contract to which any Subsidiary of the Company is a party or by which such Subsidiary or any of its assets is bound. Other than the Subsidiary Ownership Interests, there are no options, warrants or rights of any kind to acquire securities or other Equity Interests in any of the Subsidiaries of the Company, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any of the Subsidiaries of the Company.

(c) The Company has made available correct and complete copies of the Organizational Documents of each of its Subsidiaries. No Subsidiary of the Company is in violation of any of the provisions of its Organizational Documents in any material respect.

3.4 Authority and Enforceability.

(a) The Company has all requisite power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and no further corporate action is required on the part of the Company to authorize this Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby. The Company Stockholder Approval is

the only vote, approval or consent of the holders of any class or series of Company Capital Stock or any other securities of the Company that is necessary to adopt this Agreement and each of the Related Agreements to which the Company is a party and approve the transactions contemplated hereby and thereby. This Agreement and each of the Related Agreements to which the Company is a party have been, or, as of the Effective Time shall be, duly executed and delivered by the Company and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute, or shall constitute when executed and delivered, the valid and binding obligations of the Company enforceable against it in accordance with their respective terms, subject to (A) laws of general application relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and (B) principles of equity, rules of law governing specific performance, injunctive relief and other equitable remedies (the "***Enforcement Exceptions***"). The Board, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the Board, has (x) declared that this Agreement, the Related Agreements and the transactions contemplated hereby and thereby, including the Merger, upon the terms and subject to the conditions set forth herein, are advisable and in the best interests of the Company and the Company Stockholders, (y) approved this Agreement in accordance with the provisions of the DGCL and (z) directed that the adoption of this Agreement and approval of the Merger be submitted to the Company Stockholders for consideration and recommended that all of the Company Stockholders adopt this Agreement and approve the Merger (collectively, the "***Company Board Resolutions***"). Other than the Company Stockholder Approval, no other votes, approvals or consents on the part of the Company or any of the Company Security Holders are necessary to adopt this Agreement and approve the transactions contemplated by this Agreement, including the Merger.

(b) The Company, the Board and the Company Stockholders have taken all actions, if any, necessary to provide that the restrictive provisions of any "fair price," "moratorium," "control share acquisition," "business combination," "interested shareholder" or other similar anti-takeover statute or regulation, and any anti-takeover provision in the Charter Documents shall not be applicable to any of Parent, the Company or the Surviving Corporation or to the execution, delivery or performance of the transactions contemplated by this Agreement, including the consummation of the Merger or any of the other transactions contemplated by this Agreement.

3.5 No Conflict. The execution and delivery by the Company of this Agreement and any Related Agreement to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, shall not conflict with or result in any violation by the Company or any Subsidiary of the Company of or default under (with or without notice or lapse of time, or both) or give rise to, any payment obligation, or a right of termination, cancellation, modification or acceleration of any material obligation or loss of any material benefit under, or result in the creation of any Lien (other than Permitted Liens) on any material assets of the Company or any Subsidiary of the Company or any of the Equity Interests of the Company or any Subsidiary of the Company under (a) any provision of the Charter Documents or the Organizational Documents of any Subsidiary of the Company, (b) any Material Contract, or (c) any Law applicable to the Company or any of its Subsidiaries or any of their properties or assets (whether tangible or intangible), other than, in the case of (b) or (c) any such conflict, violation, default, obligation, right, or loss that would not be material to the Company. Section 3.5 of the Disclosure Schedule sets forth all notices, consents, waivers and approvals of parties to any Material Contracts with the Company or any of its Subsidiaries that are required thereunder in connection with the consummation by the Company of the transactions contemplated by this Agreement, including the Merger, or for any such Material Contract to remain in full force and effect without material limitation, modification or alteration immediately after the Closing and, but for any fact, circumstance or condition with respect to Parent, so as to preserve all material rights of, and benefits to, the Company under such Material Contracts from and after the Closing, the failure of which to be given or obtained would be material to the Company.

3.6 Governmental Authorization. No consent, notice, waiver, approval, Order or authorization of, or registration, declaration or filing with any Governmental Entity is required by, or with respect to, the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement and any Related Agreement to which the Company is a party or the consummation of the transactions contemplated hereby and thereby, except for (a) such consents, notices, waivers, approvals, Orders, authorizations, registrations, declarations and filings as may be required under applicable securities Laws (b) the filing of the Certificate of Merger as provided in Section 1.2 hereof and (c) such filings and notifications as may be required to be made by the Company in connection with the Merger under the HSR Act and the expiration or early termination of applicable waiting periods under the HSR Act.

3.7 Company Financial Statements; No Undisclosed Liabilities.

(a) The Company has delivered to Parent correct and complete copies of its audited consolidated financial statements for the fiscal years ended January 31, 2020 and January 31, 2019 (including, in each case, balance sheets, statements of income and statements of cash flows) (the "***Audited Financials***") and its unaudited consolidated financial statements (including, in each case, balance sheets, statements of income and statements of cash flows) as of July 31, 2020 and the six (6) months then ended (the "***Quarterly Financials***") and as of August 31, 2020 and the seven (7) months then ended (the "***Balance Sheet Date***") (and such financials, the "***Interim Financials***", collectively with the Audited Financials and the Interim Financials, the "***Financials***"), which are included as Section 3.7(a) of the Disclosure Schedule. The Financials (i) are derived from and in accordance with the books and records of the Company and its Subsidiaries, (ii) fairly present in all material respects the consolidated financial condition of the Company and its Subsidiaries at the dates therein indicated and the consolidated results of operations and cash flows of the Company and its Subsidiaries for the periods therein specified (subject, (A) in the case of the Quarterly Financials and Interim Financials to normal recurring year-end adjustments and (B) in the case of the Interim Financials, quarter-end adjustments, in each case, none of which individually or in the aggregate are or shall be material to the Company), and (iii) were prepared in accordance with GAAP, except for the absence of footnotes in the unaudited Financials, applied on a consistent basis throughout the periods indicated and consistent with each other.

(b) Neither the Company nor any of its Subsidiaries has any material liabilities other than (i) those set forth on or provided for on the face of the balance sheet (the "***Current Balance Sheet***") included in the Financials as of the Balance Sheet Date, (ii) those incurred in the conduct of the Company's or such Subsidiary's business since the Balance Sheet Date in the Ordinary Course of Business that do not result from any breach of Contract, warranty, infringement, tort or violation of Law by the Company, (iii) those incurred by the Company or any of its Subsidiaries in connection with the negotiation, execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, including all Third Party Expenses, and (iv) those arising under Contracts made available to Parent in accordance with their terms (other than the payment of liquidated damages or arising as a result of a default or breach thereof). Except for Liabilities reflected in the Financials, neither the Company nor any of its Subsidiaries has any off-balance sheet Liability of any nature to, or any financial interest in, any third parties or entities, the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of expenses incurred by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has ever guaranteed any debt or other obligation of any other Person. All reserves that are set forth in or reflected in the Current Balance Sheet have been established in accordance with GAAP consistently applied.

(c) Section 3.7(c) of the Disclosure Schedule sets forth a correct and complete list of all Indebtedness described in clause (a) of the definition of "Indebtedness" (not including the amounts thereof) of the Company and/or any of its Subsidiaries as of the Agreement Date, including, for each such item of Indebtedness, the agreement governing the Indebtedness, any assets securing such Indebtedness and any prepayment or other penalties payable in connection with the repayment of such Indebtedness at the Closing pursuant to the agreement(s) governing such Indebtedness.

(d) The Company has established and maintains a system of internal accounting controls that are customary for a company at the stage of development as the Company to provide reasonable assurances (i) that transactions, receipts and expenditures of the Company and its Subsidiaries are being executed and made only in accordance with appropriate authorizations of management and the Board, (ii) that transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP and (B) to maintain accountability for assets, (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company or any of its Subsidiaries and (iv) that the amount recorded for assets on the books and records of the Company and its Subsidiaries is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. None of the Company, any of the Company' Subsidiaries, the Company's independent auditors nor, to the Knowledge of the Company, any current or former employee, consultant or director of the Company or any of its Subsidiaries, has identified or been made aware of any fraud, whether or not material, that involves the Company's or any of its Subsidiary's management or other current or former employees, consultants or directors of the Company or any of its Subsidiaries who have a role in the preparation of the Financials or the internal accounting controls utilized by the Company or any of its Subsidiaries, or any claim or allegation regarding any of the foregoing. Neither the Company, nor any of its Subsidiaries, nor, to the Knowledge of the Company, any Representative of the Company or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, in each case, regarding deficient accounting or auditing practices, procedures, methodologies or methods of the Company, any of its Subsidiaries, or their internal accounting controls or any material inaccuracy in the Company's or any of its Subsidiary's Financials. No attorney representing the Company or any of its Subsidiaries has reported to the Board or any committee thereof or to any director or officer of the Company or any of its Subsidiaries evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company, any of its Subsidiaries or their Representatives. At the Balance Sheet Date, there were no material loss contingencies (as such term is used in Statement of Financial Accounting Standards No. 5 ("***Statement No. 5***") issued by the Financial Accounting Standards Board in March 1975) that are not adequately provided for in the Current Balance Sheet as required by Statement No. 5. Except as set forth in Section 3.7(d) of the Disclosure Schedules, there has been no material change in the Company's or any of its Subsidiaries' accounting policies since January 1, 2018, except as described in the Financials.

3.8 No Changes. Since the Balance Sheet Date through the Agreement Date: (a) the Company and each of its Subsidiaries has conducted its business only in the Ordinary Course of Business (except with respect to actions taken by the Company in connection with this Agreement and the transactions contemplated hereby); (b) there has not occurred a Material Adverse Effect with respect to the Company; and (c) neither the Company nor any of its Subsidiaries has taken any action that, if taken after the Agreement Date, would constitute a breach of, or require the consent of, Parent under Section 6.2.

3.9 Tax Matters.

(a) **General Tax Matters**.

(i) The Company and its Subsidiaries have (A) prepared and timely filed all income and other material Tax Returns required to be filed, and all such Tax Returns are true and correct in all material respects and (B) paid all Taxes required to be paid by the Company and its Subsidiaries (whether or not shown on a Tax Return). Neither the Company nor any of its Subsidiaries is the beneficiary of any extension of time within which to file any Tax Return. All accrued and unpaid Taxes of the Company and its Subsidiaries as of close of business on the Closing Date will be included in the Estimated Closing Indebtedness Amount.

(ii) The Company and its Subsidiaries have paid or withheld or collected with respect to its employees, creditors, customers, stockholders and other third parties, all Taxes and social security charges and similar fees, Federal Insurance Contribution Act amounts, Federal Unemployment Tax Act amounts and other Taxes required to be paid or withheld or collected, and have timely paid over any such Taxes and other amounts to the appropriate Governmental Entity in accordance with applicable Law, and filed materially correct and complete information Tax Returns to the extent required to be filed by the Company and its Subsidiaries with respect thereto.

(iii) There is no Tax deficiency outstanding, assessed or proposed in writing against the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Tax Return of the Company or any of its Subsidiaries is presently in progress, nor has the Company nor any of its Subsidiaries been notified in writing of any request for such an audit or other examination. No written claim has ever been made by any Tax authority in a jurisdiction where the Company and its Subsidiaries do not file Tax Returns that the Company or and of its Subsidiaries are or may be subject to Tax in that jurisdiction. No adjustment relating to any Tax Return filed by the Company or any of its Subsidiaries has been proposed by any Tax authority. Neither the Company nor any of its Subsidiaries is a party to or bound by any closing or other agreement or ruling with any Governmental Entity with respect to Taxes. There are no matters relating to Taxes under discussion between any Tax authority and the Company or and of its Subsidiaries.

(v) As of the Balance Sheet Date, neither the Company nor any of its Subsidiaries has any liabilities for unpaid Taxes which have not been accrued or reserved on the face of Current Balance Sheet (rather than in any notes thereto), whether asserted or unasserted, contingent or otherwise, and neither the Company nor any of its Subsidiaries has incurred any liability for Taxes other than in the Ordinary Course of Business (or recognized any extraordinary gain) since the Balance Sheet Date.

(vi) The Company has delivered to Parent correct and complete copies of all income, sales and use, value added, and other material Tax Returns filed by the Company or any of its Subsidiaries for all taxable periods remaining open under the applicable statute of limitations, all IRS Forms 8832 filed by the Company or any of its Subsidiaries, and all examination reports and statements of deficiencies, adjustments and proposed deficiencies and adjustments in respect of Taxes of the Company and its Subsidiaries. Section 3.9(a)(vi) of the Disclosure Schedule sets forth each jurisdiction where the Company or any of its Subsidiaries will be required to file a Tax Return following the Closing with respect to any Pre-Closing Tax Period, including the type of Tax Return and the type of Tax required to be paid. No power of attorney with respect to Taxes has been granted with respect to the Company or any of its Subsidiaries.

(vii) There are no Liens on the assets of the Company or any of its Subsidiaries relating or attributable to Taxes, other than Liens for Taxes not yet due and payable.

(viii) Neither the Company nor any of its Subsidiaries has been, during the applicable period provided in Section 897(c) of the Code, a “United States Real Property Holding Corporation” within the meaning of Section 897(c)(2) of the Code.

(ix) The Company has made available to Parent correct and complete copies of any formal written analysis prepared by, or on behalf of, the Company or any of its Subsidiaries regarding whether any of the Tax attribute carryforwards of the Company or any of its Subsidiaries (including, but not limited to, net operating losses and Tax credits) are subject to limitation pursuant to Sections 382, 383 or 384 of the Code.

(x) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax free treatment under Section 355 of the Code.

(xi) Neither the Company nor any of its Subsidiaries has (A) participated in any "reportable transaction" as defined in Section 6707A(c) of the Code or the treasury regulations promulgated thereunder, engaged in any transaction that would reasonably be likely to require the filing of an IRS Schedule UTP, or (B) participated or engaged in any other transaction that is subject to disclosure requirements pursuant to a corresponding or similar provision of state, local or non-U.S. Tax Law. Neither the Company nor any of its Subsidiaries has taken a position on any Tax Return that could give rise to a substantial understatement of Tax within the meaning of Section 6662 of the Code (or any similar provision of state, local or non-U.S. Tax Law).

(xii) Neither the Company, its Subsidiaries, nor any predecessor of the Company or any of its Subsidiaries has (A) ever been a member of an affiliated group (within the meaning of Section 1504(a) of the Code) filing a consolidated federal income Tax Return, (B) ever been a party to any Tax sharing, indemnification, reimbursement or allocation agreement (excluding for this purpose ancillary provisions in Ordinary Commercial Agreements), nor does the Company or any of its Subsidiaries owe any amount under any such agreement, (C) any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law, including any arrangement for group or consortium relief or similar arrangement), as a transferee or successor, by operation of Law, by contract, or otherwise, or (D) ever been a party to any joint venture, partnership or other agreement that is treated as a partnership for U.S. federal income Tax purposes.

(xiii) Neither the Company nor any of its Subsidiaries (and Parent as a result of its acquisition of the Company) will be required to include any income or gain or exclude any deduction or loss from taxable income for any Tax period or portion thereof ending after the Closing as a result of (A) any adjustment under Section 481 of the Code (or any corresponding provision of state, local or non-U.S. Tax Law) by reason of a change in a method of accounting, or use of an improper method of accounting, or otherwise (including as a result of the transactions contemplated by this Agreement) for a taxable period that ends on or prior to the Closing Date, (B) any "closing agreement" within the meaning of Section 7121 of the Code (or any similar provision of applicable state, local or non-U.S. Law) entered into on or prior to the Closing, (C) any intercompany transaction (including any intercompany transaction subject to Section 367 or 482 of the Code) or excess loss account described in the Treasury Regulations promulgated pursuant to Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. Law) with respect to a transaction occurring before the Closing, (D) any installment sale or open transaction disposition made on or prior to the Closing, (E) any deferred revenue or prepaid amount received on or prior to the Closing Date, or (F) any payment, loan, event or other transaction that occurred prior to the Closing but the payment and/or liability for which is deferred or forgiven pursuant to any Pandemic Response Law (other than Section 2302 of the CARES Act). Neither the Company nor any of its Subsidiaries has made an election under Sections 108(i) or 965(h) of the Code (or any corresponding or similar provision of state, local or non-U.S. Law).

(xiv) Each of the Company and each of its Subsidiaries uses the accrual method of accounting for income Tax purposes.

(xv) The Company is and always has been a domestic corporation taxable under subchapter C of the Code, and each Subsidiary of the Company is and always has been a foreign corporation, in each case for U.S. federal income Tax purposes. Except for the Subsidiary Ownership Interests set forth in Section 3.3(b) of the Disclosure Schedule, none of the Company or any of its Subsidiaries has or ever has had any direct or indirect ownership interest in any trust, corporation, partnership, limited liability company, joint venture or other business entity for U.S. federal income Tax purposes.

(xvi) Each of the Subsidiaries of the Company (A) is a "controlled foreign corporation" as defined in Section 957 of the Code, (B) is not a "surrogate foreign corporation" as defined in Section 7874(a)(2)(B) of the Code, and (C) is not subject to U.S. federal income Tax under any provision of the Code. The Company would not be required to include any amount as income under Section 951 of the Code or Section 951A of the Code other than in excess of the amounts disclosed in Section 3.9(a)(xvi) of the Disclosure Schedule were the taxable years of the Subsidiaries of the Company deemed to close on the Closing Date. As of the Closing Date, none of the Subsidiaries of the Company will hold any assets that constitute United States property within the meaning of Section 956 of the Code other than in respect of any intercompany receivables from the Company. Each Subsidiary of the Company was initially formed by the Company and has always been wholly-owned by the Company.

(xvii) Neither the Company nor any of its Subsidiaries is subject to Tax in any country other than its country of incorporation or formation by virtue of having a permanent establishment or other place of business in such other country. Neither the Company nor any of its Subsidiaries owns an interest in real property in any jurisdiction in which a Tax is imposed, or the value of the interest reassessed, on the transfer of an interest in real property and which treats the transfer of an interest in an entity that owns an interest in real property as a transfer of the interest in real property.

(xviii) Neither the Company nor any of its Subsidiaries has ever (A) participated in an international boycott as defined in Section 999 of the Code, (B) been subject to any accumulated earnings Tax or personal holding company Tax, (C) had branch operations in any foreign country, (D) been party to a gain recognition agreement under Section 367 of the Code, or (E) incurred a dual consolidated loss within the meaning of Section 1503 of the Code. Neither the Company nor any of its Subsidiaries has transferred any intangible property the transfer of which would be subject to the rules of Section 367(d) of the Code. No Tax ruling, clearance or consent has been issued to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has applied for any Tax ruling, clearance or consent. To the extent required by applicable Law, the each of Company and its Subsidiaries has timely filed all reports and have created and/or retained all records required under Sections 6038, 6038A, 6038B, 6038C, 6046 and 6046A of the Code (and any comparable provisions of any non-U.S. Tax Law).

(xix) All transactions and agreements entered into between any of the Company and its Subsidiaries have been made on arm's length terms. Each of the Company and its Subsidiaries is, and has been at all relevant times, in compliance in all material respects with all applicable transfer pricing laws and regulations.

(xx) Section 3.9(a)(xx) of the Disclosure Schedule lists all Tax holidays and similar Tax benefits which have current applicability to the Company or any of its Subsidiaries not generally available to any Person without specific application therefor. Each of the Company and its Subsidiaries is currently in material compliance with the requirements for all such Tax holidays and similar Tax benefits and have been in material compliance since such holiday or benefit was originally claimed by the Company or any of its Subsidiaries. To the Knowledge of the Company, no Tax holiday or similar Tax benefit of the Company or any of its Subsidiaries will terminate or be subject to recapture or clawback by reason of the transactions contemplated by this Agreement.

(xxi) Neither the Company nor any of its Subsidiaries has taken any action, nor knows of any fact or circumstance, that could reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(xxii) To the Knowledge of the Company, there is no material property or obligation of the Company or any of its Subsidiaries, including uncashed checks to vendors, customers or employees, non-refunded overpayments, credits or unclaimed amounts or intangibles, that are, or may become, escheatable or reportable as unclaimed property to any Governmental Entity under any applicable escheatment, unclaimed property or similar applicable Laws.

(xxiii) No Company Securities are a "covered security" within the meaning of Section 6045(g) of the Code, nor are there any shares of Company Capital Stock that were issued in connection with the performance of services and subject to vesting for which no valid and timely election was filed pursuant to Section 83(b) of the Code. The Company has delivered or made available to Parent correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statements with the appropriate IRS Center with respect to any share of Company Capital Stock that was initially subject to a vesting arrangement issued by the Company to any of its employees, non-employee directors, consultants or other service providers.

(xxiv) The Company and its Subsidiaries have collected, remitted and reported to the appropriate Tax authority all sales, use, value added, excise and similar Taxes required to be so collected, remitted or reported pursuant to all applicable Tax Laws. The Company and its Subsidiaries have complied in all material respects with all applicable Laws relating to record retention (including to the extent necessary to claim any exemption from Tax collection and maintaining adequate and current resale certificates to support any such claimed exemption.

(xxv) Section 3.9(a)(xxv) of the Disclosure Schedule, sets forth, as of the Agreement Date, the amount of any "applicable employment taxes" under Section 2302 of the CARES Act the payment of which has been deferred, extended or delayed by the Company and its Subsidiaries pursuant to the CARES Act. None of the Company or any of its Subsidiaries has (A) sought a covered loan under paragraph (36) of Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by Section 1102 of the CARES Act, or (B) except for Section 2302 of the CARES Act, availed itself of relief pursuant to any other Pandemic Response Laws that could reasonably be expected to impact the Tax payment and/or reporting obligations of the Company or any of its Subsidiaries after the Closing Date.

(b) **Tax Matters related to Compensation**. Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will (either alone or together with any other event) result in any payment or benefit that would be, individually or in combination with any other payment or benefit, characterized or reasonably expected to be characterized as an "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of Tax law), excluding, however, the effect of any arrangement entered into by or at the direction of Parent or its Affiliates, the material terms (including value) of which are not disclosed to the Company prior to the date hereof (each, an "***Undisclosed Parent Arrangement***"). There is no contract, agreement, plan or arrangement to which the Company, its Subsidiaries or any ERISA Affiliate is a party or by which it is bound to compensate any employee for excise taxes paid pursuant to Section 4999 of the Code or any similar state Law. Other than the Restricted Shares, none of the shares of outstanding capital stock of the Company is subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code.

(c) **409A Compliance**. Each nonqualified deferred compensation plan is and has been in documentary and operational compliance with Section 409A of the Code and all applicable IRS guidance issued with respect thereto. The per share exercise price for each Company Option is no less than the fair market value of a share of Company Common Stock on the date of grant (and as of any later modification thereof) within the meaning of Section 409A of the Code and as determined in a manner consistent with Section 409A of the Code. There is no contract, agreement, plan or arrangement to which the Company, its Subsidiaries or any ERISA Affiliate is a party or by which it is bound to compensate any employee for taxes paid pursuant to Section 409A of the Code or any similar state Law.

3.10 Restrictions on Business Activities. There is no Contract (non-competition or otherwise), commitment or Order to which the Company or any of its Subsidiaries is a party or which is otherwise binding upon the Company or any of its Subsidiaries (or any of their respective assets) which has or may reasonably be expected to have the effect of (a) prohibiting or materially impairing (i) any business practice of the Company or any of its Subsidiaries, (ii) any acquisition of property (tangible or intangible) by the Company or any of its Subsidiaries, or (iii) the conduct of business by the Company or any of its Subsidiaries, or (b) otherwise limiting the freedom of the Company or any of its Subsidiaries to engage in any line of business or to compete with any Person. Without limiting the generality of the foregoing, neither the Company nor any of its Subsidiaries has entered into any Contract under which the Company or any of its Subsidiaries is restricted from selling, licensing, delivering or otherwise distributing or commercializing any of Company Owned IP or Company Products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market.

3.11 Title to Properties; Absence of Liens; Condition and Sufficiency of Assets.

(a) Neither the Company nor any of its Subsidiaries owns, or has ever owned, any real property.

(b) Section 3.11(b) of the Disclosure Schedule sets forth a list, as of the Agreement Date, of all leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to all real property currently leased, subleased or licensed by or from the Company or any of its Subsidiaries or otherwise used or occupied by the Company or any of its Subsidiaries for the operation of its business (the "***Leased Real Property***"), including all amendments, terminations and modifications thereof ("***Lease Agreements***"), and there are no other Lease Agreements for real property affecting the Leased Real Property or to which the Company or any of its Subsidiaries is bound. There is not, under any of such Lease Agreements, any existing default (or event which with notice or lapse of time, or both, would constitute a default) on the part of the Company (or to the Knowledge of the Company, any other party thereto) which would be material to the operation of the business of the Company or any of its Subsidiaries, and no rent is past due. The Lease Agreements are valid and effective in accordance with their respective terms, subject to the Enforcement Exceptions. The Company has not received any written notice of a default, alleged failure to perform, or any offset or counterclaim with respect to any such Lease Agreement, which has not been fully remedied and withdrawn.

(c) Each of the Company and its Subsidiaries has good title to, or valid leasehold interest in, all of its tangible properties, real and personal, reflected on the Current Balance Sheet or acquired after the Balance Sheet Date (except properties and assets sold or otherwise disposed of since the Balance Sheet Date in the Ordinary Course of Business), or, with respect to leased properties and assets, valid leasehold interests in such tangible properties and assets that afford the Company or such Subsidiary valid leasehold possession of the tangible properties that are the subject of such leases, in each case, free and clear of all Liens, except Permitted Liens.

(d) The tangible assets and properties owned, leased and licensed by the Company or its Subsidiaries constitute all of the tangible assets and properties that are necessary for the Company and its Subsidiaries to conduct and operate the Company and its Subsidiaries' businesses as conducted as of the Agreement Date.

(e) All material machinery, equipment, and other tangible assets of the Company and its Subsidiaries (other than real property) currently being used in the conduct of the business of the Company and its Subsidiaries have been maintained in all material respects in accordance with generally accepted industry practice (giving due account to the age and length of use and ordinary wear and tear), are in all material respects in good operating condition and repair, ordinary wear and tear excepted, and are adequate and suitable for the uses to which they are being put. No maintenance of such assets has been materially deferred by the Company or any of its Subsidiaries.

(f) For the avoidance of doubt, for the purposes of this Section 3.11, all references and representations with respect to the assets or properties of the Company exclude Intellectual Property Rights, which are covered by Section 3.12.

3.12 Intellectual Property.

(a) **Definitions**. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(i) "***Behavioral Data***" means data collected from an IP address, web beacon, pixel tag, ad tag, cookie, JavaScript, local storage, software, or by any other means, or from a particular computer, Web browser, mobile telephone, or other device or application, where such data is or may be used to identify or contact an individual, device, household or application (including by means of an advertisement or other content), to develop a profile or record of the activities of an individual, device, or application across multiple websites or online services, to predict or infer the preferences, interests, or other characteristics of an individual, device, or application, or a user thereof, or to target advertisements or other content to an individual, device, or application.

(ii) ***"Company Hybrid Product***" means the Hybrid Segment product currently under development by the Company that comprises on-premise software designed to allow the Company's customers to run the Company's data processing pipeline on the customer's own cloud instances.

(iii) "***Company IP***" shall mean (i) all Technology and Intellectual Property Rights in the Company Products, and (ii) all Company Owned IP.

(iv) "***Company Owned IP***" shall mean any and all Intellectual Property Rights, including Registered IP, that are owned or purported to be owned by the Company or any Subsidiary of the Company.

(v) "***Company Privacy Policy***" means each external or internal, past or present published privacy policy of the Company or any Subsidiary of the Company, including any policy, representation, or promise relating to: (i) the privacy of users of Company Products or any website or service operated by or on behalf of the Company or its Subsidiaries; or (ii) the creation, collection, use, storage, retention, hosting, disclosure, security, transmission, interception, transfer, disposal, or other processing of any Personal Data.

(vi) "***Company Products***" shall mean all products and services that have been or are as of the Agreement Date commercially provided, made available, marketed, distributed, offered online, offered for sale, sold, leased, loaned, or licensed by or on behalf of the Company or any Subsidiary of the Company, at any time prior to the date of the Agreement (including through resellers and other channel partners), and any product or service currently under development as of the date of the Agreement by or on behalf of the Company or any Subsidiary of the Company schedule for release in the next three (3) months and in its state of development as of the date of the Agreement (including the Company Hybrid Product).

(vii) "***Company Products Data***" means (i) all data and content uploaded or otherwise provided by or for customers or users (or any of their respective customers or users) of the Company or any of its Subsidiaries to, or stored by or for customers or users (or any of their respective customers or users) of the Company or any of its Subsidiaries on the Company Products; (ii) all data and content (including any voice, video, email, text messaging, or other communications) created, compiled, inferred, derived, transmitted, intercepted, or otherwise collected or obtained by or for the Company Products or by or for the Company or any of its Subsidiaries in connection with its provision of the Company Products or operation of the business of the Company and its Subsidiaries; and (iii) data and content compiled, inferred, or derived directly or indirectly from any of the data and content described in subclauses (i) and (ii) above.

(viii) "***Company Software***" means (i) any the software that embodies any Company Owned IP and (ii) all Software that comprises a Company Product.

(ix) "***Company Source Code***" shall mean any software source code authored by or on behalf of the Company, and any software source code of any Company Product.

(x) *"**Contaminant***" means any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code, software routines, or hardware components designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or permitting or causing unauthorized access to, a system, network, or other device; or (ii) damaging or destroying any data or file without the user's consent.

(xi) "***Intellectual Property Rights***" shall mean all rights in, arising out of, or associated with Technology and intellectual property in any jurisdiction, including: (i) rights in, arising out of, or associated with works of authorship, including without limitation rights granted under the Copyright Act; (ii) rights in, arising out of, or associated with databases; (iii) rights in, arising out of, or associated with inventions, including without limitation rights granted under the Patent Act ("***Patent Rights***"); (iv) rights in, arising out of, or associated with trademarks, service marks and trade names including without limitation rights granted under the Lanham Act; (v) rights in, arising out of, or associated with confidential information and trade secrets, including without limitation rights described under the Uniform Trade Secrets Act; (vi) rights of attribution and integrity and other moral rights of an author; (vii) rights in, arising out of, or associated with a person's name, voice, signature, photograph, or likeness, including without limitation rights of personality, publicity or similar rights; (viii) rights in, arising out of, or associated with domain names; and (ix) any similar or analogous rights arising in any jurisdiction in the world.

(xii) "***Open Source Material***" shall mean any software or other materials that are distributed as "free software" or "open source software" (as such terms are commonly understood in the software industry), including software code or other materials that are licensed under a Creative Commons License, open database license, the Mozilla Public License, the GNU General Public License, GNU Lesser General Public License, Affero General Public License, Common Public License, Apache License, BSD License, or MIT License and all other licenses identified by the Open Source Initiative as "open source licenses" (such licenses or agreements are collectively, ***"Open Source Licenses***").

(xiii) "***Personal Data***" shall mean information about an identified or identifiable natural person including, all such information that constitutes "personal data" as defined under the GDPR, "personal information" as defined under the CCPA, or "personal data", "personally identifiable information", "nonpublic personal information", "customer proprietary network information," "individually identifiable health information," "protected health information," "personal information" as defined under applicable Law or any similar information governed by Privacy Requirements.

(xiv) "***Privacy Requirements***" means any applicable Law (including the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, the Children's Online Privacy Protection Act, the Federal Information Security Management Act, the California Consumer Privacy Act of 2018 ("***CCPA***"), other state privacy and data privacy laws, state social security number protection laws, state data breach notification laws, state consumer protection laws, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation or "***GDPR***"), the Privacy and Electronic Communications Directive 2002/58/EC ("***ePrivacy Directive***") any European Union or United Kingdom laws and regulations implementing the GDPR or ePrivacy Directive, any applicable international Laws and regulations), contractual obligation or internal or external policy of the Company or its Subsidiaries, in each case, as amended from time to time, that pertains to (A) privacy, data security or data protection, (B) the creation, collection, use, disclosure, transfer, transmission, storage, security, hosting, disposal, destruction, retention, interception or other processing of Personal Data, (C) direct marketing and any other initiation, transmission, monitoring, recording, or receipt of communications (in any format, including voice, video, email, phone, text messaging, or otherwise), or consumer protection, or (D) security breach notification, and the Company Privacy Policies.

(xv) "***Registered IP***" shall mean domain names and all Intellectual Property Rights that are the subject of an application, certificate, filing, registration, or other document issued by, filed with, or recorded by, any state, government, or other public legal authority at any time in any jurisdiction, including without limitation, all applications, foreign counterparts, reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations, and continuations-in-part associated with patents.

(xvi) "***Shrink-Wrap Software***" means any generally commercially available, non-customized software in executable code or hosted form that is available for an annual cost of not more than $100,000 in the aggregate for all users and work stations and not distributed by the Company or its Subsidiaries.

(xvii) "***Technology***" shall mean all forms of technology and content, including any or all of the following: (i) published and unpublished works of authorship, including without limitation audiovisual works, collective works, computer programs or software (whether in source code or executable form), documentation, compilations, databases, derivative works, literary works, maskworks, websites, and sound recordings; (ii) inventions (whether or not patentable), discoveries, improvements, business methods, compositions of matter, machines, methods, and processes and new uses for any of the preceding items; (iii) information that is not generally known or readily ascertainable through proper means, whether tangible or intangible, including without limitation algorithms, customer lists, ideas, designs, formulas, know-how, methods, processes, programs, prototypes, systems, and techniques; (iv) databases, data compilations and collections and technical data; and (v) devices, prototypes, designs and schematics (whether or not any of the foregoing is embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries).

(b) **Registered IP**. Section 3.12(b)(1) of the Disclosure Schedule lists, as of the Agreement Date: (i) each item of Registered IP which is owned, filed in the name of, or purported to be owned by the Company or its Subsidiaries or subject to a valid obligation of assignment to the Company or any Subsidiary (whether owned exclusively, jointly with another Person, or otherwise) ("***Company Registered IP***"); (ii) the jurisdiction in which such item of Registered IP has been registered or filed and the applicable registration or serial number; (iii) the filing date, and issuance/registration/grant date; (iv) a brief descriptions of the prosecution status thereof; and (v) any other Person that has an ownership interest in such item of Registered IP and the nature of such ownership interest. Section 3.12(b)(2) of the Disclosure Schedule lists, as of the Agreement Date: (y) any formal actions that must be taken by the Company or any Subsidiary within ninety (90) days of the Closing Date with respect to any Company Registered IP, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates, and (z) any Legal Proceedings before any court or tribunal (including the United States Patent and Trademark Office (the "***PTO***"), the U.S. Copyright Office, or equivalent authority anywhere in the world) to which the Company or any Subsidiary is a party and in which claims are raised relating to the validity, enforceability, scope, ownership or infringement of any of the Company Registered IP, but excluding ordinary course prosecution for such Company Registered IP. All necessary registration, maintenance and renewal fees in connection with the Company Registered IP that are or shall be due for payment on or before the Closing Date have been or shall be timely paid and all necessary documents and certificates in connection with the Company Registered IP that are or shall be due for filing on or before the Closing Date have been or shall be timely filed with the PTO or other relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered IP. To the maximum extent provided for by, and in accordance with, applicable Laws, the Company and each Subsidiary has recorded each assignment of Company Registered IP with each relevant Governmental Entity, in accordance with applicable Laws. The Company has made available to Parent correct and complete copies of all applications, correspondence and other material documents related to each such item of Company Registered IP.

(c) **Title, Validity and Enforceability**. The Company or its Subsidiaries exclusively own all right, title, and interest to and in the Company Owned IP free and clear of all Liens (other than Permitted Liens and non-exclusive licenses granted in the Ordinary Course of Business). All Company Registered IP is subsisting and, to the Knowledge of the Company valid and enforceable (except with respect to applications, which are validly applied for).

(d) **Contracts**.

(i) Section 3.12(d)(i) of the Disclosure Schedule lists, as of the Agreement Date, all licenses or Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound pursuant to which any material Intellectual Property Right or Technology is licensed to the Company or any of its Subsidiaries (other than (A) non-exclusive software licenses or software-as-a-service agreements with respect to Shrink-Wrap Software and Open Source Materials, (B) nondisclosure agreements entered in the Ordinary Course of Business, and (C) licenses of Intellectual Property Rights that are substantially similar in all material respects to those contained in any Standard Form Agreement), (collectively "***Inbound Licenses***").

(ii) Section 3.12(d)(ii) of the Disclosure Schedule lists, as of the Agreement Date, each license or Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound pursuant to which the Company or any of its Subsidiaries has granted to any Person any license under, agreed not to assert or enforce, or in which any Person has otherwise received or acquired any right (whether or not currently exercisable) or interest in, any Company Owned IP (other than (A) nondisclosure agreements entered in the Ordinary Course of Business; (B) nonexclusive licenses to provide the Company Products to the Company's or any Subsidiary's customers

entered in the Ordinary Course of Business; (C) access or licenses to Company IP granted to Company employees, consultants, and independent contractors pursuant to Personnel Agreements; (D) incidental trademark licenses; and (E) non-exclusive licenses granted to the Company's or any Subsidiary's service providers and vendors for the sole purpose of providing services to the Company or a Subsidiary) (collectively, "***Outbound Licenses***").

(iii) The Company has made available to Parent a correct and complete copy of each standard form of Contract used by the Company and its Subsidiaries at any time in connection with its business, including (as applicable) each of its unmodified standard forms of: (A) employee agreement containing any arbitration agreement and assignment or license of Intellectual Property Rights or any confidentiality provision; (B) consulting or independent contractor agreement containing any assignment or license of Intellectual Property Rights or any confidentiality provision; (C) confidentiality or nondisclosure agreement; and (D) customer contract providing for non-exclusive use of or access to the Company Products (collectively, the "***Standard Form Agreements***").

(e) **Company Owned IP.** The Company or a Subsidiary of the Company has the exclusive right to bring infringement actions with respect to the Company Owned IP. Neither the Company nor any Subsidiary has: (A) transferred full or partial ownership of, or granted any exclusive license with respect to, any Intellectual Property Rights that are or, as of the time of such transfer or exclusive license were, owned or purported to be owned by the Company and material to the Company or its Subsidiaries, to any other Person; or (B) permitted Intellectual Property Rights that are or, were at the time, owned or purported to be owned by the Company and material to the Company or its Subsidiaries to enter into the public domain.

(f) **Development of Company IP**. Neither the Company nor any Subsidiary has jointly developed any Company Owned IP with any other Person with respect to which such other Person has retained any rights in the developed subject matter. Without limiting the generality of the foregoing:

(i) Each Person who is or was an employee, consultant or contractor of the Company or any Subsidiary and that was involved in the development of any Technology or, in the case of consultants or contractors, Technology that are material to the Company, for or on behalf of the Company or its Subsidiaries has signed a valid, enforceable agreement (A) containing an assignment to the Company or such Subsidiary of such Person's rights, title and interest in and to the resulting Technology and any Intellectual Property Rights arising in connection therewith, and (B) which also contains customary confidentiality provisions protecting the rights of the Company or such Subsidiary in trade secrets and other Company or Subsidiary proprietary information (such valid, enforceable agreements "***Personnel Agreements***"). The Company or such Subsidiary and all other parties thereto are in compliance in all material respects with the provisions of the Personnel Agreements.

(ii) No current or former member, manager, officer, director, consultant, contractor or employee, of the Company or any Subsidiary (A) has made any claim of ownership with respect to any Company Owned IP, or (B) has any claim, right (whether or not currently exercisable) or interest to or in any Company Owned IP.

(iii) To the Knowledge of the Company, no current or former employee of the Company or any Subsidiary is: (A) bound by or otherwise subject to any Contract with a third Person restricting such employee from performing (or in the case of former employees, having performed) such employee's duties for the Company or such Subsidiary; or (B) in breach of any Contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to his/her activities as an employee or contractor of the Company or such Subsidiary.

(iv) No funding, facilities or personnel of any Governmental Entity or any public or private university, college or other educational or research institution were used directly to develop or create, in whole or in part, any Company Owned IP for or on behalf of the Company or its Subsidiaries.

(v) No current or former employee of the Company or any Subsidiary of the Company is in any material respect in violation of any employment contract, non-disclosure, confidentiality agreement, or consulting agreement with the Company or any of its Subsidiaries. No current or former employee of the Company or any Subsidiary of the Company is in any material respect in violation of any non-competition agreement, non-solicitation agreement or restrictive covenant with a former employer or service recipient relating to the right of any such employee to be employed by or provide services to the Company or any of its Subsidiaries because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others.

(g) **Standards Bodies.** Neither the Company nor any of its Subsidiaries is, nor has ever been, a member or promoter of, or a contributor to, any industry standards body or any similar organization that requires or obligates the Company or its Subsidiaries to grant or offer to any other Person any license or right to any Company Owned IP. Neither the Company nor any of its Subsidiaries is a party to any Contract with a standards body or any similar organization involving the license to the Company or its Subsidiaries of "standards essential" Technology or Intellectual Property Rights, and neither the Company nor any Subsidiary has reasonable basis to believe that in the absence of such Contract, it has any Liability therefor.

(h) **Protection of Trade Secrets.** The Company and its Subsidiaries have taken reasonable steps and precautions necessary to maintain the confidentiality of, and otherwise protect and enforce its rights in, all proprietary and confidential information that the Company and its Subsidiaries hold, or purport to hold, as a trade secret or maintains, or purport to maintain, as confidential.

(i) **Enforcement**. To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated, and no Person is currently infringing, misappropriating or otherwise violating, any Company Owned IP. Section 3.12(i) of the Disclosure Schedule lists (and the Company has made available to Parent a correct and complete copy of) each letter or other written or electronic communication, or correspondence or claim that has been sent or otherwise delivered to any other Person by the Company, any Subsidiary, or any of their representatives, regarding any actual, alleged or suspected infringement or misappropriation of any Company Owned IP.

(j) **Non-Infringement**. The operation of the business of the Company and its Subsidiaries as currently conducted or as currently contemplated by the Company and its Subsidiaries to be conducted by the Company and its Subsidiaries, including the design, development, use, import, branding, advertising, promotion, marketing, sale, provision, and licensing out of any Company Product, has not and does not infringe, violate or misappropriate, and shall not infringe, violate or misappropriate, when conducted by the Surviving Corporation or the Company and its Subsidiaries following the Closing (i) as currently contemplated by the Company and its Subsidiaries or (ii) in substantially the same manner as currently conducted by the Company and its Subsidiaries, any Intellectual Property Rights of any Person, or constitute unfair competition or trade practices under the laws of any jurisdiction. Without limiting the generality of the foregoing:

(i) No infringement, misappropriation, or similar claim or Legal Proceeding involving or relating to any Intellectual Property Rights of another Person is pending or threatened in writing against the Company or its Subsidiaries or against any other Person who is or may be entitled to be indemnified, defended, held harmless or reimbursed by the Company or its Subsidiaries with respect to such Legal Proceeding.

(ii) Neither the Company nor any Subsidiary has received any written notice or other written communications relating to any actual, alleged or suspected infringement, misappropriation or violation by the Company or any Subsidiary of any Intellectual Property Rights of another Person, including any letter or other written communication suggesting or offering that the Company or any Subsidiary obtain a license to any Intellectual Property Rights of another Person in a manner that reasonably implies infringement or violation in the absence of a license thereto.

(k) **Company Software**. The Company Software does not contain any bug, defect or error (including any bug, defect or error relating to or resulting from the display, manipulation, processing, storage, transmission or use of date data) that: (A) materially and adversely affects the use, functionality or performance of such Company Software or any product or system containing or authorized or intended to be used in conjunction with such Company Software; or (B) causes or would cause the Company or any Subsidiary to fail to comply in any material respect, with any applicable warranty or other contractual commitment relating to the use, functionality or performance of any Company Product or such Company Software. No Company Software contains any "back door," "drop dead device," "time bomb," "Trojan horse," "virus" or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, any of the following functions: (X) disrupting, disabling, harming or otherwise materially impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (Y) damaging or destroying any data or file without the user's consent.

(l) **Company Source Code**. No Company Source Code within the possession or control of the Company has been delivered, licensed or made available to any escrow agent or other Person who is not, or was not, as of the date thereof, an employee, consultant or independent contractor of the Company or any of its Subsidiaries subject to a Personnel Agreement. Neither the Company nor any Subsidiary has any duty or obligation (whether present, contingent, or otherwise) to deliver, license or make available any Company Source Code to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) shall, or could reasonably be expected to, result in the authorized delivery, license, or disclosure of any Company Source Code within the possession or control of the Company to any other Person.

(m) **Open Source**.

(i) Section 3.12(m)(i) of the Disclosure Schedule lists, as of the Agreement Date: (A) each item of third party Open Source Materials (including versions) that is contained in, distributed with, linked with the current version any software that embodies any Company Owned IP and any other Company Software owned by or purported to be owned by the Company or from which any part of the current version of any such Company Software is derived; (B) the name of or a link to (or other locator for) the applicable Open Source License for each such item of Open Source Material that is software; and (C) whether such Open Source Material has been distributed by or on behalf of the Company or its Subsidiaries.

(ii) No Company Product and no other material Company Software contains, is linked with, derived from, or is distributed with, any Open Source Materials in a manner that requires the Company or any Subsidiary pursuant to the applicable Open Source License: (A) that the Company or its Subsidiaries grant a license under, or refrain from asserting any one or more of its Patent Rights or that any Company Software or part thereof (except for the applicable, unmodified third party Open Source Material itself): (1) be disclosed or distributed in source code form; (2) be licensed for the purpose of making modifications or derivative works; or (3) be redistributable at no charge; or (B) that otherwise imposes any limitation, restriction or condition on the Company's or any Subsidiary's commercial exploitation of any Company Software or part thereof (in each case (A) and (B), except for the applicable, unmodified third party Open Source Material itself).

(iii) Neither the Company nor any of its Subsidiaries has distributed any Company Source Code pursuant to an Open Source License.

(n) **Privacy.**

(i) Section 3.12(n)(i) of the Disclosure Schedule lists all Company Privacy Policies. None of the disclosures made or contained in any Company Privacy Policy has been inaccurate, misleading or deceptive in any material respect.

(ii) Except as set forth on Section 3.12(n)(i) of the Disclosure Schedule, the use of the Company Products by customers of the Company or its Subsidiaries (and such customers' customers and users) for their intended purposes or in accordance with any agreement in place between the Company or its Subsidiaries and such customers at all times has complied, in all material respects with all Privacy Requirements.

(iii) The Company, its Subsidiaries, the Company Products comply, and have at all times complied, with all Privacy Requirements, including those relating to (a) the privacy of customers and non-customer end users of the Company Products; (b) the privacy of the Company's or its Subsidiaries' job applicants, employees or other personnel and (c) the creation, collection, use, storage, retention, hosting, disclosure, security, transmission, interception, transfer, disposal and any other processing of any Company Data by or for the Company or its Subsidiaries. The Company and its Subsidiaries have complied in all material respects with all third-party privacy policies, terms of use, and similar documents that the Company or its Subsidiaries is or has been contractually obligated to comply with. The Company and its Subsidiaries have entered into agreements with third parties in compliance in all material respects with Privacy Requirements.

(iv) Except as set forth on Section 3.12(n)(iv) of the Disclosure Schedule, there are no requests to the Company or its Subsidiaries from individuals seeking to exercise their rights under Privacy Requirements (such as rights to obtain, access, rectify, or delete their Personal Data; opt-out of sharing of their data; restrict processing of or object to processing of Personal Data; data portability) that have not been fulfilled in accordance with Privacy Requirements or are not presently in the process of being addressed in full. No indemnification requests are pending or threatened in writing against the Company nor any of its Subsidiaries alleging any violation of Privacy Requirements.

(v) Neither Company nor any of its Subsidiaries has collected or received any Personal Data online from children under the age of thirteen (13) without (where legally required) verifiable parental consent or directed any of its websites to children under the age of thirteen (13) through which such Personal Data could be obtained.

(vi) Neither the execution, delivery, and performance of this Agreement, the transactions contemplated hereby nor the transfer of any Personal Data maintained or otherwise processed by or for the Company or its Subsidiaries, including all of the Company's or its Subsidiaries' databases and other Personal Data relating to employees, customers and all non-customer end users of the Company Products, from the Company or any Subsidiary to Parent will cause, constitute, or result in a breach or violation of any Privacy Requirements or any Company Privacy Policy.

(o) **Systems**. The computer, information technology and data processing systems, facilities, infrastructure and services owned, used, or leased by or on behalf of the Company and its Subsidiaries, including the Company Products and all other software, hardware, networks, communications facilities, platforms and related systems and services in use or control of the Company and its Subsidiaries (collectively, "***Systems***"), are reasonably sufficient for the operation of the business of the Company and its Subsidiaries as currently conducted or as proposed to be conducted, including as to capacity, scalability and ability to process current peak volumes in a timely manner. The Systems are in good working condition to effectively perform all computing, information technology and data processing operations necessary for the operation of the Company and its Subsidiaries as currently conducted or as proposed to be conducted.

(p) **Security Measures**.

(i) Except as described in Section 3.12(p)(i) of the Disclosure Schedule, the Company's and its Subsidiaries' information security practices and policies comply, and have at all times complied, with all Privacy Requirements. The Company and its Subsidiaries have implemented and maintained reasonable disaster recovery and business continuity plans, procedures and facilities, including with respect to all Systems and the business of the Company and its Subsidiaries. To the Knowledge of the Company, neither the Company nor its Subsidiaries has experienced any material disruption to, or material interruption in, the conduct of its business attributable to a defect, error, or other failure or deficiency of any System.

(ii) Except as described in Section 3.12(p)(ii) of the Disclosure Schedule, with respect to each Person performing services for the Company or its Subsidiaries that is or has been permitted to access or otherwise process Personal Data or Company confidential information, the Company or such Subsidiary has obtained a written agreement from such Person that complies with all Privacy Requirements. To the Knowledge of the Company, all Persons are in compliance with the provisions of such agreements. Section 3.12(p)(ii) of the Disclosure Schedule identifies procedures taken by the Company (including internal Company policies) and the standard form of non-disclosure or confidentiality agreements generally used by the Company and its Subsidiaries with Persons whom the Company or its Subsidiaries shares Company confidential information.

(iii) Except as described in Section 3.12(p)(iii) of the Disclosure Schedule, there have not been data security incidents that have given rise to a duty of the Company or its Subsidiaries to report the incident to impacted data subjects or any Governmental Entity. The Company and its Subsidiaries have made all notifications to customers or non-customer end-users required to be made by the Company or its Subsidiaries under any Privacy Requirements arising out of or relating to any security incidents involving Personal Data.

(iv) The Company and its Subsidiaries have at all times implemented, maintained, and monitored reasonable and appropriate plans, policies, safeguards, and measures (including with respect to technical, administrative, and physical security) to preserve and protect the confidentiality, availability, security, and integrity of all Systems, all Personal Data or Company confidential information used, collected, handled, transmitted, stored, or otherwise processed by or for the Company and its Subsidiaries. Such plans, policies, safeguards, and measures have complied at all times with Privacy Requirements and agreements with third parties, and have included (A) steps to protect the Systems from infection by Contaminants, access by unauthorized Persons, or access by authorized Persons that exceeds the Person's authorization; (B) performing and documenting risk assessment and management procedures of the Company and its Subsidiaries ("***Information Security Reviews***"); and (C) adherence to industry standard practices pertaining to secure programming techniques. The Company and its Subsidiaries have timely corrected any material exceptions or vulnerabilities identified in such Information Security Reviews.

(v) Except as set forth on Section 3.12(n)(i) of the Disclosure Schedule, there is no, and has been no, complaint to, audit or request to audit, investigation (formal or informal) or Legal Proceeding, in each case, against the Company, its Subsidiaries or any of their respective customers (in the case of customers, to the extent relating to any Company Product or the practices of the Company, its Subsidiaries, or any Person performing for the Company or its Subsidiaries) by any private party, the U.S. Federal Trade Commission, any data protection authority or any other Governmental Entity, with respect to (A) the creation, collection, storage, hosting, use, disclosure, transmission, transfer, disposal, security, possession, interception, or other processing of any Personal Data by or for the Company or its Subsidiaries or (B) the security, confidentiality, availability, or integrity of any Systems or of any Personal Data or Company confidential information used, processed or maintained by or for the Company or its Subsidiaries.

(vi) Section 3.12(p)(vi) of the Disclosure Schedule accurately identifies, and the Company has made available, each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to the Company or its Subsidiaries regarding any actual, alleged or suspected violation of any Privacy Requirements by (a) the Company, its Subsidiaries, or any Person performing for the Company or its Subsidiaries, or (b) any of the Company's or its Subsidiaries' customers or non-customer end-users, and provides a brief description of the current status of the matter referred to in such letter, communication or correspondence.

(q) **Effect of Transaction**. All Company Owned IP is (and immediately following Closing shall be) fully transferable, alienable and licensable by the Company or its Subsidiaries (or Parent or Surviving Corporation, as applicable) without restriction and without payment of any kind to any third party. Neither the execution, delivery or performance of this Agreement or any other agreements referred to in this Agreement nor the consummation of any of the transactions contemplated hereby will, with or without notice or lapse of time, result in, or give any other Person the right or option to cause or declare: (i) a loss of, or Lien on, any Company Owned IP; (ii) an obligation for Parent to offer any discount or be bound by any "most favored pricing" terms under any Contract to which the Company or its Subsidiaries is a party or bound or Parent or its Affiliates being bound by any exclusivity, non-compete, or similar restriction on the Parent's or its Affiliates' respective businesses to which Parent or its Affiliates would not have been bound but for the transactions contemplated by this Agreement; (iii) the release, disclosure or delivery of any Company Owned IP by or to any escrow agent or other Person; or (iv) the grant, assignment or transfer to any other Person of any license or other right or interest in, under, or with respect to, either any of the Company Owned IP or any other Technology or the Intellectual Property Rights of Parent.

3.13 Agreements, Contracts and Commitments.

(a) Except for this Agreement and the Contracts specifically identified on Section 3.12(d) of the Disclosure Schedule (with each of such Contracts specifically identified under subsection(s) of such Section 3.13 of the Disclosure Schedule that correspond to the Subsection or Subsections of this Section 3.13 of the Disclosure Schedule), neither the Company nor any of its Subsidiaries is, as of the Agreement Date, a party to or bound by any of the following Contracts, excluding, for the avoidance of doubt, any Company Employee Plans and Employment Agreements as disclosed in Section 3.20(a) of the Disclosure Schedule:

(i) (A) any Contract to grant any severance, change of control payments, retention bonus, equity acceleration, or termination pay (in cash or otherwise) to any employee, consultant, advisor, independent contractor or director of the Company or any Subsidiary; or (B) any Contract with any labor union or any collective bargaining agreement or similar Contract;

(ii) any fidelity or surety bond or completion bond;

(iii) any lease of any real property or personal property;

(iv) any Contract relating to capital expenditures and involving future payments in any amount in excess of $25,000 individually or $50,000 in the aggregate, in each case in any fiscal year;

(v) any Contract relating to the disposition or acquisition of ownership of assets or any interest in any business enterprise outside the Ordinary Course of Business;

(vi) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit or other Indebtedness;

(vii) any purchase order or Contract or group of related Contracts with the same vendor or supplier for the purchase of tangible items of equipment or related services in any amount in excess of $100,000 in the aggregate in any fiscal year;

(viii) any Inbound License;

(ix) any Outbound License;

(x) any Contract with a Top Supplier;

(xi) any Contract with a Top Customer;

(xii) any confidentiality and non-disclosure agreements (whether the Company is the beneficiary or the obligated party thereunder), other than any Personnel Agreements and any confidentiality and non-disclosure agreement (whether the Company is the beneficiary or the obligated party thereunder) entered into in the Ordinary Course of Business that is not material;

(xiii) any Contract providing for "offshore" or outsourced development of any material items of Technology by, for or on behalf of the Company or any of its Subsidiaries;

(xiv) any Contract containing a provision that limits, restricts or impairs the Company's or any of its Subsidiaries' ability to operate in any geography of the world or with any Person, including those Contracts (A) that contain covenants of non-competition, rights of first refusal or negotiation, non-solicitation of customers, and exclusive dealings arrangements or (B) under which the Company or any of its Subsidiaries is restricted from hiring or soliciting potential employees, consultants or independent contractors and which restriction on hiring or soliciting potential employees, consultants or independent contractors would reasonably be expected to be material to the Company and its Subsidiaries' ability to operate its business as currently conducted;

(xv) any Contract with federal, state, city, county, parish, municipal or other Governmental Entities;

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

(xvii) any agency, dealer, distribution, sales representative, remarketer, reseller, or other Contract for the distribution of Company Products (other than agreements with resellers and channel partners entered into in the Ordinary Course of Business and with terms that do not materially deviate from the terms set forth in the form of reseller agreement made available to Parent);

(xviii) any Contract pursuant to which the Company or any of its Subsidiaries is bound to or has committed to provide any product or service to any third party on a most favored nation basis or similar terms;

(xix) any Contract granting any license or other rights to or from the Company or any of its Subsidiaries with respect to Company Data, other than grants to service providers to use such Company Data in connection with the provision of services to the Company or any of its Subsidiaries;

(xx) any standstill or similar agreement containing provisions prohibiting a third party from purchasing Equity Interests of the Company or any of its Subsidiaries or assets of the Company or any of its Subsidiaries or otherwise seeking to influence or exercise control over the Company or any of its Subsidiaries;

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

(xxii) any agreement of indemnification with officers or directors of the Company;

(xxiii) any Contract with any investment banker, broker, advisor or similar party, or any accountant, legal counsel or other Person retained by the Company or any of its Subsidiaries, in connection with this Agreement and the transactions contemplated hereby;

(xxiv) any Contract or other arrangement to settle any Legal Proceeding or to settle any threatened Legal Proceeding, in each case, that involves material outstanding obligations of the Company or any Subsidiary of the Company; and

(xxv) any other Contract or group of related Contracts with the same counter-party that have not been otherwise disclosed pursuant to this Section 3.13 that involves $500,000 in the aggregate or more, in any fiscal year.

(b) The Company has made available correct and complete copies of each Contract required to be disclosed pursuant to Sections 3.2, 3.10, 3.11, 3.12 (including, for the avoidance of doubt, each Contract entered into on a Standard Form Agreement), 3.13 and 3.20(a). For the purposes of this Agreement, each of the foregoing Contracts referenced in this subsection 3.13(b) as well as any Contracts entered into subsequent to the Agreement Date and prior to the Closing Date that would have been required to be disclosed pursuant to Sections 3.2, 3.10, 3.11, 3.12 (including, for the avoidance of doubt, each Contract entered into on a Standard Form Agreement), 3.13 and 3.20(a) if such Contract had been in effect as of the Closing Date, shall each be a "***Material Contract***" and collectively are the "***Material Contracts***."

(c) Each of the Company and its Subsidiaries has performed in all material respects all of the obligations required to be performed by it and is entitled to all benefits under, and has not received any written notice alleging it to be in material default in respect of, any Material Contract. Each of the Material Contracts is in full force and effect, subject only to the effect, if any, of the Enforcement Exceptions. There exists (x) no material default or material event of default under any Material Contract by the Company or any of its Subsidiaries or, to the Knowledge of the Company, any other party thereto, and

(y) no event, occurrence, condition or act, with respect to the Company or any of its Subsidiaries, or to the Knowledge of the Company, with respect to any other party to a Material Contract, that, with the giving of notice or the lapse of time, would reasonably be expected to (i) become a material default or material event of default under any Material Contract or (ii) give any third party (A) the right to declare a default or exercise any remedy under any Material Contract, which default would be material to the Company, (B) the right to a rebate, chargeback, refund, credit, penalty or change in delivery schedule under any Material Contract, which would be material to the Company, (C) the right to accelerate the maturity or performance of any material obligation of the Company or any of its Subsidiaries under any Material Contract, or (D) the right to cancel (other than at the expiration of the term of any Contract in accordance with its terms), terminate or modify any Material Contract, which cancellation, termination or modification would be material to the Company. Neither the Company nor any of its Subsidiaries has received any written notice to cancel or modify any Material Contract. Neither the Company nor any of its Subsidiaries has any Liability for renegotiation of Contracts with Governmental Entities.

3.14 Interested Party Transactions.

(a) No officer or director of the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any Company Stockholder (nor, to the Knowledge of the Company, any immediate family member of any of such Persons, or any trust in which any of such Persons has or has had an interest) (each, an "***Interested Party***"), has or has had, directly or indirectly, (i) any interest in any entity which furnished or sold, or furnishes or sells, services, products, or technology to the Company or any of its Subsidiaries, (ii) any interest in any entity that purchases from or sells or furnishes to the Company or any of its Subsidiaries, any goods or services, or (iii) any interest in, or is a party to, any Contract to which the Company or any of its Subsidiaries is a party (except, in each case, for any interest or Contract relating to (A) normal compensation or welfare benefits provided for services as an officer, director or employee of the Company or any of its Subsidiaries or (B) the Company's Securities owned by such Interested Party); *provided,* that (y) ownership of no more than five percent (5%) of the outstanding voting securities of an entity nor (z) any investment in any portfolio company by any Company Stockholder which is a private equity or venture capital fund, in each case, shall not be deemed to be an "interest in any entity" for purposes of this Section 3.14.

(b) All transactions pursuant to which any Interested Party has purchased any services, products, or technology from, or sold or furnished any services, products or technology to, the Company or any of its Subsidiaries that were entered into on or after the inception of the Company, have been on an arms'-length basis on terms no less favorable to the Company and its Subsidiaries than would be available from an unaffiliated party.

3.15 Company Authorizations. Section 3.15 of the Disclosure Schedule sets forth, as of the Agreement Date, each consent, license, permit, grant or other authorization (a) pursuant to which the Company and its Subsidiaries currently operate, provide any services or hold any interest in any of their properties, or (b) which is required for the operation of the business of the Company and its Subsidiaries as currently conducted or the holding of any such interest, in each case, except for any consent, license, permit, grant or other authorization the lack of which would not reasonably be expected to be material to the Company or any of its Subsidiaries (collectively, including any such items that are required to be disclosed in Section 3.15 of the Disclosure Schedule, "***Company Authorizations***"). All of the Company Authorizations have been issued or granted to the Company or any of its Subsidiaries, are in full force and effect and constitute all Company Authorizations required to permit each of the Company and its Subsidiaries to operate or conduct its business or hold any interest in its properties or assets, except any such Company Authorizations the failure to be in effect would be material to the Company. The Company and its Subsidiaries are in compliance in all material respects with all such Company Authorizations, and as of the Closing Date shall have applied for and not been denied any required renewals of such Company Authorizations the failure of which to obtain would be material to the Company.

3.16 Litigation.

(a) Except as set forth in Section 3.16(a) of the Disclosure Schedule, as of the Agreement Date, there is no Legal Proceeding of any nature pending, or to the Knowledge of the Company, threatened, against the Company, any of its Subsidiaries, any of their respective properties or assets (tangible or intangible) or any of their respective officers or directors (in their capacities as such), provided that with respect to any Legal Proceeding that is an investigative proceeding, audit, inquiry, investigation or similar proceeding that is not a matter of public records, this representation and warranty is given as to the Knowledge of the Company. No Governmental Entity has, at any time during the five (5) years prior to the Agreement Date, challenged or investigated the legal right of the Company or any of its Subsidiaries to conduct their respective operations as presently, currently contemplated to be or previously conducted. As of the Agreement Date, the Company has not received any written notice from any Person who has a contractual right or a right pursuant to laws of the State of Delaware or any other state or jurisdiction to indemnification from the Company or any of its Subsidiaries of any Legal Proceeding of any nature pending or threatened against such Person which would reasonably be expected to result in material Liability to the Company or any of its Subsidiaries after the Agreement Date.

(b) As of the Agreement Date, neither the Company nor any of its Subsidiaries has any Legal Proceeding of any nature pending against any other Person.

3.17 Books and Records.

(a) The Company has made available to Parent correct and complete copies of (i) all documents identified on the Disclosure Schedule, and (ii) the Charter Documents and the Organizational Documents of each of the Company's Subsidiaries, each as currently in effect. The minute books of the Company and each of its Subsidiaries provided to Parent contain a correct and complete summary of all meetings of the board of directors (or similar governing body) of the Company and of the Company Stockholders or actions by written consent since the time of incorporation of the Company through the Agreement Date, and reflect all transactions referred to in such minutes accurately in all material respects.

(b) The Company and each of its Subsidiaries have made and kept business records, financial books and records, personnel records, ledgers, sales accounting records, Tax records and related work papers and other books and records of the Company and its Subsidiaries (collectively, the "***Books and Records***") that fairly reflect, in all material respects, the business activities of the Company and its Subsidiaries. At the Closing, the minute books and other Books and Records of the Company and its Subsidiaries shall be in the possession of the Company and its Subsidiaries.

3.18 Environmental, Health and Safety Matters. Each of the Company and its Subsidiaries is in material compliance with all Environmental, Health and Safety Requirements in connection with the ownership, use, maintenance or operation of its business or assets or properties. During the five (5) year period preceding the Agreement Date, the Company has not received any written notice of any pending or threatened allegations by any Person that the properties or assets of the Company or any of its Subsidiaries are not, or that its business has not been conducted, in material compliance with all Environmental, Health and Safety Requirements. Neither the Company nor any of its Subsidiaries has retained or assumed any Liability of any other Person under any Environmental, Health and Safety Requirements.

3.19 Brokers' and Finders' Fees. Except as set forth on Section 3.19 of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has incurred, and shall not incur, directly or indirectly, any Liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with this Agreement or any transaction contemplated hereby, nor shall Parent or the Company incur, directly or indirectly, any such Liability based on arrangements made by or on behalf of the Company or any of its Subsidiaries.

3.20 Employee Benefit Plans and Compensation.

(a) **Schedule**. Section 3.20(a) of the Disclosure Schedule contains a correct and complete list, as of the Agreement Date, of each material Company Employee Plan and each material Employee Agreement, indicating the applicable jurisdiction of each International Employee Plan other than (i) employment agreements or employment offer letters that are terminable by the Company or any Subsidiary of the Company (a) unilaterally without advance notice or (b) in accordance with applicable Law by paying the statutory minimum notice and any severance, as applicable, under applicable Law, change in control, retention bonus, or vesting acceleration provisions and (ii) consulting, contractor, advisor, or other service provider agreements that are terminable by the Company or any Subsidiary of the Company unilaterally with no more than thirty (30) days' notice and do not contain any termination consideration, bonus, change in control, or vesting acceleration provisions. Except as set forth in Section 3.20(a) of the Disclosure Schedule, as of the Agreement Date, none of the Company, its Subsidiaries, or any ERISA Affiliate has made any plan or commitment to establish or enter into following the Agreement Date any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by law, to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable Law, or with respect to any annual merit-based raise or promotion made in the Ordinary Course of Business, in each case as previously disclosed to Parent in writing, or as required by this Agreement) or the terms of the applicable Company Employee Plan or Employee Agreement. Except as set forth on Section 3.20(a) of the Disclosure Schedule, no Company Employee Plan is maintained by a professional employer organization.

(b) **Documents**. The Company has made available to Parent (i) correct and complete copies of all documents embodying each material Company Employee Plan and each material Employee Agreement including all amendments thereto and all related trust documents, (ii) the most recent annual report (Form 5500), if any, required under ERISA or the Code or by any other applicable Law in connection with each Company Employee Plan, (iii) if the Company Employee Plan is funded, the most recent annual and periodic accounting of such Company Employee Plan assets, (iv) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA or by any other applicable Law with respect to each Company Employee Plan, (v) current material written agreements and contracts relating to each material Company Employee Plan, including administrative service agreements and group insurance contracts, (vi) all material correspondence within the last two (2) years to or from any Governmental Entity relating to any Company Employee Plan other than routine correspondence in the normal course of operations of such Company Employee Plan, (vii) all discrimination tests for each Company Employee Plan for the three most recent plan years, and (viii) the most recent IRS (or any other applicable tax authority) determination or opinion letter issued with respect to each Company Employee Plan for which determination letters are currently available.

(c) **Employee Plan Compliance**. Each of the Company and its Subsidiaries is not in material default or violation of, and, as of the Agreement Date, has no Knowledge of any default or violation by any other party to, any Company Employee Plan, and each Company Employee Plan has been established and maintained in accordance in all material respects with its terms and in material compliance with all applicable Laws, including ERISA or the Code. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has obtained a favorable IRS determination letter (or opinion letter, if applicable) as to its qualified status under the Code, and there has been no event or condition that has adversely affected or could reasonably be expected to adversely affect such qualified status. There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan. There are no audits, inquiries or Legal Proceeding pending or to the Knowledge of the Company, threatened by the IRS, DOL, or any other Governmental Entity with respect to any Company Employee Plan.

(d) **International Employee Plan**. No International Employee Plan has unfunded liabilities, that as of the Effective Time, shall not be fully offset by insurance or are not accurately and fully reflected on the Financials and accrued in accordance with applicable accounting principles consistently applied.

(e) **No Pension Plan**. None of the Company, the Company's Subsidiaries or any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plan subject to Title IV of ERISA or Section 412 of the Code. No International Employee Plan is a defined benefit plan under applicable U.S. Law.

(f) **No Self-Insured Plan**. Neither the Company nor any of its Subsidiaries has ever maintained, established, sponsored, participated in or contributed to any self-insured plan that provides benefits to employees, consultants, advisors, independent contractors or directors of the Company, any Subsidiary of the Company or any ERISA Affiliate (including any such plan pursuant to which a stop loss policy or contract applies).

(g) **Collectively Bargained, Multiemployer and Multiple Employer Plan**. At no time has the Company, the Company's Subsidiaries or any ERISA Affiliate contributed to or been obligated to contribute to any multiemployer plan (as defined in Section 3(37) of ERISA). None of the Company, the Company's Subsidiaries or any ERISA Affiliate has at any time ever maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code.

(h) **No Post-Employment Obligations**. No Company Employee Plan or Employee Agreement provides, or reflects or represents any Liability to provide, post-employment or retiree life insurance, health or other employee welfare benefits to any Person for any reason, except as may be required by COBRA or other applicable statute, and neither the Company nor any of its Subsidiaries have ever represented, promised or contracted (whether in oral or written form) to any employee, consultant, advisor, independent contractor or director (either individually or as a group) or any other Person that any such individual would be provided with post-employment or retiree life insurance, health or other employee welfare benefits, except to the extent required by statute.

(i) **Effect of Transaction**. Except as set forth in Section 3.20(i) of the Disclosure Schedules, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or upon the occurrence of any additional or subsequent events) shall (i) result in any payment or benefit (including severance, bonus or otherwise) becoming due to any employee, consultant, advisor, independent contractor or director of the Company, or any Subsidiary of the Company or any ERISA Affiliate, (ii) result in any forgiveness of Indebtedness with respect to any employee, consultant, advisor, independent contractor or director of the Company or any Subsidiary of the Company or any ERISA Affiliate, (iii) materially increase any benefits otherwise payable by the Company or any of its Subsidiaries or (iv) result in the obligation to fund benefits or result in the acceleration of the time of payment or vesting of any such benefits, except as required under Section 411(d)(3) of the Code.

(j) **Employment Matters**. Each of the Company and its Subsidiaries is, and at all times in the last four (4) years has been, in material compliance with all applicable foreign, federal, state and local laws, rules and regulations, collective bargaining agreements and arrangements, extension orders and binding customs respecting employment, including but not limited to: employment practices, terms and conditions of employment, worker classification (including the proper classification of workers as independent contractors and consultants and employees as exempt or non-exempt), Tax withholding, government contracting, child labor, affirmative action, prohibited discrimination, harassment, and retaliation, equal employment opportunity, labor or employee relations, fair employment practices, disability rights or benefits, workers compensation, unemployment compensation and insurance, health insurance continuation, privacy, statutory leaves of absence, meal and rest periods, vacation, sick and other paid time off, immigration, employee safety and health, wages and hours (including minimum and overtime wages), compensation and hours of work, right to information and consultation, pay equity, and in each case, except as would not reasonably be expected to result in a Material Adverse Effect, with respect to employees: (i) has withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice), and (iv) has paid in full to all current and former employees, independent contractors, consultants, advisors, and directors all wages, salaries, fees, commissions, bonuses, benefits, and other compensation that are due and owing to such Persons. Except as set forth in Section 3.20(j) of the Disclosure Schedule, there are no Legal Proceedings pending, or to the Knowledge of the Company, threatened against the Company, the Company's Subsidiaries or any of their respective employees, consultants, advisors, independent contractors or directors (in their capacities as such) relating to any such employee, consultant, advisor, independent contractor or director, any Contract, Employee Agreement or Company Employee Plan, including (without limitation), any claim relating to Unfair Labor Practices (as defined in the National Labor Relations Act), employment discrimination, harassment, retaliation, compensation, misclassification of workers, wages and hours, or any other employment related matter arising under applicable Law. There are no pending or, to the Knowledge of the Company, threatened claims or actions against the Company, the Company's Subsidiaries or any of their trustees under any worker's compensation policy or long term disability policy. Neither the Company nor any of its Subsidiaries is a party to a conciliation agreement, consent decree or other agreement or Order with any foreign, federal, state, or local agency or governmental authority with respect to employment practices. The services provided by each current employee in the United States is terminable at the will of the Company or its applicable Subsidiary and neither the Company nor any of its Subsidiaries has any obligation to provide any particular form or period of notice prior to terminating the employment of any current employee (except as required by Law for employees located outside of the United States or as set forth in Section 3.20(j) of the Disclosure Schedules), and any such termination would result in no Liability to the Company or any of its Subsidiaries other than claims for severance pay and benefits as set forth in Section 3.20(j) of the Disclosure Schedule or pursuant to Law. No former employee, consultant, advisor, independent contractor or director (or spouse or other dependent thereof) is receiving, scheduled to receive, owed, entitled to, or eligible for any benefits (whether from the Company, any Subsidiary or otherwise) relating to such Person's service with the Company or any of its Subsidiaries. The Company and each of its Subsidiaries is in material compliance with all orders issued under applicable occupational health and safety Law and all applicable orders related to COVID-19, including without limitation business openings or closures, screening, testing, response, rehire notices or obligations, and employee privacy. Except as disclosed on Section 3.20(j) of the Disclosure Schedule, neither the Company nor any of its Subsidiaries have any current Liability for accrued and vested but unpaid severance, pay in lieu of notice, provident fund contributions, gratuity payments or other payment arising from the termination of the service of any former worker.

(k) **Labor**. No strike, labor dispute, slowdown, concerted refusal to work overtime, or work stoppage against the Company or any of its Subsidiaries is pending, or to the Knowledge of the Company, threatened. There are no activities or Legal Proceedings of any labor union to organize any current employees and no union campaign being conducted to solicit cards from employees to authorize a union to request a National Labor Relations Board certifications election with respect to any Company or Subsidiary employees. There are no Legal Proceedings or labor disputes or grievances pending or, to the Knowledge of the Company, threatened relating to any labor or employee matters involving any current employee, consultant, advisor, independent contractor or director, including charges of unfair labor practices. Neither the Company nor any of its Subsidiaries have received any correspondence, charges, complaints, notices or orders from the National Labor Relations Board or any state labor relations agency or any other labor organization (including any foreign labor organizations) during the period from the date four (4) years prior to the Agreement Date, and there are no arbitration opinions interpreting and enforcing any labor agreement to which the Company or any of its Subsidiaries is a party, or by which the Company or any of its Subsidiaries is bound. Neither the Company nor any of its Subsidiaries is presently, nor has been in the past, a party to, or bound by, any collective bargaining agreement, industrial award or enterprise agreement, works council, employee delegate, labor contract, or arrangement or union contract with respect to employees, consultants, advisors, independent contractors or directors, and no collective bargaining agreement is being negotiated by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has any duty to bargain with any labor organization or works council or similar employee representative group. To the Knowledge of the Company, there have never been any activities or proceedings of any labor union to organize any workers. No labor dispute, strike or work stoppage against the Company or any of its Subsidiaries is now pending, has occurred in the past, or, to the knowledge of the Company, is now threatened that would reasonably be expected to interfere with the business activities of the Company or any of its Subsidiaries.

(l) **WARN Act**. Neither the Company nor any of its Subsidiaries have taken any action that would constitute a "plant closing" or "mass layoff" within the meaning of the WARN Act or similar state or local or foreign Law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local or foreign Law, or incurred any liability or obligation under WARN or any similar state or local or foreign Law that remains unsatisfied at any time prior to the Closing. No actions taken by the Company prior to the Closing (not associated with this Agreement or the transactions thereby), including mass layoffs, reductions in force, furloughs, relocations, or plant closings would have triggered any notice or other obligations under the WARN Act or similar state or local or foreign law. No such actions, including without limitation, mass layoffs, reductions in force, furloughs, relocations or plant closings will be implemented before the Closing without advance notification to and approval of Parent, and except as set forth on Section 3.20(l) of the Disclosure Schedule, there has been no "employment loss" as defined by the WARN Act or similar state or local or foreign Law within the ninety (90) days prior to the Closing.

(m) **No Interference or Conflict**. To the Knowledge of the Company, no stockholder, director, officer, or current employee, consultant, advisor, or independent contractor is obligated under any contract or agreement, or subject to any Order of any court or administrative agency, that would conflict with such Person's employment or engagement with the Company or any of its Subsidiaries, interfere with such Person's efforts to promote the interests of the Company or any of its Subsidiaries or that would interfere with the business of the Company or any of its Subsidiaries. Neither the execution nor delivery of this Agreement, nor the carrying on of the business of the Company or any of its Subsidiaries as presently conducted or proposed to be conducted nor any activity of such officers, directors, employees or consultants in connection with the carrying on of the business of the Company or any of its Subsidiaries as presently conducted or proposed to be conducted shall, to the Knowledge of the Company, conflict with or result in a material breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such officers, directors, employees, or consultants is now bound.

(n) **Certain Employee Matters**. Section 3.20(n) of the Disclosure Schedule contains a correct and complete list of the current employees of the Company and each of its Subsidiaries as of the Agreement Date and shows with respect to each such employee (on a redacted basis, as needed to comply with Law): (i) the employee's name or employee identification number, position held, base salary or hourly wage rate, as applicable, designation as either exempt or non-exempt (as applicable), full-time, part-time or temporary status, and all other remuneration payable or which the Company or any of its Subsidiaries is bound to provide (whether at present or in the future) to each such employee, and includes, if any, particulars of all profit sharing, incentive compensation, commissions, and bonus arrangements to which the Company or any of its Subsidiaries is a party, (ii) the date of hire, (iii) the balance of any accrued and unused vacation or paid time off, (iv) leave status for employees, (v) visa status and visa expiration date (if applicable), (vi) the name of any union, collective bargaining agreement or other similar labor agreement covering such employee, (vii) employing entity and location of employment (including city, state, province and country, as applicable), and (viii) any promises or commitments made to them with respect to material changes or additions to their compensation or benefits. No current employee, officer, or director has given notice to the Company or any of its Subsidiaries to terminate his or her employment or engagement with the Company or such Subsidiary and to the Knowledge of the Company, no employee, officer, or director listed on Section 3.20(n) of the Disclosure Schedule intends to terminate his or her employment or engagement with the Company or any Subsidiary of the Company for any reason, other than in accordance with the employment arrangements provided for in this Agreement. There are no performance improvement plans or material disciplinary actions contemplated or pending against any Key Employee or employees in the vice president level and above.

(o) **Contractor List**. Section 3.20(o) of the Disclosure Schedule lists, as of the Agreement Date, (i) all current independent contractors, consultants, agency workers and advisors to the Company and each of its Subsidiaries, in each case who are material service providers, (ii) the location at which such independent contractors, consultants, agency workers and advisors are providing services (if known), (iii) the initial dates of engagement, (iv) a description of the fee arrangement, (v) description of the services of such individual independent contractors, consultants, agency workers and advisors to the Company and each of its Subsidiaries, and (vi) whether they are an individual or entity (and if an entity, the approximate number of workers performing services for the Company on behalf of the contracting entity).

(p) **Misconduct.** In the last five (5) years, no allegations of sexual harassment, sexual misconduct or retaliation while employed by, or providing services to, the Company or any of its Subsidiaries have been made, or to the Knowledge of the Company, threatened, against (i) any Key Employee, or any current or former officer or director of the Company or any of its Subsidiaries (in each case, in their capacities as such), or (ii) any employee, consultant, advisor, or independent contractor of the Company or any of its Subsidiaries (in their capacities as such), in each case, who, directly or indirectly, supervises other employees of the Company or any of its Subsidiaries and is material to the business operations of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has disciplined or terminated any Person within the meaning of (i) and (ii), entered into any settlement agreement, or conducted any investigation related to allegations of sexual harassment, sexual misconduct or retaliation by or regarding any such Person. To the extent required by applicable Law: (x) each of the Company and its Subsidiaries has established and distributed to its employees, consultants, advisors, independent contractors and directors a written policy against harassment and a complaint procedure, and (y) it has required all employees, consultants, advisors, independent contractors and directors to complete anti-harassment training in compliance with applicable Law, in each case, except as would not reasonably by likely to result in a Material Adverse Effect.

(q) **Work Authorization.** All of the Company's employees are authorized and have appropriate documentation to work in the jurisdiction in which they are working.

3.21 Insurance. Section 3.21 of the Disclosure Schedule lists, as of the Agreement Date, all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors (in such capacities as employees, officers and directors) of the Company or any of its Subsidiaries, including the type of coverage, the carrier, the policy limits of coverage, the term and the annual premiums of such policies. As of the Agreement Date, there are not and have been no claims in the last three (3) years for which an insurance carrier has denied or threatened to deny coverage. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, shall be paid if incurred prior to the Closing Date), and each of the Company and its Subsidiaries is otherwise in material compliance with the terms of such policies and bonds.

3.22 Compliance with Laws. Each of the Company and its Subsidiaries is, and has been in the last five (5) years, in compliance in all material respects with all Laws and Orders applicable to such Person and any of such Person's business, properties or assets. To the Knowledge of the Company, no condition or state of facts exists that is reasonably likely to give rise to a material violation by the Company or any of its Subsidiaries of, or a material liability of the Company or any of its Subsidiaries under, any applicable Law or Order. During the five (5) year period preceding the Agreement Date, neither the Company nor any of its Subsidiaries has received any written, or, to the Knowledge of the Company, oral, notice to the effect that a Governmental Entity claimed or alleged that the Company or any of its Subsidiaries was not in compliance in all material respects with all Laws or Orders applicable to the Company and its Subsidiaries and any of its business, properties, or assets. As of the Agreement Date, to the Knowledge of the Company, neither the Company nor any of its Subsidiaries is under investigation with respect to the violation of any Laws. No director, officer, or, to the Knowledge of the Company, agent, employee, consultant, representative or other Person acting on behalf of the Company or any of its Subsidiaries has, directly or indirectly, violated any provision of any Privacy Requirements or Trade Laws.

3.23 Export Control and Sanctions Laws. Each of the Company and its Subsidiaries has conducted its export transactions in accordance in all material respects with applicable provisions of United States export and re-export controls and sanctions laws and regulations, including the Export Administration Act and Regulations, the Foreign Assets Control Regulations, the International Traffic in Arms Regulations, other controls administered by the United States Department of Commerce or the United States Department of State, the regulations administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("***OFAC***"), and all other applicable import/export controls and sanctions laws and regulations in other countries in which the Company or any of its Subsidiaries conducts business (collectively, "***Trade Laws***"). Except as set forth in Section 3.23, neither the Company nor any of its Subsidiaries has engaged in any transactions or dealings with, or exported any products, technology, or services to, (a) any country or territory that is subject to a U.S. Government embargo (currently, Cuba, Iran, North Korea, Syria, and the Crimea Region) (collectively, the "***Embargoed Countries***"); (b) any instrumentality, agent, entity, or individual that is located in, or acting on behalf of, or directly or indirectly owned or controlled by any governmental entity of, any Embargoed Country; (c) any individual or entity identified on any list of designated and prohibited parties maintained by the U.S. Government, the United Kingdom, or the European Union, including, but not limited to, the List of Specially Designated Nationals and Blocked Persons, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identifications List, which are maintained by OFAC, or the Entity List, Denied Persons List, or Unverified List, which are maintained by the Bureau of Industry and Security of the U.S. Commerce Department (collectively, the "***Prohibited Party Lists***"). None of the Company, any of its Subsidiaries or its or their actual or beneficial owners appear on a Prohibited Party List. Without limiting the foregoing: (A) each of the Company and its Subsidiaries has obtained all export and import licenses, license exceptions and other consents, notices, waivers, approvals, Orders, authorizations, registrations, declarations and filings with any Governmental Entity required for (i) the export, import and re-export of products, services, software and technologies and (ii) releases of technologies and software to foreign nationals located in the United States and abroad (collectively, "***Export Approvals***"), (B) each of the Company and its Subsidiaries is in compliance with the

terms of all applicable Export Approvals, (C) there are no pending or, to the Knowledge of the Company, threatened claims against the Company or any of its Subsidiaries with respect to such Export Approvals, (D) there are no actions, conditions or circumstances pertaining to the Company's or any of its Subsidiaries' export transactions that would reasonably be expected to give rise to any future claims and (E) no Export Approvals for the transfer of export licenses to Parent or the Surviving Corporation are required, except for such Export Approvals that can be obtained expeditiously and without material cost. None of the Company, any of its Subsidiaries or any of the Company's or any of its Subsidiaries' officers, directors or employees are or have been the subject of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to violations of export control and sanctions laws and regulations.

3.24 Foreign Corrupt Practices Act. None of the Company, any Subsidiary of the Company, or any director or officer or any Affiliate, employee, or agent of the Company or any Subsidiary of the Company (in each case, in their capacities as such or relating to their employment, services or relationship with the Company or any of its Subsidiaries), has (a) directly or indirectly made, offered, promised, authorized, solicited, or accepted any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to or from any Person, including a "foreign official" (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "***FCPA***")), foreign political party or official thereof, or candidate for foreign political office, regardless of what form, whether in money, property, or services (i) to obtain favorable treatment for business or Contracts secured, (ii) to pay for favorable treatment for business or Contracts secured, (iii) to obtain special concessions or for special concessions already obtained; (iv) to improperly influence or induce any act or decision, (v) to secure any improper advantage, or (vi) in violation of applicable Law (including the FCPA) or (b) established or maintained any fund or asset that has not been recorded in the books and records of the Company or any of its Subsidiaries. Each of the Company and its Subsidiaries has established and maintain internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) and written policies and procedures to promote and ensure compliance with the FCPA and other applicable anti-corruption laws (collectively, the "***Anti-Corruption Laws***") and to ensure that all books and records of the Company and each of its Subsidiaries accurately and fairly reflect, in reasonable detail, all transactions and dispositions of funds and assets. None of the Company, any Subsidiary of the Company or any of the Company's or any of its Subsidiaries' directors, officers, or employees are or have been the subject of any allegation, voluntary disclosure, investigation, prosecution, or other enforcement action related to the Anti-Corruption Laws.

3.25 Suppliers, Customers and Resellers.

(a) Section 3.25(a) of the Disclosure Schedule sets forth a correct and complete list of: (i) the fifteen (15) largest suppliers to the Company and its Subsidiaries for the fiscal year ended January 31, 2020 and the seven-month period ended August 31, 2020 (in each case, based on the Dollar amount paid to such supplier during such period) (the "***Top Suppliers***"); and (ii) customers of the Company and its Subsidiaries with annual recurring revenue of $500,000 or more during the fiscal year ended January 31, 2020 and the seven-month period ended August 31, 2020 (the "***Top Customers***").

(b) As of the Agreement Date, neither the Company nor any of its Subsidiaries has received any written, or to the Knowledge of the Company, oral notice, complaint or other communication from any Top Supplier or Top Customer to the effect that it (i) has changed, modified, amended or reduced, or is reasonably likely to change, modify, amend or reduce, its business relationship with the Company or any of its Subsidiaries in a manner that is, or is reasonably likely to be, adverse to the Company or any of its Subsidiaries, or (ii) shall fail to perform, or is reasonably likely to fail to perform, its obligations under any Contract with the Company or any of its Subsidiaries in any manner that is, or is reasonably likely to be, adverse to the Company or any of its Subsidiaries in any material respect. Neither the Company nor any of its Subsidiaries has any material resellers, sales agents, distributors, or referrers with respect to the Company Products.

3.26 Compliance with Regulation D(a) **.** The Company is aware that the Parent Class A Common Stock to be issued pursuant to the transactions contemplated by this Agreement shall constitute "restricted securities" within the meaning of the Securities Act. At no time was any Company Stockholder solicited by the Company or any of its Subsidiaries by means of general advertising or general solicitation in violation of Regulation D under the Securities Act in connection with this Agreement or the transactions contemplated by this Agreement; provided that the Company does not make any representation or warranty as to whether the solicitation of the Company Stockholder Approval in accordance with Section 5.1 or its compliance with the terms of this Agreement constitutes general advertising or general solicitation.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in the Parent SEC Documents filed prior to the Agreement Date but without giving effect to any amendment to any such document filed after the Agreement Date, and excluding any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature (it being agreed that this exception for disclosures in Parent SEC Documents shall (i) not be applicable to Section 4.5(a), Section 4.11 or Section 4.12 and (ii) only apply to the extent the relevance of any such disclosure to a particular representation and warranty is readily apparent from the actual text of the disclosure without any reference to extrinsic documentation or any independent knowledge on the part of the reader regarding the matter disclosed), each of Parent and Merger Sub hereby represents and warrants to the Company as follows:

4.1 Organization. Each of Parent and Merger Sub is duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has the requisite corporate power and authority to own, operate, distribute and lease its assets and properties and to conduct its business as it is now being conducted. Parent is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified and in good standing, individually or in the aggregate with any other such failures, would reasonably be expected to result in a Material Adverse Effect to it. Each of Parent and Merger Sub is not in any violation of any of the provisions of its charter documents.

4.2 Authority and Enforceability. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Parent and Merger Sub of this Agreement and any Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action, as applicable, on the part of Parent and Merger Sub. This Agreement and any Related Agreements to which either of Parent or Merger Sub is a party have been, or (in the case of the Related Agreements executed after the Agreement Date) as of the Effective Time, shall be, duly executed and delivered by Parent and Merger Sub, as the case may be, and, assuming the due authorization, execution and delivery by the other parties hereto and thereto constitute, or (in the case of Related Agreements executed after the Agreement Date) shall constitute when executed and delivered, the valid and binding obligations of Parent and Merger Sub, as the case may be, enforceable against each of Parent and Merger Sub, as the case may be, in accordance with their terms, subject to the Enforcement Exceptions. The board of directors of Parent approved this Agreement and the transactions contemplated hereby, including the Merger and the Parent Stock Issuance (collectively, the "***Parent Board Approval***").

4.3 Capitalization.

(a) As of October 9, 2020, the authorized capital stock of Parent consists of 1,200,000,000 shares, par value $0.001 per share, of which (i) 1,000,000,000 shares are designated as Class A Common Stock, of which 140,216,025 shares are issued and outstanding, (ii) 100,000,000 shares are designated as Class B Common Stock, of which 10,706,764 shares are issued and outstanding, and (iii) 100,000,000 shares are designated as Preferred Stock, of which no shares are issued and outstanding. As of October 9, 2020, (A) options to acquire 2,607,892 shares of Parent Class A Common were outstanding pursuant to Parent's Amended and Restated 2016 Stock Option and Incentive Plan and (B) 7,842,094 restricted stock units covering shares of Parent Class A Common Stock were outstanding pursuant to Parent's Amended and Restated 2016 Stock Option and Incentive Plan. As of October 9, 2020, options to acquire 1,780,890 shares of Parent Class B Common Stock were outstanding pursuant to Parent's Amended and Restated 2008 Stock Option Plan. As of October 9, 2020, (A) options to acquire 424,905 shares of Parent Class A Common Stock were outstanding pursuant to Parent's SendGrid, Inc. Amended 2012 Stock Incentive Plan and (B) 3,636 restricted stock units covering shares of Parent Class A Common Stock were outstanding pursuant to Parent's SendGrid, Inc. Amended 2012 Stock Incentive Plan. As of October 9, 2020, (A) options to acquire 87,905 shares of Parent Class A Common Stock were outstanding pursuant to Parent's SendGrid, Inc. 2017 Stock Incentive Plan and (B) 165,402 restricted stock units covering shares of Parent Class A Common Stock were outstanding pursuant to Parent's SendGrid, Inc. 2017 Stock Incentive Plan. As of October 9, 2020 (A) 12,487,654 shares of Parent Class A Common Stock were reserved for issuance upon the conversion of issued and outstanding Parent Class B Common Stock (including any shares of Parent Class B Common Stock issued or issuable pursuant to Parent's Amended and Restated 2008 Stock Option Plan), (B) 19,323,051 shares of Parent Class A Common Stock were reserved for issuance pursuant to Parent's Amended and Restated 2016 Stock Option and Incentive Plan, (C) 5,042,439 shares of Parent Class A Common Stock were reserved for issuance under Parent's Amended and Restated 2016 Employee Stock Purchase Plan, (D) 751,469 shares of Parent Class A Common Stock were reserved for issuance to fund and support the operations of Twilio.org and (E) 9,756,346 shares of Parent Class A Common Stock were reserved for issuance in connection with that certain indenture, dated as of May 17, 2018, between Parent and Wilmington Trust, National Association, as trustee.

(b) As of the Agreement Date, except as set forth in Section 4.3(a), (i) there are no authorized, issued or outstanding Equity Interests of the Company and (ii) no Person is party to any Contract of any character to which Parent is a party obligating Parent to issue or sell, or cause to be issued or sold, any Equity Interests of Parent or other rights to purchase or otherwise acquire any Equity Interests of Parent.

(c) Immediately prior to the Closing, the shares of Parent Class A Common Stock to be issued to the Accredited Stockholders in connection with the Parent Stock Issuance will be duly and validly reserved for issuance. Upon consummation of the Merger and the other transactions contemplated by this Agreement in accordance with the terms hereof, the shares of Parent Class A Common Stock to be issued to the Accredited Stockholders in the Parent Stock Issuance shall be duly authorized, validly issued, fully paid and nonassessable, and will be free of any Liens other than (i) Liens created by the Company Stockholders and (ii) Liens imposed by securities Laws. Assuming the accuracy of the representations and warranties made by the Company in Section 3.26 and of the Company Stockholders in the Suitability Documentation and Section 2.9 of the Joinder Agreements, the Parent Stock Issuance will comply in all material respects with all Laws, including all federal, state and foreign securities Laws. The Parent Stock Issuance will not, at the time of issuance in accordance with the terms of this Agreement, violate any pre-emptive rights, rights of first offer, rights of first refusal or similar rights of any Person. All shares of Parent Class A Common Stock issuable upon the exercise of Converted Options shall, when issued, be duly authorized, validly issued, fully paid and nonassessable, and will be free of any Liens other than (A) Liens created by the Company Optionholders and (B) Liens imposed by securities Laws.

4.4 No Conflict. The execution and delivery by each of Parent and Merger Sub of this Agreement and any Related Agreement to which it is a party, and the consummation by each of Parent and Merger Sub of the transactions contemplated hereby and thereby, shall not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) (a) the Parent Organizational Documents or the organizational documents of Merger Sub or (b) any Law or Order applicable to Parent or Merger Sub, other than, in the case of this clause (b), such conflicts, violations or defaults as would not, individually or in the aggregate, reasonably be expected to (i) result in a Material Adverse Effect with respect to Parent and its Subsidiaries, taken as a whole or (ii) prevent or materially delay the consummation of the Merger and the other transactions contemplated by this Agreement.

4.5 Parent SEC Documents; Financial Statements.

(a) All statements, reports, schedules, forms and other documents (including exhibits and all information incorporated by reference) required to have been filed by Parent with the SEC since October 20, 2016 (the "***Parent SEC Documents***") have been so filed on a timely basis. A true and complete copy of each Parent SEC Document is available on the website maintained by the SEC at http://www.sec.gov. As of their respective filing dates (or, if amended or superseded by a filing prior to the Agreement Date, then on the date of such later filing), each of the Parent SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents. None of the Parent SEC Documents, as of their respective filing dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, except to the extent corrected by a subsequently filed Parent SEC Document. During the period from October 20, 2016 through the Agreement Date, Parent has not received from the SEC any written comments with respect to any of the Parent SEC Documents (including the financial statements included therein) that have not been resolved.

(b) The financial statements of Parent, including the notes thereto, included in the Parent SEC Documents (the "***Parent Financial Statements***") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto as of their respective dates, were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto, except in the case of pro forma statements, or, in the case of unaudited financial statements, except as permitted under Form 10-Q under the Exchange Act) and fairly presented in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of Parent's operations and cash flows for the periods indicated (subject to, in the case of unaudited statements, normal and recurring year-end audit adjustments).

4.6 Litigation. As of the Agreement Date, there is no Legal Proceeding pending (or, to the knowledge of Parent or Merger Sub, being threatened) against Parent or Merger Sub, that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement or that would reasonably be expected to have a Material Adverse Effect on Parent and its Subsidiaries, taken as a whole.

4.7 Compliance with Laws. Parent and its Subsidiaries are, and since December 31, 2019 have been, in compliance with all Laws in connection with the operation of their business, except for instances of noncompliance that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect on Parent and its Subsidiaries taken as a whole.

4.8 No Prior Activities of Merger Sub. Merger Sub is a direct, wholly owned subsidiary of Parent and was formed solely for the purpose of engaging in the Merger. Except for obligations incurred in connection with its incorporation or organization or the negotiation and consummation of this Agreement and the transactions contemplated hereby, Merger Sub has not incurred any obligation or liability nor engaged in any business or activity of any type or kind whatsoever or entered into any agreement or arrangement with any Person.

4.9 Reorganization. Neither Parent nor Merger Sub has taken or agreed to take any action that is not contemplated by this Agreement, and neither Parent nor Merger Sub is aware of any facts or circumstances, that would reasonably be expected to prevent or impede the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code; *provided*, *however*, that neither Parent nor Merger Sub is making any representation or warranty under this Section 4.9 with respect to the value of the Parent Class A Common Stock, either as of the date of this Agreement or as of the Closing, or with respect to whether a decline in the value of the Parent Class A Common Stock could result in a failure of the Merger to qualify as a "reorganization" within the meaning of Section 368(a) of the Code.

4.10 Governmental Authorization. No consent, notice, waiver, approval, Order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by, or with respect to, Parent or Merger Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Merger Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (a) such consents, notices, waivers, approvals, Orders, authorizations, registrations, declarations and filings as may be required under applicable securities Laws (b) the filing of the Certificate of Merger as provided in Section 1.2 hereof and (c) such filings and notifications as may be required to be made by Parent or Merger Sub in connection with the Merger under the HSR Act and the expiration or early termination of applicable waiting periods under the HSR Act.

4.11 No Changes. Since December 31, 2019, there has not occurred a Material Adverse Effect with respect to Parent and its Subsidiaries, taken as a whole.

4.12 WKSI. As of the Agreement Date, Parent is a WKSI.

4.13 Financing. As of the Agreement Date Parent has, and at the Closing, Parent will have, sufficient funds available to it (including cash, available lines of credit or other sources of immediately available funds) to permit Parent and Merger Sub to consummate the Merger upon the terms contemplated by this Agreement, including the payment of all amounts payable hereunder or otherwise as a result of the Merger.

4.14 Brokers' and Finders' Fees. Except for fees owed to Morgan Stanley, Parent has not incurred, and shall not incur, directly or indirectly, any Liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with this Agreement or any transaction contemplated hereby.

ARTICLE V

STOCKHOLDER AND TAX MATTERS

5.1 Company Board Recommendation; Stockholder Notice; **Security Holder Notice**.

(a) Once the Company Stockholder Approval shall have been obtained, neither the Board nor any committee thereof shall withhold, withdraw, amend or modify, or propose or resolve to withhold, withdraw, amend or modify in a manner adverse to Parent, the unanimous recommendation of the Board that the Company Stockholders vote in favor of the adoption of this Agreement and the approval of the Merger and the transactions contemplated hereby.

(b) Within five (5) Business Days following the Agreement Date, the Company shall prepare, with the cooperation of Parent, and send to each Company Stockholder (other than the Company Stockholders who previously executed the Company Stockholder Approval), a notice (as it may be amended or supplemented from time to time, the "***Stockholder Notice***") comprising (i) the notice contemplated by Section 228(e) of the DGCL of the taking of a corporate action without a meeting by less than a unanimous written consent, (ii) the notice contemplated by Section 262(d)(2) of the DGCL, together with a copy of Section 262 of the DGCL and (iii) an information statement to the Company Stockholders. The Stockholder Notice shall include (x) a statement to the effect that the Board had unanimously recommended that the Company Stockholders vote in favor of the adoption of this Agreement and the approval of the Merger and the transactions contemplated hereby, and (y) such other information as the Company may reasonably determine is required or advisable under the DGCL to be included therein. Following the mailing of the Stockholder Notice, no amendment or supplement to the Stockholder Notice shall be made by the Company without the approval of Parent, which approval shall not be unreasonably withheld, conditioned or delayed. Each of Parent and the Company agrees to provide promptly to the other such information concerning its business, financial statements and affairs as, in the reasonable judgment of Parent or its counsel, may be required or advisable to be included under the DGCL in the Stockholder Notice or in any amendment or supplement thereto, and Parent and the Company agree to cause their respective Representatives to cooperate in the preparation of the Stockholder Notice and any amendment or supplement thereto.

(c) Prior to the Effective Time, the Company shall provide the Company Security Holders (other than the Company Stockholders so notified pursuant to Section 5.1(b)) with valid and timely notification of the Merger to the extent required by the terms and conditions of this Agreement, the Charter Documents, any Laws, or any agreement or instruments governing the Company Securities (other than the Company Capital Stock).

5.2 Tax Matters.

(a) **Preparation of Tax Returns**.

(i) The Company shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns that are required to be filed by the Company and its Subsidiaries (taking into account any extension properly obtained) on or before the Closing Date ("***Company Prepared Returns***"), and shall pay, or cause to be paid, all Taxes of the Company and its Subsidiaries due on or before the Closing Date. All Company Prepared Returns shall be prepared by treating items on such Tax Returns in a manner consistent with the past practices of the Company or its applicable Subsidiary with respect to such items, except as otherwise required by applicable Law. At least ten (10) days prior to filing a Company Prepared Return that is an income Tax Return or such shorter time period as is reasonable given the circumstance with respect to any other material non-income Tax Return, the Company shall submit a copy of such Tax Return to Parent for Parent's review, comment, and approval (which shall not be unreasonably withheld, conditioned or delayed), and the Company shall consider the comments of Parent in good faith and the Company shall incorporate such comments to the extent the Company determines in good faith and in consultation with its tax advisors that such comments are reasonable. If Parent fails to approve the filing of any such Tax Return, then the Company shall nonetheless be permitted to file such Tax Return in the manner determined to be appropriate by the Company in its sole discretion (each, an "***Unapproved Return***"). Prior to the Closing Date, the Company and its Subsidiaries shall not initiate any discussions with a Governmental Entity with respect to Taxes (excluding, for the avoidance of doubt the matter disclosed in Section 3.9(a)(iv) of the Disclosure Schedule), or enter into any voluntary disclosures with respect to Taxes, without prior written notice to, and consent of, Parent (such consent not to be unreasonably withheld, conditioned or delayed).

(ii) Parent shall prepare or cause to be prepared and file or cause to be filed, all Tax Returns for the Company and its Subsidiaries for a Pre-Closing Tax Period or Straddle Period that are required to be filed after the Closing Date (the "***Parent Prepared Returns***"). All such Parent Prepared Returns that are not for a Straddle Period shall be prepared in a manner consistent with the Company's past practice, except (x) as otherwise required by applicable Law or (y) to the extent that any such deviation from past practice could not reasonably be expected to give rise to an increased claim for indemnification under this Agreement. At least twenty (20) days prior to filing a Parent Prepared Return, or such shorter time period as is reasonable given the circumstances, Parent shall submit a copy of any portion of such Tax Return that reflects a material amount of Unpaid Pre-Closing Taxes to the Stockholder Representative for the Stockholder Representative's review and comment. Parent will consider in good faith any reasonable comments received in writing from the Stockholder Representative at least ten (10) days (or such shorter time period as is reasonable given the circumstances) prior to the due date for such Parent Prepared Return. For the avoidance of doubt, any failure to so submit a Parent Prepared Return shall not relieve the Company Indemnitors of any liability for Unpaid Pre-Closing Taxes with respect to such Parent Prepared Return (except to the extent the Company Indemnitors are materially prejudiced by such failure).

(iii) Notwithstanding any other provisions of this Agreement to the contrary, Parent may enter into a voluntary disclosure agreement with respect to sales, use, gross receipts or value-added Taxes (or similar Taxes in the nature of sales, use, gross receipts or valued-added Taxes) of the Company and its Subsidiaries or otherwise to voluntarily correct a Tax practice (including one relating to the filing, reporting, withholding, or payment of any Tax) in respect of a Pre-Closing Tax Period (each a "***VDA Action***"), without seeking the advance written consent of the Stockholder Representative; *provided*, *however*, that Parent shall not be indemnified under this Agreement for any Unpaid Pre-Closing Taxes or other VDA Losses paid or incurred as a result of any VDA Action unless each of the following conditions are satisfied: (x) Parent shall have provided notice to the Stockholder Representative prior to initiating such VDA Action; (y) Parent shall have permitted the Stockholder Representative to participate in such VDA Action at its own expense, and (z) Parent shall not have settled such VDA Action without the prior approval of the Stockholder Representative (which approval shall not be unreasonably withheld, conditioned or delayed). Any Unpaid Pre-Closing Taxes with respect to a VDA Action for which Parent is entitled to be indemnified for, together with interest, penalties and fines that may be assessed with respect to such Taxes and the reasonable costs and expenses of the third-party advisors (including attorneys and accountants) engaged by Parent and/or the Company, in each case, in connection with the evaluation of, preparation for, filing of, defense and/or settlement of any VDA Action shall be referred to herein as "***VDA Losses***." For the avoidance of doubt, such VDA Losses shall be subject to the limitation contained in Section 8.3(b) or Section 8.3(c), as applicable.

(b) **Cooperation**. Parent and the Stockholder Representative shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of any Tax Returns with respect to the Company or its operations and any pending or threatened audit, Legal Proceedings or assessments with respect thereto or to Taxes owed by the Company. Such cooperation shall include Parent's retention and provision of records and information that are reasonably relevant to any such audit or other Legal Proceedings and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder. In furtherance of the foregoing, the Company (before the Closing Date) and the Stockholder Representative (after the Closing Date) agree to cooperate with Parent and provide any relevant information within their possession (or reasonably available) requested by Parent that is reasonably necessary for Parent to determine the limitations, if any, on any of the Company's Tax loss carryforwards under Sections 382, 383 and 384 of the Code or any similar provision of Law of any other jurisdiction applicable to any of the Company. Notwithstanding the foregoing or any other provision herein to the contrary, in no event shall the Company be entitled to review or otherwise have access to any income Tax Return, or information related thereto, of Parent or its Affiliates (other than income Tax Returns of the Company for taxable periods ending on or prior to the Closing Date).

(c) **Transfer Taxes**. All Transfer Taxes incurred as a result of the transactions contemplated in this Agreement shall be borne fifty percent (50%) by the Company Indemnitors and fifty percent (50%) by Parent. The party responsible under applicable law shall file all related Tax Returns and each of Parent, and the Company Indemnitors shall cooperate in connection with any such filings.

(d) **Tax Treatment**. The Merger is intended to be treated and qualify as a "reorganization" within the meaning of Section 368(a) of the Code, and this Agreement is intended to constitute a "plan of reorganization" within the meaning of Treasury Regulations Section 1.368-2(g) and Section 1.368-3. Each of Parent and the Company shall report the Merger as a reorganization within the meaning of Section 368(a) of the Code on all applicable Tax Returns unless otherwise required by either (a) a change in or clarification of applicable Law after the Closing Date or (b) a final determination within the meaning of Section 1313 of the Code (or a corresponding or similar provision of state or local Tax Law). Neither of the Company, nor Parent shall (and after the Closing, Parent shall not permit the Company or any other Affiliate of Parent to) knowingly take any action that would reasonably be expected to prevent the Merger from being treated as a reorganization for U.S. federal income Tax purposes, other than any actions that are required by the provisions of this Agreement. Notwithstanding the foregoing, other than Section 4.9, Parent makes no representations or warranties to the Company or to any Company Security Holder regarding the Tax treatment of the Merger, or any of the Tax consequences to the Company or any Company Security Holder of this Agreement, the Merger or any of the other transactions or agreements contemplated hereby. The Company acknowledges that the Company and the Company Security Holders are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other transactions and agreements contemplated hereby.

(e) **Certain Tax Actions**. For so long as either or both of the Indemnity Escrow Account and the Specific Indemnity Escrow Account remain outstanding, unless required by applicable Law, Parent shall not (i) re-file, supplement or amend any Tax Return of the Company or any of its Subsidiaries filed prior to the Closing Date or (ii) make, change or revoke any Tax election of the Company or any of its Subsidiaries that has retroactive effect to any taxable period ending on or before the Closing Date, in each case, (x) without the prior written consent of the Stockholder Representative (such consent not to be unreasonably withheld, conditioned or delayed), except that such consent shall not be required with respect to the re-filing or amendment of any Unapproved Return, or (y) to the extent that such action would reasonably be expected to have the effect of increasing the amount of Unpaid Pre-Closing Taxes for which the Company Indemnitors will be required to indemnify the Parent Indemnified Parties under Section 8.2.

5.3 Allocation Schedule.

(a) The Company shall prepare and deliver to Parent a spreadsheet (the "***Allocation Schedule***") at least three (3) Business Days prior to the Closing and reasonably satisfactory to Parent, which Allocation Schedule shall be dated as of the Closing Date and shall set forth all of the information (in addition to the other required data and information specified therein) set forth on Schedule E attached hereto, as of immediately prior to the Closing.

(b) The Allocation Schedule shall be accompanied by reasonably detailed back-up documentation for the calculations contained therein. The Company shall make available to Parent and its Representatives the work papers (subject to the execution of customary work paper access letters, if requested) and other books and records used in preparing the Allocation Schedule and reasonable access to employees of the Company and its Subsidiaries as Parent may reasonably request in connection with its review of the Allocation Schedule, and will otherwise cooperate in good faith with Parent's and its Representatives review and shall take into consideration in good faith any comments of Parent on the Allocation Schedule. Notwithstanding the foregoing, in no event will any of Parent's rights be considered waived, impaired or otherwise limited as a result of Parent not making an objection prior to the Closing or its making an objection that is not fully implemented in a revised Allocation Schedule, as applicable.

5.4 Securities Law Exemption; Transfer Restrictions; Stop-Transfer Instructions, Securities Law Compliance.

(a) Each of the parties hereto (other than the Stockholder Representative) shall use its reasonable best efforts to cause the issuance of all shares of Parent Class A Common Stock contemplated by this Agreement in connection with the Merger to validly qualify for an exemption from the registration and prospectus delivery requirements of the Securities Act and the equivalent state "blue sky" laws.

(b) The shares of Parent Class A Common Stock constitute "restricted securities" under the Securities Act and may not be transferred absent registration under the Securities Act or an exemption therefrom, and any such transfer shall be subject to compliance with applicable state securities Laws. All shares of Parent Class A Common Stock issued in connection with this Agreement shall bear a legend or legends referencing restrictions applicable to such shares under applicable securities Laws and under this Agreement, which legend shall state in substance:

> "The securities evidenced by this certificate have been issued and sold without registration under the United States Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state of the United States (a "State Act") in reliance upon certain exemptions from registration under said acts. The securities evidenced by this certificate cannot be sold, assigned or otherwise transferred within the United States unless such sale, assignment or other transfer is (i) made pursuant to an effective registration statement under the Securities Act and in accordance with each applicable State Act or (ii) exempt from, or not subject to, the Securities Act and each applicable State Act."

Parent shall instruct its transfer agent to remove such legend from the shares of Parent Class A Common Stock issued hereunder on the first anniversary of the Closing Date; *provided*, *further*, that Parent shall facilitate resales of Parent Common Stock occurring on or after the date that is six (6) months following the Closing Date in respect of a sale that is compliant with Rule 144 by instructing its transfer agent to remove such legends in connection with any such Rule 144-compliant sale.

(c) Notwithstanding the foregoing, and subject to Section 3.4 (*Lock-Up Period*) of any Joinder Agreement to which such Accredited Stockholder is a party, any Accredited Stockholder may transfer shares of Parent Class A Common Stock received in the Merger in a transaction that does not constitute a sale under Rule 144 (i) to an Affiliate of such Accredited Stockholder, (ii) if the Accredited Stockholder is an individual, to an immediate family member or trust for the benefit of such Accredited Stockholder or one or more of such Accredited Stockholder's immediate family members, (iii) pursuant to the laws of testamentary or intestate succession or otherwise involuntarily transferred by operation of law, or (iv) if the Accredited Stockholder is a partnership, corporation, or limited liability company, to any one or more partners, stockholders or members thereof (each, a "***Fund Transferee***"); *provided*, *however*, that (A) such Accredited Stockholder shall give Parent written notice prior to the time of such transfer stating the name and address of the transferee and identifying the shares being transferred to the transferee and (B) if reasonably requested by Parent, such transferee shall agree in writing, in form and substance reasonably satisfactory to Parent, to be bound by the provisions of this Section 5.4. Any such transfer of such shares pursuant to this Section 5.4(c) is referred to as a "***Permitted Transfer***," and any such transferee of shares pursuant to this Section 5.4(c) is referred to herein as a "***Permitted Transferee***."

(d) To ensure compliance with the restrictions imposed by this Agreement, Parent may issue appropriate "stop-transfer" instructions to its transfer agent. Parent shall not be required (i) to transfer on its books any shares of Parent Class A Common Stock that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such shares of Parent Class A Common Stock, or to accord the right to vote or pay dividends, to any purchaser or other transferee to whom such shares of Parent Class A Common Stock has been purportedly so transferred.

5.5 Indemnification of Directors and Officers of the Company.

(a) During the period ending six (6) years after the Effective Time (and, if applicable, for any subsequent period of time during the pendency, and through the resolution, of any D&O Indemnifiable Matter(s) initiated during such six-year period), the Surviving Corporation and its successors shall, and Parent shall cause the Surviving Corporation and its successors to, fulfill their obligations to the present and former members of the Board and present and former officers of the Company (such directors and officers being herein called the "***Company Indemnitees***") pursuant to the terms of the Charter Documents as in effect on the Agreement Date, the DGCL and other applicable Law and any indemnification agreements between the Company and such Company Indemnitees set forth on Schedule 5.5(a) (such obligations, collectively, the "***D&O Indemnifiable Matters***"). Notwithstanding the foregoing, the obligations of Parent and the Surviving Corporation or its successors in respect of the D&O Indemnifiable Matters (i) shall be subject to any limitation imposed by applicable Law, the terms of the Charter Documents and/or the terms of the applicable indemnification agreement and (ii) shall not be deemed to release any Company Indemnitee who is also an officer or director of the Company from his or her obligations pursuant to this Agreement or any Related Agreement to which such Person is a party.

(b) Prior to the Effective Time, the Company shall purchase and fully pay (and such purchase price shall be included in Third Party Expenses of the Company) for (i) an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage or otherwise in a form reasonably acceptable to Parent that shall provide the Company Indemnitees with coverage for six (6) years following the Effective Time of not less than the existing coverage and have other terms not materially less favorable to the insured persons than the Company's directors' and officers' liability insurance coverage presently maintained by the Company (the "***D&O Tail Policy***") and (ii) an extended reporting period endorsement under the Company's existing cyber security insurance policy (the "***Cyber Tail Policy***") or otherwise in a form acceptable to Parent, which shall provide coverage for three (3) years following the Effective Time and shall have a scope substantially similar to the existing coverage under, and have other terms not materially less favorable to the insured persons than the terms of, the cyber security insurance coverage currently maintained by the Company. Parent shall not, and shall cause the Surviving Corporation to not, take any action to eliminate such D&O Tail Policy or Cyber Tail Policy. The cost of any D&O Tail Policy and the Cyber Tail Policy shall be considered a Third Party Expense for purposes of this Agreement. At or prior to the Closing, the Company shall provide a copy of the D&O Tail Policy and the Cyber Tail Policy to Parent, along with written confirmation from the insurance provider that the D&O Tail Policy and Cyber Tail Policy will be bound at Closing.

(c) Notwithstanding anything in this Agreement to the contrary, the obligations under this Section 5.5 shall not be terminated or modified in such a manner as to adversely affect any Company Indemnitee to whom this Section 5.5 applies without the consent of such affected Company Indemnitee, it being understood and agreed that the Company Indemnitees are intended to be express third party beneficiaries of this Agreement with rights of enforcement.

5.6 Resale Registration Statement.

(a) Promptly following the Agreement Date, Parent shall prepare a registration statement of Parent registering the resale by the Accredited Stockholders of the shares of Parent Class A Common Stock to be issued to the Accredited Stockholders hereunder (such shares, the "***Registrable Shares***," and such registration statement, the "***Resale Registration Statement***"). The Company shall use its commercially reasonable efforts to cause to be completed, executed and delivered by the Company Stockholders and the Company Warrantholders who are, or who the Company reasonably believes to be, Accredited Stockholders, the Selling Stockholder Questionnaires in the form attached hereto as Exhibit L (the "***Selling Stockholder Questionnaires***"), and will provide all such completed Selling Stockholder Questionnaires that it receives back from Company Stockholders and the Company Warrantholders to Parent. Each Accredited Stockholder who has returned a properly completed Selling Stockholder Questionnaire is referred to herein as a "***Selling Stockholder***." Parent shall file the Resale Registration Statement in accordance with Schedule 5.6(a).

(b) The Resale Registration Statement (or any prospectus or prospectus supplement forming a part of such Resale Registration Statement), as initially filed, shall include the Registrable Shares of all Selling Stockholders for whom Parent has received completed Selling Stockholder Questionnaires on or before the third (3rd) Business Day prior to the Closing Date and allow for distributions by such Selling Stockholders to Fund Transferees that are Permitted Transferees under the Resale Registration Statement. On a date requested by the Stockholder Representative in writing (so long as such date is at least ten (10) Business Days after such request), Parent shall file an amendment or supplement, as appropriate, to the Resale Registration Statement (and any prospectus or prospectus supplement forming a part of such Resale Registration Statement) to include the Registrable Shares of (i) any Selling Stockholders who deliver Selling Stockholder Questionnaires on or after the third (3rd) Business Day prior to the Closing Date or (ii) any Permitted Transferees to the extent such filing is required in order to permit the Permitted Transferees to offer and sell the Registrable Shares received by the Permitted Transferees in the Permitted Transfer pursuant to the Resale Registration Statement. Parent further agrees to provide in the Resale Registration Statement (and in any prospectus or prospectus supplement forming a part of such Resale Registration Statement) that all Permitted Transferees shall, by virtue of receiving Registrable Shares in a Permitted Transfer, be deemed to be selling stockholders under the Resale Registration Statement (or any such prospectus or prospectus supplement) with respect to the Registrable Shares received by such Permitted Transferees in such Permitted Transfers. Parent shall only be required to file three such amendments or supplements. Parent shall include disclosure in the plan of distribution in the Resale Registration Statement (and any prospectus or prospectus supplement forming a part of such Resale Registration Statement) that Permitted Transfers to Fund Transferees will be transfers covered by the Resale Registration Statement.

(c) Parent shall notify each Selling Stockholder promptly upon discovery that, or upon the discovery of the happening of any event as a result of which, the Resale Registration Statement or any supplement to any prospectus forming a part of the Resale Registration Statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading in the light of the circumstances under which they were made, and, as promptly as practicable, use commercially reasonable efforts to supplement or amend such prospectus so that such prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein not misleading in the light of the circumstances under which they were made. After the Resale Registration Statement becomes effective, Parent shall notify each Selling Stockholder of any request by the SEC that Parent amend or supplement such Resale Registration Statement or prospectus, and Parent shall use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to the Resale Registration Statement and the prospectus used in connection therewith as may be reasonably necessary to keep the Resale Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Shares covered by the Resale Registration Statement. Parent shall furnish to each Selling Stockholder such numbers of copies of a prospectus, including a preliminary prospectus, and any supplement to any prospectus, as required by the Securities Act and shall take such other actions (including causing the removal of any restricted legends), as the Selling Stockholders may reasonably request in order to facilitate their disposition of their Registrable Shares, subject to each Selling Stockholder providing any information reasonably requested by Parent to facilitate such action. Parent further agrees to the obligations and undertakings set forth on Schedule 5.6(c).

(d) Notwithstanding any of the provisions of this Section 5.6 to the contrary, after the Resale Registration Statement becomes effective, Parent shall be entitled to postpone the filing of an amendment or supplement to the Resale Registration Statement (and any related prospectus or prospectus supplement pursuant to Section 5.6(b)) or suspend the use of, or trading under, the Resale Registration Statement in accordance with Schedule 5.6(d).

(e) From the date of this Agreement until the earlier of the date this Agreement is terminated in accordance with its terms and the end of the Registration Period, Parent shall use its commercially reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, and file with the SEC in a timely manner all reports and other documents required to be filed by Parent under the Securities Act and the Exchange Act.

(f) All of the expenses incurred in connection with any registration of Registrable Shares pursuant to this Agreement, including all SEC fees, blue sky registration and filing fees, listing notices and filing fees, printing fees and expenses, transfer agents' and registrars' fees and expenses and all fees and expenses of Parent's outside counsel and independent accountants of Parent shall be paid by Parent. Parent shall not be responsible for any selling expenses of any Selling Stockholder (including any broker's fees or commissions) or fees or expenses of outside counsel or independent accountants of Selling Stockholder or, to the extent incurred prior to the Closing, the Company in connection with the Resale Registration Statement.

(g) Parent shall use commercially reasonable efforts to cause the shares of Parent Class A Common Stock being issued in the Merger to be approved for listing (subject to notice of issuance) on the New York Stock Exchange effective as of the Closing.

5.7 Continuing Employee Retention Awards. Prior to the Closing, Parent shall establish a retention pool in an aggregate amount of $10,000,000 in the form of equity awards (the "***Retention Pool***") that will be granted to certain of the Continuing Employees in accordance with Schedule 5.7. The awards to be made out of the Retention Pool (the "***Retention Awards***") to any Continuing Employees who enter into Retention Agreements with Parent prior to the Closing will be set forth in the applicable Retention Agreement. On or before the later of (a) thirty (30) days following the Closing and (b) the first regularly scheduled meeting of the board of directors or compensation committee of Parent following the Closing, Parent will grant the Retention Awards to Continuing Employees in accordance with Schedule 5.7. To the extent Parent elects to establish the Retention Pool in whole or in part in the form of equity awards, Parent will cause the Parent Class A Common Stock issuable upon exercise or settlement of such equity awards for which a Form S-8 registration statement is available to be registered with the SEC on Form S-8 no later than the date that such awards are issued or granted, will maintain the effectiveness of such registration statement for so long as such equity awards remain outstanding and will reserve a sufficient number of shares of Parent Class A Common Stock for issuance upon exercise or settlement thereof.

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 Conduct of the Business of the Company. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time (the "***Pre-Closing Period***"), the Company shall, and shall cause each of its Subsidiaries to:

(a) subject to applicable Law, conduct its business solely in the Ordinary Course of Business (except to the extent expressly provided otherwise herein or as consented to in writing by Parent);

(b) use commercially reasonable efforts to (i) pay and perform all of its undisputed debts and other obligations (including Taxes) when due, (ii) collect accounts receivable when due and not extend credit outside of the Ordinary Course of Business, (iii) sell the Company's or any Subsidiary of the Company's products and services consistent with past practice as to discounting, license, service and maintenance terms, incentive programs and revenue recognition and other terms and (iv) preserve intact its present business organizations, keep available the services of its present officers and employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it;

(c) assure that each of its Contracts entered into after the Agreement Date will not require the procurement of any consent, waiver or novation or provide for any change in the material obligations of any party thereto in connection with, or terminate as a result of the consummation of, the Merger; and

(d) promptly notify Parent of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Merger.

6.2 Restrictions on Conduct of the Business. Without limiting the generality or effect of the provisions of Section 6.1 and subject to applicable Law, except as (i) expressly set forth on Schedule 6.2, (ii) expressly contemplated by the terms hereof or (iii) consented to by Parent in response to an email request for such consent that is addressed to the Parent representatives set forth in Schedule 6.2(I) (the "***Parent Representatives***"), which consent shall (A) not be unreasonably withheld, conditioned or delayed and (B) shall be granted or withheld by the Parent Representatives within two (2) Business Days of receiving such email request; *provided*, that such consent shall be deemed to have been provided in the event no Parent Representative responds within such two (2) Business Days, during the Pre-Closing Period, the Company shall not, and shall cause each Subsidiary of the Company not to:

(a) amend its Charter Documents or equivalent organizational or governing documents;

(b) merge or consolidate itself with any other Person or adopt a plan of complete or partial liquidation, dissolution, consolidation, restructuring, recapitalization or other reorganization;

(c) declare or pay any dividends on or make any other distributions (whether in cash, stock or other property) in respect of any of its Equity Interests, or split, combine or reclassify any of its Equity Interests or issue or authorize the issuance of any Equity Interests or other securities in respect of, in lieu of or in substitution for its Equity Interests, or repurchase or otherwise acquire, directly or indirectly, any of its Equity Interests except for purchases from former employees, non-employee directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service and issuances in connection with the exercise of any Company Options or Company Warrants or upon conversion of any shares of Company Preferred Stock;

(d) (i) enter into, amend, renew or modify any (A) Material Contract (except as set forth on Schedule 6.2(a) or renewals of Contracts with suppliers, vendors or customers entered into in the Ordinary Course of Business), (B) any Contract that would (if entered into, amended, renewed or modified prior to the Agreement Date) constitute a Material Contract (other than the entry into renewals of Contracts with suppliers, vendors or customers entered into in the Ordinary Course of Business), or (C) Contract requiring a novation or consent in connection with the Merger or the other transactions contemplated by

this Agreement, (ii) violate, terminate (other than non-renewals occurring in the Ordinary Course of Business), or waive any of the terms of any of its Material Contracts, or (iii) enter into, amend, renew, modify or terminate (other than non-renewals occurring in the Ordinary Course of Business) any Contract or waive, release or assign any rights or claims thereunder, which if so entered into, modified, amended, terminated, waived, released or assigned would be reasonably likely to (x) adversely affect the Company or any of its Subsidiaries (or, following consummation of the Merger, Parent or any of its Affiliates) in any material respect, (y) impair the ability of the Company or the Stockholder Representative to perform their respective obligations under this Agreement or (z) prevent or materially delay or impair the consummation of the Merger and the other transactions contemplated hereby;

(e) issue, deliver, grant or sell or authorize or propose the issuance, delivery, grant or sale of, or purchase or propose the purchase of, any Company Voting Debt, any Equity Interests or any other indebtedness or other security granting its holder the right to vote on any matters on which any Company Security Holder may vote (or that is convertible into, or exchangeable for, securities having such right), or enter into or authorize or propose to enter into any Contracts of any character obligating it to issue any Equity Interests, other than: (i) the issuance of shares of Company Common Stock pursuant to the exercise of Company Options that are outstanding as of the Agreement Date, (ii) the issuance of shares of Company Common Stock pursuant to the exercise of the Company Warrant or upon conversion of shares of Company Preferred Stock, and (iii) the repurchase of any shares of Company Capital Stock from former employees, non-employee directors and consultants in accordance with Contracts providing for the repurchase of shares in connection with any termination of service;

(f) except as set forth in Schedule 6.2(f): (i) hire, or offer to hire, any additional officers or employees at the director level or above or with an annual compensation of $200,000 or more, (ii) engage any advisor, consultant or independent contractor with annual compensation in excess of $50,000, (iii) terminate the employment or engagement of any director, officer, employee, advisor, consultant or independent contractor of the Company or any Subsidiary of the Company, in each case whose annual compensation exceeds $200,000 (which, for purposes of clarity, shall not include a voluntary termination by any such Person or a termination by the Company or any Subsidiary for cause or for failing to satisfy performance expectations after being placed on a performance improvement plan, (iv) change the title, office, position, compensation, responsibilities or terms and conditions of employment of any officer or director or more senior employee of the Company or any Subsidiary of the Company, (v) enter into, amend or extend the term of any (X) employment, consulting, independent contractor, advisor, or service provider agreement (in each case, except as permitted under clause (i)-(ii) of this Section 6.2(f)), or any bonus or incentive compensation arrangement, commission agreement, severance agreement or retention bonus, in each case, with any Person whose annual compensation from the Company or any Subsidiary exceeds $50,000 (excluding equity compensation), or (Y) change of control agreement with, or Company Option held by, any officer, employee, advisor, consultant or independent contractor, (vi) recognize or enter into any Contract or other agreement with any labor organization or union or collective bargaining agreement (except as otherwise required by Law and after advance notice to Parent) or (vii) add any new members to the Board (all new offers or hires permitted pursuant to this Section 6.2(f), a "***Permitted Hire***");

(g) make any loans or advances (other than routine expense advances to employees of the Company or any Subsidiary of the Company consistent with past practice) to, or any investments in or capital contributions to, any Person, or forgive or discharge in whole or in part any outstanding loans or advances, or prepay any indebtedness for borrowed money;

(h) except for non-exclusive licenses in connection with the provision of the Company Products (not including rights in any Company Source Code other than Company Source Code that comprises the Company Hybrid Product or distributed pursuant to an Open Source Licenses in substantially the same manner as distributed by the Company as of the date of the Agreement) and the Company services in the Ordinary Course of Business, transfer, sell, license to any Person any rights to any Intellectual Property Rights;

(i) except in connection with the provision of the Company Products and Company services in the Ordinary Course of Business, enter into any agreement with respect to the development of any Intellectual Property Rights or Technology with a third party (excluding agreements with consultants and independent contractors pursuant to Personnel Agreements);

(j) transfer or provide a copy of any Company Source Code to any Person (including any current or former employee or consultant of the Company or any Subsidiary of the Company or any contractor or commercial partner of the Company or any Subsidiary of the Company) (other than as done by the Company consistent with past practice, with respect to the Company Hybrid Product or providing access to Company Source Code to current employees and consultants of the Company or any Subsidiary of the Company actually involved in the development of the Company Products on a need to know basis in the Ordinary Course of Business and provided each such employee or consultant has executed a Personnel Agreement) or materially amend or replace any Company Privacy Policy;

(k) take any action regarding a patent, patent application or other registered Intellectual Property Right, other than filing continuations for existing patent applications or completing or renewing registrations of existing Company Registered IP in the Ordinary Course of Business;

(l) enter into any license, distribution, reseller, OEM, joint venture or joint marketing or any similar arrangement or agreement (other than nonexclusive arrangements entered in the Ordinary Course of Business);

(m) sell, lease, license or otherwise dispose of or encumber (other than Permitted Liens) any of its material properties or assets, other than non-exclusive licenses of Company Products in the Ordinary Course of Business, or enter into any Contract with respect to the foregoing;

(n) enter into any operating lease in excess of $50,000 or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(o) incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(p) (i) pay, discharge or satisfy any Liability to any Person who is an officer, director or stockholder of the Company or any Subsidiary of the Company, other than compensation due for services as an officer or director or the reimbursement of business expenses in the Ordinary Course of Business, (ii) defer payment of any accounts payable other than in the Ordinary Course of Business, or (iii) give any discount, accommodation or other concession other than in the Ordinary Course of Business, in order to accelerate or induce the collection of any receivable;

(q) make any capital expenditures, capital additions or capital improvements in excess of $200,000 individually or $500,000 in the aggregate;

(r) materially change the amount of, or terminate, any insurance coverage;

(s) cancel, release or waive any material claims or rights held by the Company or any Subsidiary of the Company;

(t) (i) adopt, establish, enter into, terminate, discontinue or amend any Company Employee Plan, except in each case as required under ERISA, applicable Law or as necessary to maintain the qualified status of such plan under applicable Law, (ii) accelerate the payment, funding or vesting of any compensation or benefits of any employee, consultant, advisor, independent contractor or director of the Company or any Subsidiary of the Company, (iii) pay any bonus or other incentive compensation to any employee, consultant, advisor, independent contractor or director, or (iv) increase the compensation or benefits of any employee, consultant, advisor, independent contractor or director (other than, with respect to clauses (iii) and (iv), as required by the terms of preexisting plans, policies or Contracts that have been disclosed to Parent and are set forth on Schedule 6.2(t));

(u) except as required by Law, grant or pay, or enter into any Contract providing for the granting or payment of any severance, change of control, retention or termination pay or benefits to any Person (other than existing immigration sponsorship costs incurred in the Ordinary Course of Business and any payments or benefits provided pursuant to preexisting plans, policies or Contracts that have been disclosed to Parent and are set forth on Schedule 6.2(u) (whether pursuant to Contract or applicable Law)) in excess of $25,000 individually or $75,000 in the aggregate;

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

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

(x) make, change or revoke any material Tax election, adopt or change any Tax accounting method or period, file any federal, state, or non-U.S. income Tax Return or any other material Tax Return without complying with the requirements of Section 5.2(a)(i), file any amended Tax Return, enter into any closing agreement within the meaning of Section 7121 of the Code (or any similar provision of applicable state, local or non-U.S. Law), voluntary disclosure application or agreement or similar process, apply for any Tax ruling, settle or compromise any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, enter into any tax allocation agreement, tax sharing agreement or tax indemnity agreement (excluding for this purpose any ancillary provisions in any Ordinary Commercial Agreement), assume or agree to indemnify any liability for Taxes of another Person (excluding for this purpose any ancillary provisions in any Ordinary Commercial Agreement), voluntarily surrender any right to claim a Tax refund, avail itself of relief pursuant to Pandemic Response Laws (except for Section 2302 of the CARES Act) that could reasonably be expected to impact the Tax payment and/or reporting obligations of the Company or any of its Subsidiaries after the Closing Date, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax if such similar action would have the effect of increasing the Tax liability the Company or any of its Subsidiaries for any Tax period ending after the Closing Date or decreasing any Tax attribute of the Company or any of its Subsidiaries existing on the Closing Date;

(y) change accounting methods or practices (including any change in depreciation or amortization policies) or revalue any of its assets (including writing down the value of inventory or writing off notes or accounts receivable otherwise than in the Ordinary Course of Business), except in each case as required by changes in GAAP as concurred with its independent accountants and after notice to Parent;

(z) enter into any agreement for the purchase, sale or lease of any real property;

(aa) place or allow the creation of any Lien (other than a Permitted Lien) on any of its properties;

(bb) materially change the manner in which it provides warranties, discounts or credits to customers; or

(cc) take or agree in writing or otherwise to take, any of the actions described in clauses (a) through (bb).

Nothing in this Section 6.2 shall cause Parent to control the Company in violation of the HSR Act or other antitrust Law.

6.3 No Solicitation.

(a) During the Pre-Closing Period, the Company will not, nor will it authorize or permit any of its Representatives to, directly or indirectly, (i) solicit, willingly encourage others to solicit, or willingly encourage, facilitate or accept any discussions, proposals or offers that constitute, or could reasonably be expected to lead to, an Acquisition Proposal, (ii) enter into, participate in, maintain or continue any communications (except solely to provide written notice as to the existence of these provisions) or negotiations regarding, or deliver or make available to any Person any non-public information with respect to, or take any other action regarding, any inquiry, expression of interest, proposal or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, (iii) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention or desire to agree to, accept, approve, endorse or recommend) any Acquisition Proposal, (iv) enter into any letter of intent or any other Contract contemplating or otherwise relating to any Acquisition Proposal, or (v) submit any Acquisition Proposal to the vote of any stockholders of the Company. The Company will, and will cause its Representatives to, (A) immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Persons conducted prior to or on the Agreement Date with respect to any Acquisition Proposal and (B) immediately revoke or withdraw access of any Person (other than Parent and its Representatives) to any data room (virtual or actual) containing any non-public information with respect to the Company in connection with an Acquisition Proposal and request from each Person (other than Parent and its Representatives) the prompt return or destruction of all non-public information with respect to the Company previously provided to such Person in connection with an Acquisition Proposal. If any of the Company's Representatives, whether in his, her or its capacity as such or in any other capacity, takes any action that the Company is obligated pursuant to this Section 6.3 not to authorize or permit such Representative to take, then the Company shall be deemed for all purposes of this Agreement to have breached this Section 6.3.

(b) The Company shall immediately (but in any event, within 24 hours) notify Parent in writing after receipt by the Company (or, to the Knowledge of the Company, by any of its Representatives), of (i) any Acquisition Proposal, (ii) any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) any other notice that any Person is considering making an Acquisition Proposal or (iv) any request for non-public information relating to the Company or for access to any of the properties, books or records of the Company by any Person or Persons other than Parent and its Representatives reasonably expected to be in connection with a potential Acquisition Proposal. Such notice shall describe the material terms and conditions of such Acquisition Proposal. The Company shall keep Parent fully informed of the status and details of, and any modification to, any such inquiry, expression of interest, proposal or offer and any correspondence or communications related thereto. The Company shall provide Parent with 48-hours prior notice (or such lesser prior notice as is provided to the members of the Board) of any meeting of the Board at which the Board is reasonably expected to discuss any Acquisition Proposal.

6.4 Access to Information.

(a) During the Pre-Closing Period, (i) the Company shall afford Parent and its Representatives reasonable access during business hours to (A) the Company's properties, books, Contracts and records and (B) all other information concerning the business, properties and personnel of the Company as Parent may reasonably request and (ii) the Company shall provide to Parent and its Representatives correct and complete copies of the Company's (A) internal financial statements, (B) Tax Returns, Tax elections and all other material records and work papers relating to Taxes, (C) a schedule of any deferred intercompany gain or loss with respect to transactions to which the Company has been a party, and (D) receipts received for any material Taxes paid to foreign Tax authorities, provided, however, that the foregoing shall not require the Company to provide any information or documents if such access or disclosure in the good faith reasonable belief of the Company after consultation with the Company's outside legal advisor would violate any Law or otherwise result in the waiver of the Company's attorney-client privilege, the work product doctrine or similar privilege or protection applicable to such information or documents.

(b) Subject to compliance with applicable Law, during the Pre-Closing Period, the Company and Parent shall each confer from time to time as requested by the other party with one or more Representatives of each party to discuss any material changes or developments in the operational matters of the Company or Parent and the general status of the ongoing operations of the Company and Parent.

(c) No information obtained by Parent or the Company during the pendency of the Merger in any investigation pursuant to this Section 6.4 shall affect or be deemed to modify any representation, warranty, covenant, agreement, obligation or condition set forth herein.

6.5 Notification of Certain Matters.

(a) Each of the Company and Parent shall give the other prompt notice of the occurrence or non-occurrence of any event that is reasonably likely to cause the failure of any of the conditions set forth in Sections 7.2(a) or (b), with respect to the Company, or Sections 7.3(a) or (b), with respect to Parent; *provided,* that the delivery of any notice pursuant to this Section 6.5 shall not limit or otherwise affect any remedies available to such notified party; *provided further*, that, any such failure to provide such notice of a breach of a representation or warranty shall be deemed to be a breach of such representation or warranty for purposes of this Agreement (and not, for the avoidance of doubt, a breach of covenant). No disclosure by the Company pursuant to this Section 6.5, however, shall be deemed to amend or supplement the Disclosure Schedule or prevent or cure any misrepresentation, breach of representation or warranty or breach of any covenant.

(b) Each of the Company and Parent shall give the other prompt notice of the commencement or known threat of commencement of any Legal Proceeding by or before any Governmental Entity with respect to the Merger or any of the other transactions contemplated by this Agreement, keep such notified party informed as to the status of any such Legal Proceeding or threat, and permit authorized Representatives of such notified party to be present at each meeting or conference relating to any such Legal Proceeding, to participate in, or review, any material communication before it is made to any Governmental Entity, and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with any such Legal Proceeding, including by providing such notified party with a reasonable opportunity to review and comment on any filing, submission, response to an information request or other (oral or written) communication to be

submitted or made to any Governmental Entity and such receiving party shall consider any such received comments in good faith; *provided*, *that*, in each case, the applicable party shall not be required to make any such disclosure or provide such access to the other party to the extent that such disclosure or access would, in the applicable party's reasonable good faith determination, jeopardize protections afforded to such party under the attorney-client privilege or the attorney work product doctrine or violate any Law applicable to such party with respect to such disclosure; *provided, further,* that each such party shall use its commercially reasonable efforts to provide such notice and access in a manner that does not violate any such Law or waive any such privilege.

6.6 Section 280G.

(a) If necessary, the Company shall solicit, obtain and deliver to Parent, prior to the initiation of the requisite stockholder approval procedure under Section 6.6(b), a Parachute Payment Waiver (the "***Parachute Payment Waiver***"), from each Person who the Company or Parent reasonably believes could be, with respect to the Company, a "disqualified individual" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), and who might otherwise have received, receive or have the right or entitlement to receive a Section 280G Payment (as defined below), unless the 280G Stockholder Approval (as defined below) is obtained pursuant to Section 6.6(b).

(b) Prior to the Closing Date, the Company shall submit to the Company Stockholders, for approval by such Company Stockholders holding the number of shares of stock required by the terms of Section 280G(b)(5)(B) of the Code, a written consent in favor of a proposal to render the parachute payment provisions of Section 280G of the Code and the regulations thereunder inapplicable to all Section 280G Payments. "***Section 280G Payments***" means any payments or benefits that might reasonably be expected to result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that causes the payments or benefits to not be deductible by reason of Section 280G or that would be subject to an excise tax under Section 4999 of the Code. Prior to delivery of documents to the stockholders in connection with the stockholder approval contemplated by this Section 6.6(b), the Company shall provide Parent and its counsel with a reasonable opportunity (but, in any event, no less than two (2) days prior to such delivery) to review and comment on all documents to be delivered to the stockholders in connection with such stockholder approval. Any such stockholder approval shall be sought by the Company in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations. Prior to the Closing, the Company shall deliver to Parent written notification that (i) a vote of the holders of Company Capital Stock was solicited in conformance with Section 280G of the Code and the regulations promulgated thereunder and the requisite stockholder approval was obtained with respect to any payments and benefits that were subject to the stockholder vote (the "***280G Stockholder Approval***") or (ii) that the 280G Stockholder Approval was not obtained and as a consequence, that such payments and benefits shall not be made or provided (or shall be returned) to the extent they would cause any amounts to constitute Section 280G Payments, pursuant to the Parachute Payment Waivers; *provided*, no stockholder vote shall be required pursuant to Section 1.5(a)(i) with respect to the value of any Undisclosed Parent Arrangements.

6.7 Confidentiality. The parties hereto acknowledge that Parent and the Company have previously executed those certain confidentiality agreements dated August 6, 2020 and September 16, 2020, (the "***Confidentiality Agreements***"), which shall continue in full force and effect in accordance with their terms. Each party hereto (other than the Stockholder Representative) agrees that it and its Representatives shall hold the terms of this Agreement, and the fact of this Agreement's existence, in strict confidence, and at no time shall any party or its Representatives disclose any of the terms of this Agreement (including the economic terms) or any non-public information about another party hereto to any other Person without the prior written consent of the other party. Notwithstanding anything to the contrary in the foregoing (including in the Confidentiality Agreements), a party hereto shall be permitted to disclose any and all terms

(i) to its financial, tax and legal advisors (each of whom is subject to a similar obligation of confidentiality), (ii) to any Governmental Entity or administrative agency to the extent necessary or advisable in compliance with applicable Law and the rules of the primary exchange on which such party is then listed, (iii) to Persons to which such party is otherwise incurring Third Party Expenses (but only to the extent reasonably necessary for such Person to perform its services in connection therewith), (iv) as reasonably necessary for the Company to obtain the Company Stockholder Approval and the other consents and approvals of the Company Stockholders and other third parties contemplated by this Agreement, (v) in connection with enforcing its rights or defending itself against any claims hereunder and (vi) as otherwise permitted by Section 6.8. The Stockholder Representative hereby agrees to hold the terms of this Agreement, the fact of this Agreement's existence, and information relating to the Merger or this Agreement received by the Stockholder Representative after the Closing or relating to the period after the Closing in strict confidence, and at no time shall the Stockholder Representative disclose any of the terms of this Agreement (including the economic terms) or any non-public information about a party hereto to any other Person without the prior written consent of Parent (and, prior to Closing, the Company); *provided*, however, following Closing, the Stockholder Representative shall be permitted to disclose information as required by law or to employees, advisors, agents or consultants of the Stockholder Representative and to the Company Indemnitors, in each case who have a need to know such information, provided that such persons are subject to confidentiality obligations with respect thereto. Notwithstanding anything else to the contrary contained herein, nothing shall prevent a Company Stockholder that is a venture capital or private equity fund (or its Representatives), from communicating to its current or potential investors the existence and terms of this Agreement, including the amount of the Total Merger Consideration, the Specific Indemnity Escrow Amount, the Indemnity Escrow Amount, the Adjustment Escrow Amount or the Expense Fund, but only to the extent (a) such communications to current or potential investors (i) relate to the economic returns on investment, (ii) are permitted under the terms of such Company Stockholder's governing fund documents in effect as of the Agreement Date and (iii) are made in connection with such Company Stockholder's or its Representative's fundraising and reporting activities (on such Company Stockholder's behalf) required as part of its ordinary course of business and consistent with past practices and (b) such current or potential investors are subject to obligations of confidentiality.

6.8 Public Disclosure. The parties agree that the initial press release to be issued with respect to the execution and delivery of this Agreement shall be in the form mutually agreed upon by Parent and the Company. Prior to the Effective Time or any earlier termination of this Agreement pursuant to the terms hereof, the Company shall not, and the Company shall cause each of its Representatives not to, issue any press release or other public communications (other than any communications permitted by this Section 6.8 or in accordance with the communications plan approved by Parent) relating to the terms of this Agreement or the Merger or use Parent's name or refer to Parent directly or indirectly in connection with Parent's relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Parent, unless required by applicable Law and except as reasonably necessary for the Company to obtain the Company Stockholder Approval and the other consents and approvals of the Company Stockholders and other third parties contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, in Section 6.7 or in the Confidentiality Agreements, (a) Parent may be permitted to make such public communications regarding this Agreement or the Merger as Parent may determine is reasonable and appropriate for a public reporting company, (b) the Company and its Affiliates and its and their respective Representatives may make such public communications regarding this Agreement or the Merger that are consistent with previous press releases or public announcements made in compliance with this Section 6.8 and (c) each of Parent and the Company shall be entitled to make certain statements or communications in accordance with Schedule 6.8 (subject to the limitations set forth therein).

6.9 Reasonable Best Efforts.

(a) Each of the parties hereto (other than the Stockholder Representative) agrees to use its reasonable best efforts, and to cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including the satisfaction of the respective conditions set forth in Article VI, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Merger and the other transactions contemplated by this Agreement.

(b) The parties (other than the Stockholder Representative) shall make all filings and notifications and other submissions with respect to this Agreement and the transactions contemplated hereby under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations (the "***HSR Act***") and any other applicable antitrust Laws and, in any event, shall each file the Notification and Report Form under the HSR Act, if required, no more than three (3) Business Days after the Agreement Date. The parties agree to request at the time of filing early termination of the applicable waiting period under the HSR Act. To the extent permitted by applicable Law, each of the Company and Parent shall promptly inform the other of any material communication between the Company or Parent (as applicable) and any Governmental Entity regarding the transactions contemplated by this Agreement (and if in writing, furnish the other party with a copy of such communication). If the Company or Parent or any affiliate thereof shall receive any formal or informal request for information or documentary material from any Governmental Entity with respect to the transactions contemplated by this Agreement, then the Company or Parent (as applicable) shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request. Without limiting the generality or effect of Section 6.9(a), to the extent permitted by applicable Law and except as may be prohibited by any Governmental Entity, the parties hereto (other than the Stockholder Representative) shall (i) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Entity relating to the transaction contemplated by this Agreement; (ii) not participate in any substantive meeting or conference, or have any substantive communication with, any Governmental Entity unless it has given the other party a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Entity, gives the other the opportunity to attend and participate therein; (iii) furnish the other party's outside legal counsel with copies of all filings and communications between it and any such Governmental Entity with respect to this Agreement and the transactions contemplated hereby; *provided* that such material (A) may be redacted as necessary (1) to comply with contractual arrangements, (2) to address legal privilege concerns, or (3) to remove references concerning the valuation of the parties or (B) designated as "outside counsel only," which materials and the information contained therein shall be given only to outside counsel and previously-agreed outside economic consultants of the recipient and will not be disclosed by such outside counsel or outside economic consultants to employees, officers, or directors of the recipient without the advance written consent of the party providing such materials; and (iv) furnish the other party's outside legal counsel with such necessary information and reasonable assistance as the other party's outside legal counsel may reasonably request in connection with its preparation of necessary submissions of information to any such Governmental Entity. All filing fees in connection with filings required by the HSR Act shall be borne by the acquiring person, as defined by 16 C.F.R. § 801.2. The Company and Parent shall each bear its own legal fees and expenses in connection with compliance with this Section 6.9.

(c) Notwithstanding the foregoing, nothing in this Section 6.9 or otherwise in this Agreement shall require Parent: (i) to take any action that would prohibit or limit in any respect, or place any conditions on, the ownership or operation by Parent of any portion of the business, assets, Intellectual Property Rights, categories of assets, relationships, contractual rights, obligations or arrangements of Parent or any of its Affiliates (including the Company), or compel Parent to divest, dispose of, hold separate or license any portion of the business, assets, Intellectual Property Rights, categories of assets, relationships, contractual rights, obligations or arrangements of Parent or any of its Affiliates (including the Company); (ii) to propose or agree to or effect any divestiture or hold separate any business or assets; or (iii) to commence, contest, or defend any Legal Proceeding relating to the transactions contemplated by this Agreement; *provided* that the Company shall not take any of the foregoing actions without the prior written consent of Parent.

6.10 Termination of 401(k) Plans. Effective as of the day immediately preceding the Closing Date, the Company shall terminate, or shall cause the termination of, all 401(k) Plans (unless Parent provides written notice to the Company no later than three (3) Business Days prior to the Closing Date that the 401(k) Plans shall not be terminated). The Company shall provide Parent with evidence that such 401(k) Plans have been terminated (effective no later than the day immediately preceding the Closing Date) pursuant to resolutions of the applicable governing body. The form and substance of such resolutions shall be subject to review and comment by Parent at least two (2) Business Days prior to the Closing Date, which approval shall not be unreasonably withheld, conditioned or delayed. The Company also shall take such other actions in furtherance of terminating the 401(k) Plans as Parent may reasonably require. In the event that termination of the 401(k) Plans would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees, then the Company shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Parent.

6.11 Consents.

(a) The Company shall, upon Parent's request and using forms reasonably acceptable to Parent, use commercially reasonable efforts to obtain prior to the Closing, the consents, waivers and approvals listed on Schedule 6.11(a) of the Disclosure Schedule and under any Contract entered into after the Agreement Date that would have been required to be listed or described on Section 3.5 of the Disclosure Schedule if entered into prior to the Agreement Date, and the Company shall deliver copies of such consents, waivers and approvals to Parent promptly following the Company's receipt thereof.

(b) Promptly after the Agreement Date, the Company shall have sent each of the notices set forth in Schedule 6.11(b) attached hereto (the "***Notices***"), using forms reasonably acceptable to Parent.

6.12 Terminated Agreements. Prior to the Closing, the Company shall use its commercially reasonable efforts to cause each of the agreements set forth on Schedule 6.12 (the "***Terminated Agreements***") to be terminated, effective as of and contingent upon the Closing.

6.13 Resignation of Officers and Directors. Prior to the Closing, the Company shall have caused each officer and director of the Company to execute a Director and Officer Resignation Letter, effective as of the Effective Time.

6.14 Expenses. Except as explicitly provided for otherwise in this Agreement, whether or not the Merger is consummated, except as otherwise set forth herein, each of the Company and Parent shall bear its own, and its respective legal, auditors', financial advisors' and other representatives' fees and other expenses incurred with respect to this Agreement and the Merger.

6.15 Corporate Matters. The Company shall retain at its San Francisco office, and make available to Parent, all original minute books containing the records of all proceedings, consents, actions and meetings of the board of directors, committees of the boards of directors and the stockholders of the Company and the stock ledgers, journals and other records reflecting all stock issuances and transfers.

6.16 Joinder Agreements and Warrant Cancellation Agreements. The Company shall use its commercially reasonable efforts to cause the General Joinder Agreements and the Warrant Cancellation Agreement to be executed and delivered to the Company on or prior to the Closing Date by each of the applicable Company Indemnitors (for the avoidance of doubt, excluding any Company Indemnitors that executed and delivered Joinder Agreements in connection with the execution and delivery of this Agreement).

6.17 Suitability Documentation. The Company shall use its commercially reasonable efforts to cause each Company Stockholder to deliver the Suitability Documentation at least five (5) Business Days prior to the Closing.

6.18 Additional Actions. Prior to the Closing, the Company shall take each of the actions set forth on Schedule 6.18.

6.19 Warrant Cancellation Agreements. The Company shall use its commercially reasonable efforts to obtain a Warrant Cancellation Agreement, duly executed by each Company Warrantholder and the Company, and Suitability Documentation duly executed by each Company Warrantholder certifying that each such Company Warrantholder is an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act).

6.20 Other Closing Deliverables. Each of the Company and Parent shall use its commercially reasonable efforts to cause all of the Closing deliverables required to be delivered by it pursuant to Section 1.5(a) and Section 1.5(b), respectively, (and not otherwise specifically addressed by this Article VI) to be delivered to the other at or prior to the Closing.

6.21 Provision of Benefits. For the period commencing at the Effective Time and ending twelve (12) months after the Effective Time, except to the extent better terms are provided to a Continuing Employee in any Offer Letters entered into between Parent and any Continuing Employee prior to the Effective Time, Parent agrees to provide each Continuing Employee with base salary or wages, as applicable, and commission opportunity or target bonus opportunity, as applicable, in each case no less favorable than those provided to such Continuing Employees immediately prior to the Effective Time and benefits (other than defined benefit pension benefits, retiree medical, severance, perquisites and equity-based incentives) which are no less favorable in the aggregate than either (a) those provided to such Continuing Employees immediately prior to the Effective Time or (b) those provided by Parent (including its Affiliates) to similarly situated employees of Parent (or its Affiliates), with the choice of (a) or (b) to be made by Parent in its sole discretion. Parent will treat, and use commercially reasonable efforts to cause the applicable benefit plans to treat, the service of the Continuing Employees with the Company attributable to any period before the Effective Time as service rendered to Parent or any Subsidiary of Parent for purposes of eligibility to participate in and vesting (other than with respect to equity-based incentives) under Parent's health and welfare plan(s) and defined contribution plan(s), except where credit would result in duplication of benefits. Without limiting the foregoing, to the extent that any Continuing Employee participates in any health or other group welfare benefit plan of Parent following the Effective Time, Parent shall use commercially reasonable efforts to: (A) cause any pre-existing conditions or limitations, eligibility waiting periods or required physical examinations under any health or similar welfare plan of Parent to be waived with respect to the Continuing Employees and their eligible dependents, to the extent waived under the corresponding plan in which the Continuing Employee participated immediately prior to the Effective Time, and (B) provide credit for any deductibles paid by Continuing Employees under any of the Company's or its Subsidiaries' health plans in the plan year in which the Effective Time occurs towards

deductibles under the health plans of Parent or any Subsidiary of Parent. Nothing contained herein, express or implied, (x) is intended to confer upon any Continuing Employee any right to continued employment for any period or continued receipt of any specific employee benefit, or shall constitute an amendment to or any other modification of any benefit plan, (y) shall alter or limit Parent's or the Company's or their Affiliates' ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement or (z) is intended to confer upon any individual (including employees, retirees or dependents or beneficiaries of employees or retirees) any right as a third party beneficiary of this Agreement.

6.22 R&W Policy. The R&W Policy shall expressly provide that the insurers issuing such policies shall have no right, and waive any right, of subrogation, contribution or any other claim against the Company Indemnitors based upon, arising out of, or in any way resulting from this Agreement, the Merger, or the R&W Policy, except in the case of Fraud. The Parent Indemnified Parties shall not amend, waive, modify or otherwise revise the anti-subrogation waiver contained in the R&W Policy in any manner adverse to the Company Indemnitors.

6.23 Conduct of Business by Parent. During the period from the Agreement Date and continuing until the earlier of (i) the termination of this Agreement, (ii) the Effective Time and (iii) with respect to clause (c) below, the applicable Restriction Date (as defined in Schedule 6.23(c)) Parent shall not, and it shall cause each of its Subsidiaries not to, do any of the following (except to the extent expressly provided otherwise herein or as consented to in advance in writing by the Company, which consent shall not be unreasonably withheld, conditioned or delayed):

(a) amend the Parent Organizational Documents;

(b) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, other equity interests or voting securities, other than dividends and distributions by a direct or indirect wholly-owned subsidiary of Parent to Parent and stock dividend subject to Section 2.10, or (ii) repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any capital stock or voting securities of, or Equity Interests in, Parent or any of its Subsidiaries or any securities of Parent or any of its Subsidiaries convertible into or exchangeable for capital stock or voting securities of, or Equity Interest in, Parent or any of its Subsidiaries, or any warrants, calls, options or other rights to acquire any such capital stock, voting securities or Equity Interests;

(c) take any action set forth on Schedule 6.23(c);

(d) take any action that could reasonably be expected to prevent the Merger from qualifying as a "reorganization" under Section 368(a) of the Code; provided, however, that neither Parent nor either of the Merger Sub shall be deemed to have breached this covenant as a result of a decline in the value of Parent Class A Common Stock prior to the Closing (for any reason or for no reason) that results in any failure of the Merger, taken together, to qualify as a "reorganization" within the meaning of Section 368(a) of the Code; or

(e) agree, resolve or commit to do any of the foregoing.

ARTICLE VII

CONDITIONS TO THE MERGER

7.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of the Company, Parent and Merger Sub to effect the Merger shall be subject to the satisfaction or waiver, at or prior to the Effective Time, of the following conditions:

(a) **No Order**. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, Order or other legal restraint or prohibition (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting or preventing consummation of the Merger.

(b) **No Injunctions; Restraints; Illegality**. No Law or Order (whether temporary, preliminary or permanent injunction) issued by any Governmental Entity or other legal restraint or prohibition (i) preventing or restraining, in any material respect, the consummation of the Merger, (ii) prohibiting Parent's ownership or operation of any portion of the business of the Company, or (iii) compelling Parent or Company to dispose of or hold separate all or any portion of the business or assets of Company or Parent as a result of the Merger, shall be in effect.

(c) **Regulatory Approvals**. All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired, terminated or where applicable, approvals have been obtained, and any investigation or inquiry initiated by a Governmental Entity in any foreign jurisdiction under any applicable antitrust or competition-related law in such jurisdiction in connection with the Merger shall have been terminated and any related consents or terminations of waiting periods shall have been obtained.

(d) **Company Stockholder Approval**. The Company Stockholder Approval shall have been validly obtained under the DGCL and the Charter Documents and shall be in full force and effect.

7.2 Conditions to the Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Parent and Merger Sub:

(a) **Representations, Warranties and Covenants**.

(i) The Fundamental Representations (1) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to any Fundamental Representations that address matters only as of a particular date, which shall be true and correct in all material respects as of such date) and (2) that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to any Fundamental Representations that address matters only as of a particular date, which shall be true and correct in all respects as of such date);

(ii) The representations and warranties of the Company contained in this Agreement (other than the Fundamental Representations) shall be true and correct in all respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to such representations and warranties that address matters only as of a particular date, which shall be true and correct as of such date) except where the failure of such representations and warranties collectively to be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualifications) shall not have had a Material Adverse Effect with respect to the Company; and

(iii) The Company shall have performed and complied, in all material respects, with each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Company at or prior to the Closing.

(b) **No Material Adverse Effect**. Since the Agreement Date, there shall not have occurred and be continuing a Material Adverse Effect with respect to the Company.

(c) **Company Certificate**. Parent shall have received a certificate from the Company, validly executed by the Chief Executive Officer of the Company for and on the Company's behalf, to the effect that, as of the Closing the conditions set forth in Sections 7.2(a) and 7.2(b) and have been satisfied (the "***Company Certificate***").

(d) **Closing Deliverables**. The Company shall have delivered or caused to be delivered to Parent the items required by Section 1.5(a).

(e) **Employment Arrangements**. (i) Each Non-Competition and Non-Solicitation Agreement and Offer Letter, in each case executed concurrently with this Agreement by a Key Employee, shall not have been revoked or repudiated by the Key Employee prior to the Closing and (ii) no more than twenty percent (20%) of the total number of current Company employees as of the Agreement Date shall have terminated their employment with the Company at or prior to the Closing (or have delivered written notice prior to the Closing announcing an intention to terminate employment with the Company).

(f) **Certificate of Merger**. Parent shall have received the Certificate of Merger, duly executed by the Company.

7.3 Conditions to Obligations of the Company. The obligations of the Company to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) **Representations, Warranties and Covenants**.

(i) The Parent Fundamental Representations (1) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to any Parent Fundamental Representations that address matters only as of a particular date, which shall be true and correct in all material respects as of such date) and (2) that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to any Parent Fundamental Representations that address matters only as of a particular date, which shall be true and correct in all respects as of such date).

(ii) The representations and warranties of Parent and Merger Sub contained in this Agreement (other than the Parent Fundamental Representations) shall be true and correct in all respects, both as of the Agreement Date and as of the Closing Date as though made on the Closing Date (except with respect to such representations and warranties that address matters only as of a particular date, which shall be true and correct as of such date) except where the failure of such representations and warranties collectively to be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualifications) shall not have had a Material Adverse Effect with respect to the Parent or Merger Sub.

(iii) Each of Parent and Merger Sub shall have performed and complied, in all material respects, with each agreement, covenant and obligation required by this Agreement to be so performed or complied with by it at or prior to the Closing.

(b) **No Parent Material Adverse Effect**. Since the Agreement Date, there shall not have occurred and be continuing a Material Adverse Effect with respect to Parent and its Subsidiaries, taken as a whole.

(c) **Share Listing**. Parent shall have applied to have the shares of Parent Class A Common Stock issuable in connection with the Merger approved for listing on the New York Stock Exchange, and evidence thereof shall have been delivered by Parent to the Company (provided that this condition shall not be applicable unless the Company has provided Parent with all information required for such application at least two (2) Business Days before Closing).

(d) **Closing Deliverables**. Parent shall have delivered or caused to be delivered to the Company the items required by Section 1.5(b).

(e) **WKSI.** Parent shall be a WKSI on the Closing Date.

(f) **Certificate of Parent**. Company shall have received a certificate executed for and on behalf of Parent by an officer of Parent to the effect that, as of the Closing, the conditions set forth in Section 7.3(a), Section 7.3(b) and Section 7.3(e) have been satisfied (the "***Parent Certificate***").

ARTICLE VIII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; ESCROW

8.1 Survival. The representations and warranties of the Company contained in this Agreement and in the Certificates, and the right of any Parent Indemnified Party to assert a claim for indemnification hereunder with respect thereto, shall survive the Closing Date until 11:59 p.m. (California time) on the date that is twelve (12) months following the Closing Date (or, solely for purposes of claims under the R&W Policy, such longer period as specified in the R&W Policy); *provided,* that in the event of Fraud with respect to a representation or warranty contained in this Agreement or in the Certificates, as applicable, such representation or warranty, and the right to assert such a claim, shall survive for six (6) years following the Closing Date; provided further, that the Fundamental Representations and any right to assert such a claim shall survive for four (4) years following the Closing Date; *provided further,* if an Indemnification Claim Notice or Third Party Notice is given under, and in accordance with, this Article VII with respect to any representation or warranty prior to the applicable expiration date, such claim shall be preserved until such claim is finally resolved. The representations and warranties of Parent and Merger Sub set forth in this Agreement shall terminate at the Effective Time; *provided,* that in the event of Fraud with respect to a representation or warranty contained in Article IV or in the Parent Certificate, as applicable, such representation or warranty, and the right to assert such a claim, shall survive for six (6) years following the Closing Date. The covenants and agreements of the Company that by their terms are to be performed or complied with at or prior to the Closing, and the right of any Parent Indemnified Party to assert a claim for indemnification hereunder with respect thereto, shall survive until 11:59 p.m. (California time) on the date that is twelve (12) months following the Closing Date. Each other covenant and agreement of any party herein shall survive until fully performed in accordance with its terms. For the avoidance of doubt, it is the intention of the parties hereto that the foregoing respective survival periods and termination dates supersede any applicable statutes of limitations that would otherwise apply to such representations and warranties and covenants and the right to make indemnification claims in respect thereof under this Agreement, and the Company Indemnitors and the Parent Indemnified Parties hereby waive any claims or defenses based on the statute of limitations to the extent inconsistent with the survival periods set forth herein. Notwithstanding anything else to the contrary herein, it is the express intent of the parties hereto that (a) if the applicable survival period as contemplated by this Agreement for an item is shorter than the statute of limitations that would otherwise have been applicable to such item then, by contract, the applicable statute of limitations with respect to such item shall be reduced to the shortened survival period contemplated herein, and (b) the 20 year statute of limitations contemplated by 10 Del. C. § 8106(c) shall not apply to this Agreement.

8.2 Indemnification.

(a) From and after the consummation of the Merger, the Company Indemnitors shall severally, and not jointly, in accordance with each Company Indemnitor's Pro Rata Share, indemnify and hold harmless Parent and its directors, officers, affiliates (including the Surviving Corporation) (the "***Parent Indemnified Parties***"), from and against all Losses paid, incurred, suffered or sustained by the Indemnified Parties, or any of them, to the extent resulting from or arising out of any of the following:

(i) the failure of any representation or warranty of the Company in this Agreement or the Certificates to be true and correct on the Agreement Date and as of the Closing Date as if made on and as of the Closing Date, except that any such representations and warranties which by their express terms are made solely as of a specified earlier date shall be true and correct as of such specified earlier date; *provided*, that all materiality qualifications (such as "material" and "Material Adverse Effect", other than the use of the word "material" as part of any defined term) in such representations and warranties shall be disregarded for the purposes of this Article VIII;

(ii) any failure by the Company to perform or comply with any covenant or agreement applicable to it contained in this Agreement that is to be performed or complied with at or prior to Closing;

(iii) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any inaccuracy in any information set forth in the Allocation Schedule, other than any inaccuracies with respect to the items set forth in the Estimated Closing Statement (which shall be governed by Section 2.9);

(iv) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any claims by any Company Indemnitees in respect of D&O Indemnifiable Matters that are not otherwise fully covered by the D&O Tail Policy;

(v) any Fraud on the part of the Company in respect of the representations and warranties in Article III of this Agreement or in the Certificates;

(vi) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any Closing Third Party Expenses or Closing Indebtedness (excluding Unpaid Pre-Closing Taxes), in each case, to the extent not taken into account in the Final Closing Statement;

(vii) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any Unpaid Pre-Closing Taxes, to the extent not taken into account in the Final Closing Statement;

(viii) the items set forth on Schedule 8.2(a)(viii); and

(ix) the exercise by any Company Stockholder of appraisal or dissenters' rights, including appraisal rights under Section 262 of the DGCL, including payments in respect of such Person's Dissenting Shares to the extent such payments exceed the cash amount to which such Person would have been entitled pursuant to Section 2.5 in respect of such Dissenting Shares if such Person had not exercised appraisal rights in respect thereof.

(b) The rights of the Parent Indemnified Parties to indemnification, compensation or reimbursement, payment of Losses or any other remedy under this Agreement shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time (other than as a result of disclosures in the Disclosure Schedule), 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 representation, warranty, covenant or agreement made by the Company or any other matter. The waiver of any condition based on the accuracy of any such representation or warranty, will not affect the right to indemnification, compensation or reimbursement, payment of Losses, or any other remedy under this Agreement based on any such representation or warranty. Other than with respect to any claim for Fraud, no Parent Indemnified Party shall be required to show reliance on any representation, warranty, covenant or agreement in order for such Parent Indemnified Party to be entitled to indemnification, compensation or reimbursement hereunder. Nothing in this Agreement shall limit the right of any party to any Related Agreement to pursue remedies under such Related Agreement against any other party thereto with respect to any breaches of such Related Agreement by such other party.

(c) Notwithstanding anything in this Agreement to the contrary, there shall be no indemnification provided for, and the Company makes no representations or warranties regarding: (i) the amount, value or condition of, or any limitations on, any net operating losses or Tax credit of the Company arising in any Pre-Closing Tax Period (each, a "***Tax Attribute***") in a Tax period beginning after the Closing Date, or the ability of Parent or any of its Affiliates (including the Surviving Corporation) to utilize such Tax Attributes in a Tax period beginning after the Closing Date; or (ii) any Losses relating to any Taxes of the Company or any of its Subsidiaries arising a result of any action taken by Parent after the Closing on the Closing Date that is outside the Ordinary Course of Business and not otherwise explicitly contemplated by this Agreement.

8.3 Certain Limitations.

(a) Except in the case of Fraud, and subject to Section 8.3(b), the Parent Indemnified Parties, as a group, may not recover any Losses pursuant to an indemnification claim under Section 8.2(a)(i) unless and until the Parent Indemnified Parties, as a group, shall have paid, incurred, suffered or sustained at least $8,000,000 in Losses in the aggregate (the "***Deductible Amount***"), at which time the Parent Indemnified Parties shall be entitled to recover in accordance with this Agreement all such Losses in excess of the Deductible Amount, subject to the other limitations in this Agreement.

(b) Except in the case of Fraud and indemnification claims related to any breach of or inaccuracy in the Fundamental Representations, the Parent Indemnified Parties' sole and exclusive source of recovery for indemnification claims under Section 8.2(a)(i) and Section 8.2(a)(vii) shall be recourse against the Indemnity Escrow Account.

(c) Except in the case of Fraud, the Parent Indemnified Parties' sole and exclusive source of recovery for indemnification claims under Section 8.2(a)(viii) shall be recourse against the Specific Indemnity Escrow Account.

(d) Subject to the limitations set forth in this Section 8.3, the Parent Indemnified Parties shall be entitled to bring indemnification claims directly against the Company Indemnitors (in accordance with each Company Indemnitor's Pro Rata Share) pursuant to the claims procedures in Section 8.4, provided that any Losses with respect to such claims shall first be recovered from the Indemnity Escrow Account to the extent of any Indemnity Escrow Cash and Indemnity Escrow Shares then remaining therein; *provided*, that in no event shall the aggregate liability of any Company Indemnitor for all indemnification claims under this Agreement exceed the amount of Total Merger Consideration actually received by such Company Indemnitor (including, for the avoidance of doubt, the Escrow Cash and Escrow Shares, if and

to the extent released to the Company Indemnitor, and, in the case of the Key Employee, the amount of the Revested Stock Consideration for the Key Employee (as defined in the Joinder Agreement to which each the Key Employee is a party)), unless such indemnity claim is being made in respect of Fraud committed by such Company Indemnitor or Fraud to which such Company Indemnitor had actual knowledge (in which event there shall be no limitation on the liability of such Company Indemnitor hereunder with respect to such Fraud). In no event shall any Company Indemnitor have any liability for any Fraud committed by any other Company Indemnitor (except to the extent such Company Indemnitor had actual knowledge of such Fraud) or for any breach by any other Company Indemnitor of any Related Agreement entered into by such Company Indemnitor.

(e) The amount of any Losses that are subject to indemnification under this Article VIII shall be calculated net of the amount of any insurance proceeds, indemnification payments or reimbursements actually received by the Parent Indemnified Parties from third parties (other than the Company Indemnitors) in respect of such Losses (net of any costs or expenses incurred in obtaining such insurance, indemnification or reimbursement, including any increases in insurance premiums or retro-premium adjustments resulting from such recovery); *provided* that, except for the following sentence, nothing in this Section 7.3(d) shall be construed as or give rise to an obligation to seek any such insurance, indemnification or reimbursement. The Parent Indemnified Parties shall use commercially reasonable efforts to seek recovery under (i) the R&W Policy with respect to any applicable Losses in excess of the retention under the R&W Policy and (ii) the D&O Tail Policy and the Cyber Tail Policy, as applicable, with respect to any applicable Losses. If any Parent Indemnified Party receives any such insurance proceeds, indemnification payments or reimbursements from third parties (other than the Company Indemnitors) with respect to any Losses for which it has already received an indemnification payment hereunder (whether from the Indemnity Escrow Account or directly from any Company Indemnitor), it shall deposit an amount equal to the portion of the indemnification payment for which it received such a third party recovery (net of any costs or expenses incurred in obtaining such recovery, including any increases in insurance premiums or retro-premium adjustments resulting from such recovery) into the Indemnity Escrow Account (if the Indemnity Escrow Expiration Date has not yet occurred and to the extent such indemnification payment was made from the Indemnity Escrow Account) or with the Paying Agent for distribution to the Company Indemnitors who paid for such Losses based on their relative Pro Rata Shares; *provided* that with respect to any proceeds from the R&W Policy, the Parent Indemnified Parties shall not be required to refund any amounts previously received pursuant to this Article VIII to satisfy the retention under the R&W Policy.

(f) For purposes of determining the maximum liability under this Article VIII of a particular Company Indemnitor who receives shares of Parent Class A Common Stock in the Merger, the shares of Parent Class A Common Stock received by such Company Indemnitor shall be deemed to have a value equal to the lower of (i) the Parent Stock Price and (ii) the Liquidity Price.

(g) For the avoidance of doubt, any Losses for indemnification under this Agreement shall be determined without duplication of recovery due to the facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement or other indemnifiable matter under Section 8.2. The Parent Indemnified Parties shall not be entitled to indemnification, compensation or reimbursement with respect to any amount or item to the extent such amount or item was actually included in the calculation of the Total Merger Consideration Value as finally determined in accordance with Section 2.9.

(h) Parent and Merger Sub acknowledge and agree that the sole and exclusive remedy for the Parent Indemnified Parties with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein, for any of the other matters set forth in Section 8.2, or otherwise resulting from or arising out of this Agreement, the Merger or the other transactions

contemplated hereby will be pursuant to the indemnification provisions set forth in this Article VIII; *provided*, that the foregoing clause of this sentence shall not be deemed a waiver by any party of (i) any right to specific performance or injunctive relief, (ii) any right or remedy of a party under any Related Agreement to which it is party, or (iii) any right or remedy against a particular Company Indemnitor with respect to such Company Indemnitor's own Fraud or Fraud to which such Company Indemnitor had actual knowledge, and all claims related thereto shall survive until ninety (90) days following the expiration of the applicable statute of limitations. All claims for indemnification, compensation or reimbursement under this Article VIII shall be asserted by Parent on behalf of the applicable Parent Indemnified Parties. Subject to the other limitations contained herein, the obligations of the Company Indemnitors under this Article VIII shall not be reduced, offset, eliminated or subject to contribution by reason of any action or inaction by the Company that contributed to any inaccuracy or breach giving rise to such obligation, it being understood that the Company Indemnitors, not the Company, shall have the sole obligation for the indemnification obligations under this Article VIII.

8.4 Claims for Indemnification; Resolution of Conflicts.

(a) Subject to the survival periods in Section 8.1 and the limitations set forth in Section 8.3 hereof, if a Parent Indemnified Party wishes to make an indemnification claim under this Article VIII, Parent, on behalf of such Parent Indemnified Party, shall deliver a written notice (an "***Indemnification Claim Notice***") to the Stockholder Representative (i) stating that such Parent Indemnified Party has paid, incurred, suffered or sustained, or reasonably anticipates that it may pay, incur, suffer or sustain Losses and (ii) specifying such Losses in reasonable detail (to the extent available), and, if applicable, the nature of the misrepresentation, breach of warranty or covenant to which such item is related, including, with respect to any breach of a representation, warranty or covenant the applicable section of this Agreement which was breached. To the extent reasonably practicable, Parent shall include with the Indemnification Claim Notice such documents and other information available to Parent in support of the claims asserted therein, and shall timely provide such other information as the Stockholder Representative may reasonably request in order to allow the Stockholder Representative to assess the merits of the claims. Parent may update an Indemnification Claim Notice from time to time to reflect any change in circumstances following the date thereof, so long as such update reasonably relates to the underlying facts and circumstances specifically set forth in such original Indemnification Claim Notice.

(b) If the Stockholder Representative on behalf of the Company Indemnitors shall not object in writing within the twenty (20) Business Day period after receipt of an Indemnification Claim Notice by delivery of a written notice of objection containing a reasonably detailed description supporting an objection to the applicable indemnification claim (an "***Indemnification Claim Objection Notice***"), such failure to so object shall be an irrevocable acknowledgment by the Stockholder Representative on behalf of the Company Indemnitors that the Parent Indemnified Party is entitled to the full amount of the claim for Losses set forth in such Indemnification Claim Notice if and to the extent such Losses are actually paid, incurred, suffered or sustained, but subject to the other limitations on recovery set forth herein. In the event the Stockholder Representative fails to deliver an Indemnification Claim Objection Notice, Parent and the Stockholder Representative shall promptly (but in any event within three (3) Business Days of the resolution of such Indemnification Claim Notice) deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to immediately release and distribute to Parent from the Indemnity Escrow Account (or the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii)), to the extent then available, Indemnity Escrow Cash and Indemnity Escrow Shares (or the Specific Indemnity Escrow Cash and Specific Indemnity Escrow Shares with respect to a claim made pursuant to Section 8.2(a)(viii)) with an aggregate value equal to the Losses set forth in such Indemnification Claim Notice that are recoverable subject to the limitations set forth herein (or to the extent then available in the Indemnity Escrow Account in the event such Losses exceed the then available balance of the Indemnity Escrow Account (or to the extent then available in the Specific Indemnity Escrow Account in the event such Losses

exceed the then available balance of the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii)) and Parent shall be entitled to permanently retain or cancel any such Escrow Shares so received from the Indemnity Escrow Account. Any Losses recovered by the Parent Indemnified Parties from the Indemnity Escrow Account pursuant to this Section 8.4 shall reduce the amount of Escrow Cash and Escrow Shares in the Indemnity Escrow Account (or the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii) in the same proportion as Escrow Cash and Escrow Shares were deposited in the Indemnity Escrow Account (or the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii)) at the Closing (in each case, as set forth on the Allocation Schedule). For purposes of determining the number of Escrow Shares required to satisfy any Losses under this Article VIII, each Escrow Share shall be deemed to have a value equal to the Parent Stock Price (and the parties hereto acknowledge that the Parent Stock Price only reflects an agreed-upon amount as to the value of a share of Parent Class A Common Stock for the limited purpose of this sentence and is not intended to be, nor is it, deemed to constitute the fair market value of a share of Parent Class A Common Stock at any given time).

(c) In the event that the Stockholder Representative shall timely deliver an Indemnification Claim Objection Notice in accordance with Section 8.4(b), the Stockholder Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Representative and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and, in the case of an indemnification claim to be recovered from the Indemnity Escrow Account or Specific Indemnity Escrow Account, shall be furnished to the Escrow Agent with a joint written instruction to release any applicable amounts from the Indemnity Escrow Account as set forth in the memorandum. The Escrow Agent shall be entitled to conclusively rely on any such memorandum and make distributions from the Indemnity Escrow Account in accordance with the terms thereof. In such event, the Escrow Agent shall promptly release and distribute to Parent from the Indemnity Escrow Account, Indemnity Escrow Cash and Indemnity Escrow Shares (or from the Specific Indemnity Escrow Account, Specific Indemnity Escrow Cash and Specific Indemnity Escrow Shares with respect to a claim made pursuant to Section 8.2(a)(viii)) with an aggregate value equal to the Losses set forth in such memorandum (or to the extent then available in the Indemnity Escrow Account in the event such Losses exceed the then available balance of the Indemnity Escrow Account (or to the extent then available in the Specific Indemnity Escrow Account in the event such Losses exceed the then available balance of the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii)) and Parent shall be entitled to permanently retain or cancel any such Escrow Shares so received from the Indemnity Escrow Account (or the Specific Indemnity Escrow Account with respect to a claim made pursuant to Section 8.2(a)(viii)). Should the amount held in the Indemnity Escrow Account, if any, be insufficient to satisfy in whole the amount to be paid to a Parent Indemnified Party in accordance with such memorandum, then, subject to the limitations set forth in this Article VIII, each Company Indemnitor shall, within ten (10) Business Days following the date of such memorandum, pay to the Parent Indemnified Party, such Company Indemnitor's Pro Rata Share of such shortfall. If such shortfall becomes payable prior to the Liquidity Date applicable to a particular Company Indemnitor, such Company Indemnitor may elect, in its sole discretion, whether to satisfy such shortfall in cash, in shares of Parent Class A Common Stock, or a combination thereof, with such shares to be valued for these purposes at the higher of (i) the Parent Stock Price or (ii) the volume weighted average price of Parent Class A Common Stock on the last trading day prior to the date of the memorandum instructions relating to such shortfall. If such shortfall becomes payable following the Liquidity Date applicable to a particular Company Indemnitor, the shortfall shall be payable by such Company Indemnitor solely in cash.

(d) In the event that there is a dispute relating to any Indemnification Claim Notice or Indemnification Claim Objection Notice that cannot be settled in accordance with Section 8.4(c), each of Parent or the Stockholder Representative may file suit with respect to such dispute in any court having jurisdiction in accordance with Section 10.11. Notwithstanding the foregoing, if Parent and the Stockholder Representative mutually agree, Parent and the Stockholder Representative may submit any such dispute to alternative dispute resolution prior to, or in lieu of, pursuing the claim in court.

(e) On or before the third (3rd) Business Day after the Indemnity Escrow Expiration Date, Parent will notify the Stockholder Representative in writing of the amount that Parent determines in good faith to be necessary to satisfy all claims for indemnification, compensation or reimbursement that have been asserted in any Indemnification Claim Notice (other than those pursuant to Section 8.2(a)(viii)) that was delivered to the Stockholder Representative at or prior to 11:59 p.m. (California Time) on the Indemnity Escrow Expiration Date, but not resolved, at or prior to such time (each such claim a "***Non-Specific Indemnity Continuing Claim***" and such amount, the "***Non-Specific Indemnity Retained Escrow Amount***"). Within ten (10) Business Days following the Indemnity Escrow Expiration Date, Parent and the Stockholder Representative shall deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to release and distribute from the Indemnity Escrow Account (i) the Indemnity Escrow Cash and the Indemnity Escrow Shares as of the Indemnity Escrow Expiration Date (as reduced from time to time pursuant to the terms of this Agreement), *minus* (ii) the Indemnity Escrow Cash and the Indemnity Escrow Shares in the aggregate equal to the Non-Specific Indemnity Retained Escrow Amount to the Paying Agent for further distribution to the Company Indemnitors (other than amounts payable in respect of Employee Options) in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable; *provided*, that the portion of such amount due in respect of Employee Options shall be distributed by the Escrow Agent to Parent and paid by Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation through its payroll processing system to the holders of Employee Options in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(b)(i).

(f) Following the Indemnity Escrow Expiration Date, after resolution and payment of a Non-Specific Indemnity Continuing Claim, Parent and the Stockholder Representative shall deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to release from the Indemnity Escrow Account Indemnity Escrow Cash and Indemnity Escrow Shares in an amount in the aggregate equal to (i) the Retained Escrow Amount as of the date of such resolution and payment (as reduced from time to time pursuant to the terms of this Agreement), *minus* (ii) the amounts that Parent determines in its reasonable good faith opinion to be necessary to satisfy other Non-Specific Indemnity Continuing Claims (which amounts will continue to be held as the Retained Escrow Amount so long as such amounts remain necessary in Parent's reasonable good faith opinion to satisfy other Non-Specific Indemnity Continuing Claims that remain unresolved) to the Paying Agent for further distribution to the Company Indemnitors (other than amounts payable in respect of Employee Options) in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable; *provided*, that the portion of such amount due in respect of Employee Options shall be distributed by the Escrow Agent to Parent and paid by Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation through its payroll processing system to the holders of Employee Options in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(b)(i).

(g) On or before the third (3rd) Business Day after the Specific Indemnity Escrow Expiration Date, Parent will notify the Stockholder Representative in writing of the amount that Parent determines in good faith to be necessary to satisfy all claims for indemnification, compensation or reimbursement that have been asserted in any Indemnification Claim Notice pursuant to Section 8.2(a)(viii) that was delivered to the Stockholder Representative at or prior to 11:59 p.m. (California Time) on the Specific Indemnity Escrow Expiration Date, but not resolved, at or prior to such time (each such claim a "***Specific Indemnity Continuing Claim***" and such amount, the "***Specific Indemnity Retained Escrow Amount***"). Within ten (10) Business Days following the Specific Indemnity Escrow Expiration Date, Parent and the Stockholder Representative shall deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to release and distribute from the Specific Indemnity Escrow Account (i) the Specific

Indemnity Escrow Cash and the Specific Indemnity Escrow Shares as of the Specific Indemnity Escrow Expiration Date (as reduced from time to time pursuant to the terms of this Agreement), *minus* (ii) the Specific Indemnity Escrow Cash and the Specific Indemnity Escrow Shares in the aggregate equal to the Specific Indemnity Retained Escrow Amount to the Paying Agent for further distribution to the Company Indemnitors (other than amounts payable in respect of Employee Options) in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable; *provided*, that the portion of such amount due in respect of Employee Options shall be distributed by the Escrow Agent to Parent and paid by Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation through its payroll processing system to the holders of Employee Options in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(b)(i).

(h) Following the Specific Indemnity Escrow Expiration Date, after resolution and payment of a Specific Indemnity Continuing Claim, Parent and the Stockholder Representative shall deliver a joint instruction to the Escrow Agent instructing the Escrow Agent to release from the Specific Indemnity Escrow Account Specific Indemnity Escrow Cash and Specific Indemnity Escrow Shares in an amount in the aggregate equal to (i) the Specific Indemnity Retained Escrow Amount as of the date of such resolution and payment (as reduced from time to time pursuant to the terms of this Agreement), *minus* (ii) the amounts that Parent determines in its reasonable good faith opinion to be necessary to satisfy other Specific Indemnity Continuing Claims (which amounts will continue to be held as the Retained Escrow Amount so long as such amounts remain necessary in Parent's reasonable good faith opinion to satisfy other Specific Indemnity Continuing Claims that remain unresolved) to the Paying Agent for further distribution to the Company Indemnitors (other than amounts payable in respect of Employee Options) in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable; *provided*, that the portion of such amount due in respect of Employee Options shall be distributed by the Escrow Agent to Parent and paid by Parent, the Surviving Corporation or a Subsidiary of the Surviving Corporation through its payroll processing system to the holders of Employee Options in accordance with their applicable Pro Rata Share of such amount pursuant to Section 2.1(b)(i).

(i) Each of the parties acknowledges and agrees that as a condition to Parent's and Paying Agent's obligation to make any payments pursuant to Section 8.4(e), Section 8.4(f), Section 8.4(g) or Section 8.5(h) the Stockholder Representative shall first deliver to Parent an updated Allocation Schedule setting forth the amounts payable to each Company Indemnitor in accordance with such section. Parent and the Surviving Corporation shall be entitled to conclusively rely upon the updated Allocation Schedule delivered by the Stockholder Representative, including with respect to whether any individual Company Indemnitor received the appropriate portion of any such distribution, and in no event will Parent, the Surviving Corporation or any of their Affiliates have any liability to any Person on account of payments or distributions made in accordance with the updated Allocation Schedule delivered by the Stockholder Representative.

(j) Notwithstanding the foregoing, (i) any notice that is required to be delivered to any Company Indemnitors pursuant to this Article VIII shall be deemed satisfied by delivery of such notice to the Stockholder Representative and (ii) any notices required to be delivered by, or any actions that are required to be taken by, (other than any obligations to make or right to receive any payments) any Company Indemnitors pursuant to this Article VIII shall be satisfied by delivery by, or action taken by the Stockholder Representative.

8.5 Third Party Claims. In the event Parent becomes aware of a third party claim (a "***Third Party Claim***") which Parent reasonably believes may result in a claim for indemnification pursuant to this Article VIII, Parent shall notify the Stockholder Representative of such claim with an Indemnification Claim Notice (a "***Third Party Notice***"), and the Third Party Notice shall be accompanied by copies of any documentation submitted by the third party making such Third Party Claim (except that Parent may

withhold from Stockholder Representative such communications with its legal counsel to the extent that legal counsel to Parent advises that providing such communication could result in the loss of any attorney-client privilege or right under the work-product doctrine of Parent or any Indemnitee in respect of such claim, after giving due consideration to any "community of interest" or similar privilege, if any); *provided,* that no delay or failure on the part of Parent in delivering a Third Party Notice shall cause any Parent Indemnified Party to forfeit any indemnification rights under this Article VIII except to the extent that the Company Indemnitors are actually prejudiced by such delay or failure. Upon receipt of a Third Party Notice, the Stockholder Representative shall be entitled (on behalf of the Company Indemnitors and at their expense) to participate in, but not to control, determine or conduct, the defense of such Third Party Claim. Parent shall have the right in its sole discretion to conduct the defense of, and to settle, any such claim and the Stockholder Representative shall not be entitled to control any negotiation of settlement, adjustment or compromise with respect to any such Third Party Claim; *provided*, that except with the consent of the Stockholder Representative (such consent not to be unreasonably withheld, conditioned or delayed), no settlement of any such Third Party Claim with third party claimants shall be determinative of the right of any Parent Indemnified Party to be indemnified with respect to such Third Party Claim or settlement or any Losses relating thereto; *provided*, *further*, that the consent of the Stockholder Representative with respect to any settlement of any such Third Party Claim shall be deemed to have been given unless the Stockholder Representative shall have objected within thirty (30) days after a written request for such consent by Parent. In the event that the Stockholder Representative has consented to any such settlement, adjustment or compromise, the Company Indemnitors shall have no power or authority to object under any provision of this Article VIII to the amount of such settlement, adjustment or compromise; *provided*, that any such amounts are recoverable following the application of any relevant limitations set forth in this Article VIII.

8.6 Stockholder Representative.

(a) By voting in favor of the adoption of this Agreement, the approval of the principal terms of the Merger, and the consummation of the Merger, executing a Joinder Agreement or Warrant Cancellation Agreement or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, each Company Indemnitor shall be deemed to have approved the designation of, and hereby designates, Shareholder Representative Services LLC as the representative, agent and attorney-in-fact for and on behalf of the Company Indemnitors as of the Closing for all purposes in connection with this Agreement, the Escrow Agreement, the Paying Agent Agreement and the other agreements ancillary hereto, including to give and receive notices and communications, to authorize satisfaction of claims by Parent, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to bring (or decide not to bring) actions on behalf of the Company Indemnitors, Selling Stockholders, Accredited Stockholders and Permitted Transferees to specifically enforce the terms of this Agreement, the Escrow Agreement, the Paying Agent Agreement and the other agreements ancillary hereto or for damages for breaches hereof or thereof, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing or (ii) permitted by the terms of this Agreement, the Escrow Agreement or the Paying Agent Agreement. The Stockholder Representative may resign at any time upon at least ten (10) days prior written notice to the Company Indemnitors. Such agency may be changed by the Company Indemnitors from time to time upon not less than ten (10) days prior written notice to Parent; *provided,* that the Stockholder Representative may not be removed unless the former holders of a majority of Company Capital Stock agree to such removal and to the identity of the substituted agent. A vacancy in the position of Stockholder Representative may be filled by the former holders of a majority of Company Capital Stock. No bond shall be required of the Stockholder Representative. After the Closing, notices or communications to or from the Stockholder Representative shall constitute notice to or from the Company Indemnitors.

(b) Neither the Stockholder Representative nor any member of the Advisory Committee (as defined in that certain engagement letter entered into between the Stockholder Representative and certain of the Company Indemnitors in connection with the transactions contemplated hereby (the "***Engagement Letter***")) shall incur liability of any kind with respect to any action or omission by the Stockholder Representative or the Advisory Committee in connection with their services pursuant to this Agreement, the Engagement Letter, the Escrow Agreement, the Paying Agent Agreement or any other agreements ancillary hereto, except to the extent resulting from the bad faith, gross negligence or willful misconduct of the Stockholder Representative or such member of the Advisory Committee, as applicable. For the avoidance of doubt, the preceding sentence shall not prejudice the Stockholder Representative's right to indemnification from the members of the Advisory Committee (in their capacity as Company Indemnitors) pursuant to the following sentence. The Stockholder Representative shall not be liable for any action or omission pursuant to the advice of counsel. The Company Indemnitors shall, on a several and not joint basis and based on their respective Pro Rata Shares (provided, that the indemnification provided to the Stockholder Representative shall in all cases sum to 100% coverage), indemnify, defend and hold harmless the Stockholder Representative and each member of the Advisory Committee from and against any and all losses, liabilities, damages, penalties, fines, forfeitures, actions, fees, and out-of-pocket costs and expenses (including the reasonable out-of-pocket fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "***Representative Losses***") to the extent arising out of or in connection with the Stockholder Representative's or the Advisory Committee's execution and performance of this Agreement, the Escrow Agreement, the Paying Agent Agreement and any other agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; *provided*, that in the event that any such Representative Loss is finally adjudicated to have been caused by the bad faith, gross negligence or willful misconduct of the Stockholder Representative or such member of the Advisory Committee, as applicable, the Stockholder Representative or such member of the Advisory Committee, as applicable, shall promptly reimburse the Company Indemnitors the amount of such indemnified Representative Loss to the extent attributable to such bad faith, gross negligence or willful misconduct. If not paid directly to the Stockholder Representative by the Company Indemnitors, any such Representative Losses may be recovered by the Stockholder Representative from (i) the funds in the Expense Fund Account and (ii) any other funds that become payable to the Company Indemnitors under this Agreement at such time as such amounts would otherwise be distributable to the Company Indemnitors; *provided*, that while this section allows the Stockholder Representative to be paid from the aforementioned source of funds, this does not relieve the Company Indemnitors from their obligation to promptly pay, in accordance with their respective Pro Rata Shares, such Representative Losses as they are suffered or incurred, nor does it prevent the Stockholder Representative from seeking any remedies available to it at law or otherwise. In no event shall the Stockholder Representative be required to advance its own funds on behalf of the Company Indemnitors or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Company Indemnitors set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Stockholder Representative under this section. The Company Indemnitors acknowledge and agree that the foregoing indemnities shall survive the resignation or removal of the Stockholder Representative or the termination of this Agreement.

(c) Upon the Closing, Parent shall wire to an account of Stockholder Representative as set forth on the Allocation Schedule (the "***Expense Fund Account***") an amount of $1,000,000 in cash (the "***Expense Fund***"), which shall be used for the purposes of paying directly, or reimbursing the Stockholder Representative for, any third party expenses pursuant to this Agreement, the Escrow Agreement, the Paying Agent Agreement and any other agreements ancillary hereto. The Company Indemnitors shall not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Stockholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Stockholder Representative shall not be liable for any loss of principal of the

Expense Fund other than as a result of its bad faith, gross negligence or willful misconduct. The Stockholder Representative shall hold these funds separate from its corporate funds, shall not use these funds for its operating expenses or any other corporate purposes and shall not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable after the completion of the Stockholder Representative's responsibilities, the Stockholder Representative shall deliver any remaining balance of the Expense Fund to the Paying Agent for further distribution to the Company Indemnitors the portion of such balance payable pursuant to Section 2.1(a), Section 2.1(b)(i) and Section 2.1(c), as applicable; *provided*, that as a condition to Parent's and Paying Agent's obligation to make such payments, the Stockholder Representative shall first deliver to Parent an updated Allocation Schedule setting forth the portion of such Expense Fund distribution payable to each Company Indemnitor. For tax purposes, the Expense Fund shall be treated as having been received and voluntarily set aside by the Company Indemnitors at the time of Closing. Any tax required to be withheld with respect to the deemed payment to a Company Indemnitor of its portion of the Expense Fund shall reduce the amount of cash to such Person at Closing in respect of Company Securities and shall not reduce the Expense Fund.

(d) A decision, act, consent or instruction of the Stockholder Representative, including but not limited to any extension or waiver pursuant to Section 10.6 or any amendment of this Agreement pursuant to Section 10.7 hereof, shall constitute a decision of the Company Indemnitors and shall be final, binding and conclusive upon the Company Indemnitors. Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Company Indemnitors. Parent is hereby relieved from any Liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative.

8.7 Treatment of Payments. Any payment under Article VIII of this Agreement (other than Section 8.6(c)) shall be treated by the parties, including for U.S. federal, state, local and non-U.S. income Tax purposes, as a purchase price adjustment unless otherwise required by applicable Law.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

9.1 Termination. Except as provided in Section 9.2 hereof, this Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time:

(a) by mutual agreement of the Company and Parent;

(b) by Parent or the Company if the Closing Date shall not have occurred by January 15, 2021 (the "***End Date***"); *provided* that if the Merger shall not have been consummated by the End Date solely because of the failure of the condition set forth in Section 7.1(c) to be satisfied, then the End Date shall be extended for an additional ninety (90) days; *provided, further,* that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose action or failure to act has been a proximate cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes breach of this Agreement;

(c) by Parent or the Company if any Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, Order or other legal restraint which is in effect and which has the effect of making the Merger illegal;

(d) by Parent if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of the Company contained in this Agreement such that the conditions set forth in Section 7.2(a) would not be satisfied and such breach has not been cured within thirty (30) calendar days after written notice thereof to the Company; *provided,* that no cure period shall be required for a breach which by its nature cannot be cured and, in no event shall the cure period extend past the End Date;

(e) by the Company if the Company is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of Parent or Merger Sub contained in this Agreement such that the conditions set forth in Section 7.3(a) would not be satisfied and such breach has not been cured within thirty (30) calendar days after written notice thereof to Parent; *provided,* that no cure period shall be required for a breach which by its nature cannot be cured and in no event shall the cure period extend past the End Date; or

(f) by Parent, by written notice to the Company, if the Company Stockholder Approval is not obtained by the Company within 24 hours following the execution and delivery of this Agreement by the parties hereto, provided, however, that such termination right shall expire if not invoked by Parent prior to the Company's obtaining and delivering to Parent the Company Stockholder Approval.

9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no Liability or obligation on the part of Parent, the Company, or its officers, directors or stockholders; *provided,* nothing herein shall relieve any party from liability for the knowing and willful breach of any of its representations, warranties or covenants contained herein that occurred prior to such termination; and *provided*, *further*, that the provisions of Section 6.8 (Public Disclosure), Section 6.14 (Expenses), Section 8.6 (Stockholder Representative), Article X (General Provisions) and this Section 9.2 hereof shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this Article IX.

ARTICLE X

GENERAL PROVISIONS

10.1 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (i) upon receipt when delivered by hand, (ii) upon transmission, if sent by electronic mail transmission, or (iii) one (1) Business Day after being sent by courier or express delivery service; *provided*, that in each case the notice or other communication is sent to the address or electronic mail address set forth beneath the name of such party below (or to such other address or electronic mail address as such party shall have specified in a written notice given to the other parties hereto):

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

Twilio Inc.
101 Spear Street, First Floor
San Francisco, CA 94105
Attention: Karyn Smith, General Counsel
Email: legalnotices@twilio.com

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

Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111

Attention: Jamie Leigh; Ben Beerle
Email: jleigh@cooley.com; bbeerle@cooley.com

(b) if to the Company (prior to the Closing), to:

Segment.io, Inc.
100 California Street, Suite 700
San Francisco, CA 94111
Attention: Mark Kahn (General Counsel)
Email: mark.kahn@segment.com

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

Goodwin Procter LLP
601 Marshall Street
Redwood City, CA 94063
Attention: Craig Schmitz; Michael S. Russell; Alessandra Simons
Fax No.: (650) 752-3194
Email: cschmitz@goodwinlaw.com; mrussell@goodwinlaw.com; asimons@goodwinlaw.com

(c) If to a Company Indemnitor, to its address as set forth in the Allocation Schedule.

(d) If to the Stockholder Representative:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, CO 80202
Attention: Managing Director
Email: deals@srsacquiom.com
Facsimile: (303) 623-0294
Telephone: (303) 648-4085

10.2 Interpretation. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, paragraph, Exhibit and schedule references are to the articles, sections, paragraphs, Exhibits and schedules of this Agreement unless otherwise specified. The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders. The word "extent" and the phrase "to the extent" when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not merely mean "if." Dollar thresholds shall not be indicative of what is material or create any standard with respect to any determination of a "Material Adverse Effect." The term "or" is not exclusive, and shall be interpreted as "and/or" unless the context clearly requires otherwise. A reference to any specific legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto. When calculating the period of time before which, within which or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of

such period is a non-Business Day, the period in question will end on the next succeeding Business Day. All references herein to a "party" or "parties" are to a party or parties to this Agreement unless otherwise specified. Any accounting term used in this Agreement will have, unless otherwise specifically provided herein, the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder will be computed, unless otherwise specifically provided herein, in accordance with GAAP.

10.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. The exchange of copies of this Agreement and signature pages by email in .pdf or .tif format (and including, without limitation, any electronic signature complying with the U.S. ESIGN Act of 2000, *e.g.*, www.docusign.com), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Such execution and delivery shall be considered valid, binding and effective for all purposes.

10.4 Entire Agreement; Assignment. This Agreement, the Exhibits hereto, the Disclosure Schedule, the Confidentiality Agreements: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof, (b) except as set forth in Section 5.5, are not intended to confer upon any other Person any rights or remedies hereunder, and (c) shall not be assigned by operation of law or otherwise; *provided*, that Parent may assign its rights and delegate its obligations hereunder to its Affiliates as long as Parent remains ultimately liable for all of Parent's obligations hereunder.

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

10.6 Extension and Waiver. At any time prior to the Closing, Parent and Merger Sub, on the one hand, and the Company, on the other hand, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations of the other party or parties hereto, (b) waive any inaccuracies in the representations and warranties made to such party or parties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the covenants, agreements or conditions for the benefit of such party or parties contained herein. At any time following the Closing, the Stockholder Representative may (i) extend the time for the performance of any of the obligations of Parent under the terms of this Agreement and (ii) waive compliance with any of the covenants or agreements of Parent contained herein. Any agreement on the part of a party or parties hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties. For purposes of this Section 10.6, the Company Indemnitors are deemed to have agreed that any extension or waiver signed by the Company (prior to Closing) or the Stockholder Representative (following Closing) shall be binding upon and effective against all Company Indemnitors (including the Selling Stockholders, the Accredited Stockholders and the Permitted Transferees) whether or not they have signed such extension or waiver.

10.7 Amendment. Subject to applicable Law, this Agreement may be amended by the parties hereto at any time by execution and delivery of an instrument in writing signed on behalf of each of the parties hereto. Notwithstanding the foregoing or anything to the contrary herein, (A) the provisions of Section 5.4 and Section 5.6 and this clause (A) shall not be amended or waived in a manner adverse to any Accredited Stockholder or any Permitted Transferee without the prior written consent of the Stockholder Representative and (B) the provisions of Section 5.5 and this clause (B) shall not be amended or waived in a manner adverse to any Company Indemnitee without the prior written consent of the affected Company Indemnitee. For purposes of this Section 10.7, the Company Indemnitors agree that any amendment of this Agreement signed by the Company (prior to Closing) or the Stockholder Representative (following Closing) shall be binding upon and effective against the Company Indemnitors (including the Selling Stockholders, the Accredited Stockholders and the Permitted Transferees) whether or not they have signed such amendment (subject to the authority granted to, and to the limitations thereon placed on, the Stockholder Representative hereunder to act on behalf of such Company Indemnitors).

10.8 Specific Performance. The parties hereto agree that, in the event of any breach or threatened breach by the other party or parties hereto (including the Stockholder Representative) of any covenant, obligation or other agreement set forth in this Agreement, (i) each party shall be entitled, without any proof of actual damages (and in addition to any other remedy that may be available to it), to specific performance to enforce the observance and performance of such covenant, obligation or other agreement and to an injunction preventing or restraining such breach or threatened breach, and (ii) no party hereto shall be required to provide or post any bond or other security or collateral in connection with any such decree, order or injunction or in connection with any related Legal Proceeding.

10.9 Other Remedies. Except as otherwise set forth herein, including in Section 2.9 and Section 8.3(h), any and all remedies herein expressly conferred upon a party 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 of any one remedy shall not preclude the exercise of any other remedy.

10.10 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction).

10.11 Exclusive Jurisdiction; **Waiver of Jury Trial**.

(a) ANY LEGAL PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED FIRST, IN THE COURT OF CHANCERY WITHIN NEW CASTLE COUNTY IN THE STATE OF DELAWARE (AND ANY APPELLATE COURT THEREOF LOCATED WITHIN SUCH COUNTY) AND TO THE EXTENT SUCH COURT OF CHANCERY (OR APPELLATE COURT THEREOF LOCATED WITHIN SUCH COUNTY) LACKS JURISDICTION OVER THE MATTER, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED WITHIN NEW CASTLE COUNTY IN THE STATE OF DELAWARE (OR APPELLATE COURT THEREOF LOCATED WITHIN SUCH COUNTY), AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH LEGAL PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY LEGAL PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY LEGAL PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH LEGAL PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL PROCEEDING, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11(b).

10.12 Rules of Construction. 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 shall be construed against the party drafting such agreement or document.

10.13 Acknowledgments.

(a) The Company agrees that it has conducted its own independent review and analysis of the business, assets, condition, operations and prospects of Parent and Merger Sub. In entering into this Agreement, the Company has relied solely upon its own investigation and analysis and the representations and warranties of Parent and Merger Sub set forth in Article IV and in the Parent Certificate, and the Company acknowledges and agrees that, except for the representations and warranties of Parent and Merger Sub expressly set forth in Article IV and in the Parent Certificate, neither Parent, nor Merger Sub, nor any of their respective Representatives nor any other Person acting on Parent's or Merger Sub's behalf makes or has made, and the Company is not relying on and has not relied on, any representation or warranty, either express or implied, with respect to Parent, Merger Sub, any of their businesses, the Merger or the other transactions contemplated hereby. Without limiting the generality of the foregoing, the Company acknowledges and agrees that neither Parent, nor Merger Sub nor any of their respective Representatives or any other Person has made, and the Company is not relying on and has not relied on, any representation or warranty with respect to (i) any projections, estimates or budgets for Parent or (ii) any materials, documents or information relating to Parent, Merger Sub or their respective businesses made available to the Company, any Company Security Holder or any of their respective Representatives in any "data room," online data site, confidential memorandum, other offering materials or otherwise, except, in the case of (i) and (ii), as specifically set forth in the representations and warranties set forth in Article IV and in the Parent Certificate.

(b) Each of Parent and Merger Sub agrees that it has conducted its own independent review and analysis of the business, assets, condition, operations and prospects the Company. In entering into this Agreement, each of Parent and Merger Sub has relied solely upon its own investigation and analysis and the representations and warranties of the Company set forth in Article III (as modified by the Disclosure Schedule) or in the Certificate, and each of Parent and Merger Sub acknowledges and agrees that, except for the representations and warranties of the Company expressly set forth in Article III (as modified by the Disclosure Schedule) or in the Certificate, neither the Company nor any of its Representatives nor any other Person acting on the Company's behalf makes or has made, and each of Parent and Merger Sub is not relying on and has not relied on, any representation or warranty, either express or implied, with respect to the Company, its business, the Merger or the other transactions contemplated hereby. Without limiting the generality of the foregoing, each of Parent and Merger Sub acknowledges and agrees that neither the

Company nor any its Representatives or any other Person has made, and each of Parent and Merger Sub is not relying on and has not relied on, any representation or warranty with respect to (i) any projections, estimates or budgets for the Company or (ii) any materials, documents or information relating to the Company or its business made available to Parent or Merger Sub or any of their respective Representatives in any "data room," online data site, confidential memorandum, other offering materials or otherwise, except, in the case of (i) and (ii), as specifically set forth in the representations and warranties set forth in Article III (as modified by the Disclosure Schedule) or in the Certificate. Nothing in this Section 10.13(b) shall be deemed to (A) limit any rights or remedies Parent may have under the terms and conditions of any of the Related Agreements, or (B) disclaim any reliance by Parent and Merger Sub on the representations and warranties of the Company Indemnitors set forth in the Related Agreements, including the representations and warranties set forth in the Joinder Agreements and the representations and warranties of the Company Warrantholders set forth in the Warrant Cancellation Agreements.

10.14 Attorney-Client Privilege. All communications between a Company Indemnitor, its Affiliates or the Company, on the one hand, and Goodwin Procter LLP, on the other, that are attorney-client privileged and solely to the extent that they relate to the negotiation, documentation and consummation of the Merger and the transactions contemplated hereby shall be deemed to be attorney-client confidence and communications that belong solely to the Company Indemnitors and their Affiliates, and not to the Company or the Surviving Corporation following the Closing, and may be waived only by the Stockholder Representative. Absent the written consent of Stockholder Representative, neither Parent, the Surviving Corporation or any of their Affiliates or any Person acting on their behalf shall assert that the attorney-client privilege of the Company related to the Merger was waived due to the transfer of attorney-client privileged material after the Closing (either because they were included in the computer server(s) of the Surviving Corporation or were otherwise within the records of the Surviving Corporation after the Closing). Notwithstanding the foregoing, in the event that a dispute arises between Parent or its Affiliates (including the Surviving Corporation), on the one hand, and a third party, on the other hand, Parent and its Affiliates (including the Surviving Corporation) may assert the attorney-client privilege to prevent disclosure of confidential communications to such third party; *provided*, *however*, that neither Parent nor any of its Affiliates (including the Surviving Corporation) may waive such privilege without the prior written consent of the Stockholder Representative, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that Parent or any of its Affiliates (including the Surviving Corporation) is legally required by an Order or otherwise legally required to access or obtain a copy of all or a portion of the privileged communications, to the extent (a) permitted by applicable Law and (b) advisable in the opinion of Parent's counsel, Parent shall notify the Stockholder Representative in writing so that the Stockholder Representative can seek a protective order (at the sole cost and expense of the Company Indemnitors).

10.15 Terms Defined Elsewhere. The following terms are defined elsewhere in this Agreement, as indicated below:

DEFINED TERM	PARAGRAPH
280G Stockholder Approval	6.6(b)
401(k) Plan	1.5(a)(ii)
Adjustment Resolution Period	2.9(b)
Adjustment Review Period	2.9(b)
Agreement	Preamble
Agreement Date	Preamble
Allocation Schedule	5.3(a)
Anti-Corruption Laws	3.24
Audited Financials	3.7(a)
Automatic Resale Registration Statement	Schedule 5.6(a)
Balance Sheet Date	3.7(a)

DEFINED TERM	PARAGRAPH
Behavioral Data	3.12(a)(i)
Board	Recitals
Books and Records	3.17(b)
Cancelled Options	2.1(b)(iii)
Cancelled RSU	2.1(b)(v)
Cancelled Shares	2.1(e)
CCPA	3.12(a)(xiv)
Certificate of Incorporation	3.1(d)
Certificate of Merger	1.2
Charter Documents	3.1(d)
Closing	1.4
Closing Date	1.4
Company	Preamble
Company Authorizations	3.15
Company Board Resolutions	3.4(a)
Company Certificate	7.2(c)
Company Hybrid Product	
Company Indemnitees	5.5(a)
Company IP	3.12(a)(iii)
Company Owned IP	3.12(a)(iv)
Company Prepared Returns	5.2(a)(i)
Company Privacy Policy	3.12(a)(v)
Company Products	3.12(a)(vi)
Company Products Data	3.12(a)(vii)
Company Registered IP	3.12(b)
Company Software	3.12(a)(viii)
Company Source Code	3.12(a)(ix)
Company Stockholder Approval	Preamble
Company Voting Debt	3.2(f)
Confidentiality Agreements	6.7
Contaminant	3.12(a)(x)
Contemplated Transaction	Schedule 6.9(c)
Converted Option	2.1(b)(ii)
Converted Option Exercise Price	2.1(b)(ii)
Converted RSU	2.1(b)(v)
Current Balance Sheet	3.7(b)
Cyber Tail Policy	5.5(b)
Director and Officer Resignation Letters	1.5(a)(v)
D&O Indemnifiable Matters	5.5(a)
D&O Tail Policy	5.5(b)
Deductible Amount	8.3(a)
Determination Date	2.9(c)
DGCL	1.1
Director and Officer Resignation Letters	1.5(a)(v)
Disclosure Schedule	Article III
Dissenting Shares	2.5(a)
Effective Time	1.2
Embargoed Countries	3.23
End Date	9.1(b)
Enforcement Exceptions	3.4

DEFINED TERM	PARAGRAPH
Engagement Letter	8.6(b)
ePrivacy Directive	3.12(a)(xiv)
Escrow Agreement	1.5(a)(xii)
Estimated Closing Cash Amount	2.9(a)
Estimated Closing Indebtedness Amount	2.9(a)
Estimated Closing Statement	2.9(a)
Estimated Closing Third Party Expenses	2.9(a)
Estimated Closing Working Capital Adjustment Amount	2.9(a)
Exchange Documents	2.3(b)
Expense Fund	8.6(c)
Expense Fund Account	8.6(c)
Export Approvals	3.23
FCPA	3.24
Final Closing Statement	2.9(c)
Financial Statements	3.7(a)
FIRPTA Compliance Certificate	1.5(a)(x)
Fund Transferee	5.4(c)
GDPR	3.12(a)(xiv)
HSR Act	6.9(b)
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IN WITNESS WHEREOF, Parent, Merger Sub, the Company and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

TWILIO INC.

By: /s/ Khozema Shipchandler
Name: Khozema Shipchandler
Title: Chief Financial Officer

SCORPIO MERGER SUB, INC.

By: /s/ Shanti Ariker
Name: Shanti Ariker
Title: President and Treasurer

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

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

SEGMENT.IO, INC.

By: /s/ Peter Reinhardt
Name: Peter Reinhardt
Title: Chief Executive Officer

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

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

SHAREHOLDER REPRESENTATIVE SERVICES LLC,
solely in its capacity as the Stockholder Representative

By: /s/ Sam Riffe
Name: Sam Riffe
Title: Managing Director

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

ANNEX A
CERTAIN DEFINED TERMS

"***Accredited Share Number***" shall mean the number of shares equal to (a) the total number of shares of Company Capital Stock held by Accredited Stockholders as of immediately prior to the Effective Time (on an as-converted into Company Common Stock basis), plus (b) the total number of shares of Company Common Stock issuable upon the exercise of the Company Warrants outstanding immediately prior to the Effective Time (and excluding, for the avoidance of doubt, any Cancelled Shares).

"***Accredited Stockholder***" shall mean a Company Stockholder or Company Warrantholder who either (a) has completed and delivered to the Company and Parent prior to the Closing Date (i) duly executed Suitability Documentation, in form and substance reasonably satisfactory to Parent, certifying that such Company Stockholder is an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act) (provided that, notwithstanding the delivery of any such Suitability Documentation, any Company Stockholder may be deemed an "Unaccredited Stockholder" for purposes of this Agreement if Parent reasonably determines that such Company Stockholder is not an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act)) and (ii) with respect to a Company Stockholder, a duly executed Joinder Agreement or (b) is determined by Parent prior to the Closing in its reasonable discretion to be an "accredited investor" (as such term is defined in Rule 501(a) under the Securities Act). Parent shall notify the Company of any such determination under clause (a) or (b) no later than five (5) Business Days prior to the Closing Date and the Allocation Schedule will reflect such determination.

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

"***Acquisition Transaction***" shall mean (a) the purchase, issuance, grant, or disposition of any capital stock or other securities of the Company, or of all or any material part of the assets of the Company (other than the issuance of equity securities to existing, new or former employees or other current holders of Company Options in the ordinary course, including upon exercise of outstanding Company Options) or (b) any merger, consolidation, business combination or similar transaction involving the Company, in each case other than with Parent or its Affiliates.

"***Adjusted Company Shares***" shall mean the number of shares, without duplication, equal to (a) the total number of shares of Company Capital Stock outstanding immediately prior to the Effective Time (on an as-converted into Company Common Stock basis), *plus* (b) the total number of shares of Company Common Stock issuable upon the exercise of Company Options (other than Cancelled Options) or settlement of Company RSUs, in each case whether vested or unvested, and the Company Warrants, in each case, outstanding immediately prior to the Effective Time (and excluding, for the avoidance of doubt, any Cancelled Shares, any Cancelled RSUs and any New Hire RSUs), *plus* (c) the total number of shares of Company Common Stock issuable upon settlement of the New Company RSUs approved by the Board that are to be included as Adjusted Company Shares pursuant to and in accordance with Section 6.18.

"***Adjustment Escrow Account***" means the escrow account established by the Escrow Agent to hold the Adjustment Escrow Shares and the Adjustment Escrow Cash in trust.

"***Adjustment Escrow Cash***" shall mean, (a) as of the Closing, an aggregate amount of cash equal to (i) the Per Share Adjustment Escrow Amount *multiplied by* (ii) the Company Indemnitor Share Number *minus* the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the amount of cash in the Adjustment Escrow Account.

"***Adjustment Escrow Shares***" shall mean, (a) as of the Closing, the aggregate number of shares of Parent Class A Common Stock equal to (i) the Per Share Adjustment Escrow Amount *multiplied by* (ii) the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the number of shares of Parent Class A Common Stock in the Adjustment Escrow Account.

"***Adjustment Escrow Value***" shall mean an amount equal to $6,000,000.

"***Affiliate***" means, with respect to any Person, any other Person directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with, such Person or, in the case of an individual, a member of such Person's immediate family; or, if such Person is a partnership or a limited liability company, any general partner or managing member, as applicable, of such Person or a Person controlling any such general partner or managing member. For purposes of this definition, "***control***" (including the correlative terms "***controlling***", "***controlled by***" and "***under common control with***") shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

"***Business Day***" shall mean each day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of San Francisco, California or New York, New York is closed.

"***CARES Act***" shall mean the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), signed into law on March 27, 2020.

"***Certificates***" shall mean the Secretary Certificate, the Company Certificate and the FIRPTA Compliance Certificate.

"***Closing Cash Amount***" shall mean, as of 12:01 a.m. (California time) on the Closing Date, the Company and its Subsidiaries' cash and cash equivalents, marketable securities, security deposits and cash payable to the Company or any of its Subsidiaries by credit card processing company in respect of weekly credit card sales (excluding Restricted Cash), in each case as defined by and determined in accordance with GAAP and, solely to the extent consistent with GAAP, in accordance with the Company's past practices (including the methodologies applied in the preparation of the Financials), but excluding uncleared checks, drafts and wires issued by the Company, in each case on a consolidated basis.

"***Closing Indebtedness Amount***" shall mean, as of 12:01 a.m. (California time) on the Closing Date, the Company's Indebtedness.

"***Closing Net Working Capital Amount***" shall mean (a) the sum of the accounts receivable (net of the allowance for doubtful accounts), prepaid expenses and other current assets of the Company and its Subsidiaries as of 12:01 a.m. (California time) on the Closing Date less (b) the sum of the accounts payable, accrued expenses (including bonuses), current and long-term deferred revenues, and other current liabilities (including accrued liabilities) of the Company and its Subsidiaries as of 12:01 a.m. (California time) on the Closing Date. For purposes of calculating the Closing Net Working Capital Amount, (i) the Company's current assets shall exclude all cash, interest receivable, deferred financing costs, security deposits, Tax assets (including deferred Tax assets), non-operating receivables, and current and long-term deferred contract acquisition costs, and (ii) the Company's current liabilities shall exclude all commissions, Indebtedness included in the final calculation of the Closing Indebtedness Amount and any Third Party Expenses and Tax liabilities (including deferred Tax liabilities). The Closing Net Working Capital Amount shall be determined in accordance with GAAP and, solely to the extent consistent with GAAP, in

accordance with the Company's past practices (including the methodologies applied in the preparation of the Financials). The Closing Net Working Capital Amount shall be determined in accordance with GAAP (other than as specifically set forth in the Reference Statement), and, solely to the extent consistent with GAAP, in accordance with the Company's past practices used in the preparation of the Financials.

"***Closing Target Net Working Capital Amount***" shall mean negative $30,000,000.

"***Closing Third Party Expenses***" shall mean the Third Party Expenses of the Company that shall not have been fully and finally satisfied as of immediately prior to the Closing.

"***Closing Working Capital Adjustment Amount***" shall mean the amount equal to (a) the Closing Net Working Capital Amount *less* (b) the Closing Target Net Working Capital Amount (which amount may be a positive or negative number); *provided*, *that*, if the absolute value of such amount is less than $2,000,000 (the "***Collar***"), the Closing Working Capital Adjustment Amount shall be equal to $0; *provided*, *further*, if the absolute value of the Closing Net Working Capital Amount exceeds the Collar, the Closing Net Working Capital Adjustment Amount shall be (i) increased by $500,000 if such amount is a negative number and (ii) decreased by $500,000 if such amount is a positive number.

"***COBRA***" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

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

"***Company Common Stock***" shall mean shares of common stock, par value $0.00001 per share, of the Company.

"***Company Employee Plan***" shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock related awards, welfare benefits, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including each "***employee benefit plan,***" within the meaning of Section 3(3) of ERISA which is maintained, sponsored, contributed to, or required to be contributed to, by the Company or any ERISA Affiliate for the benefit of any current or former employee, consultant, advisor, independent contractor or director of the Company or any Subsidiary of the Company, or with respect to which the Company or any ERISA Affiliate has or may have any Liability.

"***Company Equity Plan***" shall mean the Company's 2013 Stock Option and Grant Plan, as amended.

"***Company Indemnitor Share Number***" shall mean the number of shares equal to (a) the total number of shares of Company Capital Stock outstanding immediately prior to the Effective Time (on an as-converted into Company Common Stock basis), *plus* (b) the total number of shares of Company Common Stock issuable upon the exercise of the Vested Company Options and the Company Warrants and settlement of Vested Company RSUs assuming the Vested Company RSUs were settled in shares of Company Common Stock), in each case, outstanding immediately prior to the Effective Time (and excluding, for the avoidance of doubt, any Cancelled Shares and Dissenting Shares).

"***Company Indemnitors***" shall mean the Company Stockholders, the Company Vested Optionholders, the Company Vested RSU Holders and the Company Warrantholders.

"***Company Optionholder***" shall mean any Person holding any Company Option that is outstanding immediately prior to the Effective Time.

"***Company Options***" shall mean all issued and outstanding options (whether or not vested) to purchase or otherwise acquire shares of Company Capital Stock.

"***Company RSUs***" shall mean all issued and outstanding restricted stock units (whether or not vested) relating to shares of Company Capital Stock.

"***Company Preferred Stock***" shall mean, collectively, the Company Series AA Preferred Stock, the Company Series A Preferred Stock, the Company Series B Preferred Stock, the Company Series C Preferred Stock and the Company Series D Preferred Stock.

"***Company Securities***" shall mean all (a) options, warrants or other rights, arrangements or commitments to acquire the capital stock of the Company, in each case pursuant to Contracts to which the Company is a party, (b) shares of capital stock of or other voting securities or ownership interests in the Company, and (c) 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 that in each case have been issued or granted by the Company or are pursuant to Contracts to which the Company is a party.

"***Company Security Holders***" shall mean the Company Stockholders, the Company Optionholders and the Company Warrantholders.

"***Company Series A Preferred Stock***" shall mean the Series A Preferred Stock of the Company, par value $0.00001 per share.

"***Company Series AA Preferred Stock***" shall mean the Series AA Preferred Stock of the Company, par value $0.00001 per share.

"***Company Series B Preferred Stock***" shall mean the Series B Preferred Stock of the Company, par value $0.00001 per share.

"***Company Series C Preferred Stock***" shall mean the Series C Preferred Stock of the Company, par value $0.00001 per share.

"***Company Series D Preferred Stock***" shall mean the Series D Preferred Stock of the Company, par value $0.00001 per share.

"***Company Stockholder***" shall mean any holder of Company Capital Stock.

"***Company RSU Holder***" shall mean any Person holding any Company RSU that is outstanding immediately prior to the Effective Time.

"***Company Vested Optionholders***" shall mean the holders of Vested Company Options as of immediately prior to the Effective Time.

"***Company Vested RSU Holders***" shall mean the holders of Vested Company RSUs as of immediately prior to the Effective Time.

"***Company Warrantholder***" shall mean each holder of a Company Warrant as of immediately prior to the Effective Time.

"***Company Warrants***" shall mean (a) that certain Warrant to Purchase Common Stock, dated as of August 12, 2016, issued in connection with that certain Loan and Security Agreement dated as of August 12, 2016, by and between Silicon Valley Bank and the Company, assigned by Silicon Valley Bank to SVB Financial Group, and (b) that certain Warrant to Purchase Common Stock, dated as of June 18, 2020, issued in connection with that certain Mezzanine Loan and Security Agreement dated as of June 18, 2020, by and among Silicon Valley Bank, the Company, Segment Technologies Ireland, Ltd. and Segment Technologies Canada, Inc., assigned by Silicon Valley Bank to SVB Financial Group.

"***Continuing Employees***" shall mean the employees of the Company or any of its Subsidiaries who remain or become employees of Parent or any of its Subsidiaries (including the Surviving Corporation) immediately following the Effective Time.

"***Contract***" shall mean any written or oral agreement, contract, subcontract, settlement agreement, lease, sublease, instrument, permit, concession, franchise, binding understanding, note, option, bond, mortgage, indenture, trust document, loan or credit agreement, license, sublicense, insurance policy or other legally binding commitment or undertaking of any nature, excluding, however, any Company Employee Plan or Employee Agreement.

"***Deferred Payroll Taxes***" means the "applicable employment taxes" (as defined in Section 2302(d) of the CARES Act) payable by the Company or any Subsidiary that (a) relate to the portion of the "payroll tax deferral period" (as defined in Section 2302(d) of the CARES Act) that occurs prior to the Closing and (b) are payable following the Closing as permitted by Section 2302(a) of the CARES Act, calculated without giving effect to any tax credits afforded under the CARES Act, the Families First Coronavirus Response Act or any similar applicable federal, state or local Law to reduce the amount of any such Taxes payable or owed.

"***Designated Employee***" shall mean each individual listed on Schedule G attached hereto.

"***Designated Equityholder***" shall mean each individual listed on Schedule H attached hereto.

"***DOL***" shall mean the United States Department of Labor.

"***Dollars***" or "***$***" shall mean United States Dollars.

"***Employee Agreement***" shall mean each management, employment, severance, separation, consulting, advisory, contractor, relocation, repatriation, expatriation, loan, visa, work permit or other written agreement, or contract (including, any offer letter or any agreement providing for acceleration of Company Options, Company RSUs or Company Capital Stock subject to a right of repurchase in favor of the Company) between the Company or any ERISA Affiliate and any employee, consultant, advisor, independent contractor, and pursuant to which the Company or any ERISA Affiliate has or may have any Liability.

"***Employee Option***" shall mean each Vested Company Option that was granted to the holder in the holder's capacity as, or that has ever had vesting tied to the holder's performance of services as, a service provider who is or was an employee of the Company or any of its Subsidiaries for applicable employment Tax purposes.

"***Environmental, Health and Safety Requirements***" shall mean all applicable Law concerning or relating to worker/occupational health and safety, or pollution or protection of the environment, including those relating to the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, transfer, storage, disposal, distribution, importing, labeling, testing, processing, discharge, release, threatened release, control or other action or failure to act involving cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation.

"***Equity Award Exchange Ratio***" shall mean a fraction, (a) the numerator of which shall be the Per Share Consideration, and (b) the denominator of which shall be the Parent Stock Price.

"***Equity Interests***" shall mean, with respect to any Person, any capital stock of, or other ownership, membership, partnership, joint venture or equity interest in, such Person or any indebtedness, securities, options, warrants, call, subscription or other rights or entitlements of, or granted by, such Person or any of its Affiliates that are convertible into, or are exercisable or exchangeable for, or giving any Person any right or entitlement to acquire any such capital stock or other ownership, partnership, joint venture or equity interest, in all cases, whether vested or unvested.

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

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

"***Escrow Account***" shall mean the Adjustment Escrow Account, the Indemnity Escrow Account and the Specific Indemnity Escrow.

"***Escrow Agent***" shall mean Citibank, N.A.

"***Escrow Cash***" shall mean the Adjustment Escrow Cash *plus* the Indemnity Escrow Cash *plus* the Specific Indemnity Cash.

"***Escrow Shares***" shall mean the Adjustment Escrow Shares, the Indemnity Escrow Shares, and the Specific Indemnity Shares.

"***Exchange Act***" the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

"***Fraud***" shall mean common law fraud with the intent to deceive.

"***Fundamental Representations***" shall mean the representations and warranties contained in Section 3.1(a) (Organization of the Company), Section 3.2 (Company Capital Structure), Section 3.3 (Subsidiaries; Ownership Interests), Section 3.4(a) (Authority and Enforceability), Section 3.5(a) (No Conflict with Charter Documents) and Section 3.19 (Brokers' and Finders' Fees).

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

"***General Joinder Agreement***" shall mean the General Joinder Agreement substantially in the form attached hereto as Exhibit F.

"***Government Bid***" means any quotation, offer, bid or proposal made by the Company prior to the Effective Time that, if accepted, would result in or lead to a Government Contract. For avoidance of doubt, the term Government Bid includes only quotations, offers, bids or proposals that have not expired and for which award has not been made.

"***Government Contract***" means any Contract, between the Company, on the one hand, and (a) any Governmental Entity, (b) any prime contractor of a Governmental Entity in its capacity as a prime contractor, or (c) any higher-tier subcontractor of a Governmental Entity in its capacity as a subcontractor, on the other hand. Unless otherwise indicated, a task order, purchase order, or delivery order issued under a Government Contract shall not constitute a separate Government Contract for purposes of this definition, but shall be part of the Government Contract under which it was issued.

"***Governmental Entity***" means (a) any supranational, national, federal, state, county, municipal, local, or foreign government or any entity exercising executive, legislative, judicial, regulatory, taxing, or administrative functions of or pertaining to government, (b) any public international governmental organization or (c) any agency, division, bureau, department, or other political subdivision of any government, entity or organization described in the foregoing clauses (a) or (b) of this definition (including patent and trademark offices and self-regulatory organizations).

"***Indebtedness***" of any Person at any time shall mean, without duplication: (a) all liabilities of such Person for borrowed money; (b) all obligations evidenced by bonds, debentures, notes (convertible or otherwise) or similar instruments, and all liabilities in respect of mandatorily redeemable or purchasable share capital or securities convertible into share capital; (c) all liabilities of such Person for deferred rent obligations or the deferred purchase price of property or services (including any milestone, earnout or similar payments but excluding accounts payable); (d) all Unpaid Pre-Closing Taxes (other than Transaction Payroll Taxes) to the extent unpaid as of 12:01 a.m. (California time) on the Closing Date (but excluding, for the avoidance of doubt, any reserve for uncertain tax positions within the meaning of ASC 740-10 and ASC 450-20 (and any comparable guidance), including any reserve related the matter set forth in Section 3.9(a)(iv) of the Disclosure Schedule); (e) all liabilities in respect of any lease (or other arrangement conveying the right to use) which are required to be classified and accounted for under GAAP as capital leases (excluding, for the avoidance of doubt, any real estate lease); (f) all liabilities of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction securing obligations of a type described in clauses (a), (b), (c), (d) or (e) above to the extent of the obligation secured; (g) all accrued interest, fees and prepayment penalties on the items described in clauses (a) through (e) above (including any amounts payable in connection with the repayment of the Company's loan with Silicon Valley Bank); (h) all obligations of such Person under swaps, collars, caps, hedges, derivatives of any kind or similar instruments and (i) outstanding severance obligations of such Person that are actually due and payable (other than severance obligations included in the definition of Third Party Expenses and severance obligations arising from the terminations of employees, if any, done by the Company at or following Closing or otherwise at the express written direction of Parent).

"***Indemnity Escrow Account***" means the escrow account established by the Escrow Agent to hold the Indemnity Escrow Shares and the Indemnity Escrow Cash in trust.

"***Indemnity Escrow Cash***" shall mean, (a) as of the Closing, an aggregate amount of cash equal to (i) the Per Share Indemnity Escrow Amount *multiplied by* (ii) the Company Indemnitor Share Number *minus* the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the amount of cash in the Indemnity Escrow Account.

"***Indemnity Escrow Expiration Date***" shall mean the one (1) year anniversary of the Closing Date.

"***Indemnity Escrow Shares***" shall mean, (a) as of the Closing, the aggregate number of shares of Parent Class A Common Stock equal to (i) the Per Share Indemnity Escrow Amount *multiplied by* (ii) the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the number of shares of Parent Class A Common Stock in the Indemnity Escrow Account.

"***Indemnity Escrow Value***" shall mean an amount equal to $8,000,000.

"***International Employee Plan***" shall mean each Company Employee Plan or Employee Agreement that has been adopted, sponsored, contributed to, or maintained by the Company or its ERISA Affiliates, whether formally or informally, or with respect to which the Company or its ERISA Affiliates shall or may have any Liability, for the benefit of current or former employees, consultants, advisors, independent contractors or directors of the Company or any Subsidiary of the Company who perform services outside the United States.

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

"***Joinder Agreement***" shall mean the Key Employee Joinder Agreement and each General Joinder Agreement.

"***Key Employee***" shall mean each individual listed on Schedule C attached hereto.

"***Key Employee Joinder Agreement***" shall mean the Key Employee Joinder Agreement in the form attached hereto as Exhibit E executed and delivered concurrently with the execution of this Agreement by the Key Employee.

"***Knowledge***" (or any derivation thereof) shall mean, with respect to the Company, the knowledge of the Company's employees listed on Schedule F attached hereto after reasonable inquiry of their direct reports who have primary responsibility for the matters in question.

"***Law***" shall mean any applicable U.S. or non-U.S. federal, state, local or other constitution, law, statute, ordinance, rule, regulation, principle of common law, or any Order or award, in any case issued, enacted, adopted or otherwise having the force of law of any Governmental Entity.

"***Legal Proceeding***" shall mean any action, suit, charge, formal complaint, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit or investigation, in each case, by or before, any court or other Governmental Entity.

"***Liability***" shall mean, with respect to any Person, all debts, liabilities and obligations of any kind (whether known or unknown, contingent, accrued, due or to become due, secured or unsecured, matured or otherwise), including accounts payable, royalties payable, accrued bonuses, accrued vacation, employee expense obligations and all other liabilities of such Person or any of its Subsidiary, including those arising under applicable Law or any Legal Proceeding or any Order of a Governmental Entity.

"***Lien***" shall mean any lien, pledge, charge, claim, mortgage, security interest or other encumbrance of any sort.

"***Liquidity Date***" shall mean (a) with respect to a Company Indemnitor who is an Accredited Stockholder but not a Continuing Employee, the date on which the Resale Registration Statement becomes effective and such Company Indemnitor is free to trade all of its, his or her stock following the lock-up period pursuant to Section 3.4 of the Joinder Agreement signed by such Person, (b) with respect to a Company Indemnitor who is an Accredited Stockholder and a Continuing Employee, the first date after the Resale Registration Statement becomes effective that such Company Indemnitor is free to trade his or her stock pursuant to Parent's insider trading policies and following the lock-up period pursuant to Section 3.4 of the Joinder Agreement signed by such Person and (c) with respect to any other Company Indemnitor, the Closing Date.

"***Liquidity Price***" means with respect to each share of Parent Class A Common Stock received by a Company Indemnitor in the Merger, the volume weighted average trading price of Parent Class A Common Stock on the last trading date prior to the Liquidity Date.

"***Losses***" shall mean any and all deficiencies, judgments, settlements, losses, damages, interest, fines, penalties, taxes, costs and expenses (including reasonable out-of-pocket legal, accounting and other costs and expenses of professionals incurred in connection with investigating, defending or settling); *provided*, that "Losses" shall not include any exemplary or punitive damages (except to the extent paid or payable by a Parent Indemnified Party to a third party in connection with a third-party claim).

"***made available***" shall mean that a correct and complete copy of the document (including any amendments, exhibits and schedules thereto) referenced in such statement has been posted in the electronic data site managed by the Company on Merrill Datasite (Project Galaxy) for the express purpose of facilitating the Merger prior to 5:30 p.m. (California time) on the day that is two (2) days prior to the Agreement Date and retained at all times from the date of posting through Closing in such electronic data site.

"***Material Adverse Effect***" shall mean any fact, state of facts, condition, change, circumstance, development, occurrence, event or effect that, either alone or in combination with any other fact, state of facts, condition, change, circumstance, development, occurrence, event or effect, that (a) is, or would reasonably be expected to be, materially adverse to the business, assets (whether tangible or intangible), financial condition or operations of such Person and its Subsidiaries, taken as a whole, or (b) would reasonably be expected to materially impair the performance by such Person of its material obligations hereunder or materially delay the consummation of the transactions contemplated by this Agreement, including the Merger; *provided,* that, with respect to clause (a) (and only clause (a)) of this definition of "Material Adverse Effect" none of the following to the extent resulting or arising from the following shall be taken into account in determining whether there is or would reasonably be expected to be a Material Adverse Effect: (i) the execution and delivery of this Agreement (*provided* that this clause (i) shall not apply to any representation or warranty the purpose of such representation or warranty is to address the consequences resulting from the execution and delivery of this Agreement); (ii) any changes generally in the industries in which such Person participates, or general economic conditions or financial markets; (iii) any act of God, any act of terrorism, war or other armed hostilities, any regional, national or international calamity, or the continuation or worsening of the COVID-19 pandemic or derivative thereof; (iv) any failure by such Person to meet any projections, budgets or estimates of revenue or earnings (it being understood that the facts giving rise to such failure may be taken into account in determining whether there has been a Material Adverse Effect (except to the extent such facts are otherwise excluded from being taken into account by this proviso)); (v) any changes after the Agreement Date in any applicable Law or GAAP (or other applicable accounting standards); (vi) with respect to the Company, any action or failure to take action which action or failure to act is requested in writing by Parent or expressly required by, or expressly prohibited to be taken by, this Agreement; (vii) any changes in general United States or global economic conditions, including any changes affecting financial, credit, foreign exchange or capital market conditions; and (viii) with respect to Parent, (A) any change in the market price or trading volume of Parent's stock or the credit rating of Parent (it being understood that the facts giving rise to such change may be taken into account in determining whether there has been a Material Adverse Effect (except to the

extent such facts are otherwise excluded from being taken into account by this proviso)) or (B) any action or failure to take action which action or failure to act is expressly required by, or expressly prohibited to be taken by, this Agreement; *provided* that with respect to the exceptions set forth in clauses (ii), (iii), (v), and (vii) in the event that such fact, state of facts, condition, change, circumstance, development, occurrence, event or effect has had a disproportionate effect on such Person relative to other companies operating in the industry or industries in which such Person operates, then the incremental effect of such fact, state of facts, condition, change, circumstance, development, occurrence, event or effect shall be taken into account for the purpose of determining whether a Material Adverse Effect exists or would reasonably be expected to occur.

"***New Hire RSUs***" shall mean the Company RSUs granted pursuant to, and in accordance with the limitations set forth in, Schedule 6.2(c).

"***Non-Competition and Non-Solicitation Agreement***" shall mean each Non-Competition and Non-Solicitation Agreement in the form attached hereto as Exhibit B executed and delivered concurrently with the execution of this Agreement by the Designated Equityholders.

"***Non-Employee Option***" shall mean each Vested Company Option that is not an Employee Option.

"***Offer Letter***" shall mean an offer letter to a Designated Employee for at-will employment with Parent (or one of its Subsidiaries) and the other standard employment documents (including confidentiality and invention assignment agreement) executed by Parent's employees in the ordinary course, in each case, contingent and effective on the Closing.

"***Order***" shall mean any order, judgment, injunction, ruling, edict, or other decree, whether temporary, preliminary or permanent, enacted, issued, promulgated, enforced or entered by any Governmental Entity.

"***Ordinary Commercial Agreement***" shall mean any customary commercial agreement entered into in the Ordinary Course of Business and no primary purpose of which is related to Taxes.

"***Ordinary Course of Business***" means, with respect to the Company, the ordinary course of business consistent with the Company's past practice; *provided*, that, deviations from such ordinary course of business consistent with the Company's past practice shall not be deemed outside the Ordinary Course of Business to the extent such deviations were reasonably necessary with respect to actions taken prior to the Agreement Date, or, are reasonably necessary with respect to actions taken after the Agreement Date, in each case, in response to the COVID-19 pandemic to protect the health and safety of the Company's employees and other individuals having business dealings with the Company.

"***Organizational Documents***" means, with respect to each of the Company and its Subsidiaries (other than an individual), (a) the certificate or articles of incorporation or organization and any limited liability company, operating or partnership agreement adopted or filed in connection with the creation, formation or organization of such Person, and (b) all bylaws to which such Person is a party relating to the organization or governance of such Person, in each case, as amended or supplemented.

"***Pandemic Response Laws***" means the CARES Act, the Families First Coronavirus Response Act, and any other similar or additional federal, state, local, or foreign law, or administrative guidance intended to benefit taxpayers in response to the COVID-19 pandemic and associated economic downturn.

"***Parent Class A Common Stock***" shall mean shares of Class A Common Stock of Parent, par value $0.001 per share.

"***Parent Fundamental Representations***" shall mean the representations and warranties contained in Section 4.1 (Organization), Section 4.2 (Authority and Enforceability), Section 4.3 (Capitalization), Section 4.4(a) (No Conflict with Parent Organizational Documents), Section 4.8 (No Prior Activities of Merger Sub), Section 4.9 (Reorganization), Section 4.12 (WKSI) and Section 4.14 (Brokers' and Finders' Fees).

"***Parent Organizational Documents***" shall mean Parent's Amended and Restated Certificate of Incorporation, dated June 13, 2016, and its Amended and Restated Bylaws.

"***Parent Stock Price***" shall mean $277.1920.

"***Paying Agent***" shall mean Citibank, N.A.

"***Pension Plan***" shall mean each Company Employee Plan that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA.

"***Per Share Accredited Stock Consideration***" shall mean, in respect of each share of Company Capital Stock held by an Accredited Stockholder or issuable upon the exercise of a Company Warrant, a number of shares of Parent Class A Common Stock equal to (a) the Per Share Consideration *divided by* (b) the Parent Stock Price.

"***Per Share Adjustment Escrow Amount***" shall mean (a) with respect to shares of Company Capital Stock held by an Unaccredited Stockholder or issuable upon the exercise of a Vested Company Option or settlement of a Vested Company RSU, an amount of cash equal to (i) the Adjustment Escrow Value *divided by* (ii) the Company Indemnitor Share Number and (b) with respect to each share of Company Capital Stock held by an Accredited Stockholder or issuable upon the exercise of a Company Warrant, a number of shares of Parent Class A Common Stock equal to (i) the Per Share Adjustment Escrow Amount as calculated pursuant to the foregoing clause (a) *divided by* (ii) the Parent Stock Price.

"***Per Share Consideration***" shall mean an amount equal to (a) the sum of (i) the Total Merger Consideration *plus* (ii) the aggregate amount of the exercise price of all Company Options (other than Cancelled Options), whether vested or unvested, and the aggregate amount of the exercise price of all Company Warrants, in each case, outstanding immediately prior to the Effective Time, *divided by* (b) the Adjusted Company Shares.

"***Per Share Expense Fund Amount***" shall mean (a) with respect to shares of Company Capital Stock held by an Unaccredited Stockholder or issuable upon the exercise of a Vested Company Option or settlement of a Vested Company RSU, an amount of cash equal to (i) the Expense Fund *divided by* (ii) the Company Indemnitor Share Number and (b) with respect to each share of Company Capital Stock held by an Accredited Stockholder or issuable upon the exercise of a Company Warrant, a number of shares of Parent Class A Common Stock equal to (i) the Per Share Expense Fund Amount as calculated pursuant to the foregoing clause (a) *divided by* (ii) the Parent Stock Price.

"***Per Share Indemnity Escrow Amount***" shall mean (a) with respect to shares of Company Capital Stock held by an Unaccredited Stockholder or issuable upon the exercise of a Vested Company Option or settlement of a Vested Company RSU, an amount of cash equal to (i) the Indemnity Escrow Value *divided by* (ii) the Company Indemnitor Share Number and (b) with respect to each share of Company Capital Stock held by an Accredited Stockholder or issuable upon the exercise of a Company Warrant, a number of shares of Parent Class A Common Stock equal to (i) the Per Share Indemnity Escrow Amount as calculated pursuant to the foregoing clause (a) *divided by* (ii) the Parent Stock Price.

"***Per Share Specific Indemnity Escrow Amount***" shall mean (a) with respect to shares of Company Capital Stock held by an Unaccredited Stockholder or issuable upon the exercise of a Vested Company Option or settlement of a Vested Company RSU, an amount of cash equal to (i) the Specific Indemnity Escrow Value *divided by* (ii) the Company Indemnitor Share Number and (b) with respect to each share of Company Capital Stock held by an Accredited Stockholder or issuable upon the exercise of a Company Warrant, a number of shares of Parent Class A Common Stock equal to (i) the Per Share Specific Indemnity Escrow Amount as calculated pursuant to the foregoing clause (a) *divided by* (ii) the Parent Stock Price.

"***Per Share Unaccredited Cash Consideration***" shall mean, in respect of each share of Company Capital Stock (a) held by an Unaccredited Stockholder or (b) issuable upon the exercise of a Company Option or settlement of a Company RSU, an amount of cash equal to the Per Share Consideration.

"***Permitted Liens***" shall mean (a) statutory liens for Taxes that are not yet due and payable or which are being contested in good faith through appropriate proceedings and for which adequate reserves have been established on the Financials in accordance with GAAP; (b) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements (including arising under equipment leases with third parties); (c) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law; (d) inchoate statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; (e) zoning, building code, entitlement or other governmentally established restrictions or encumbrances which are not materially violated by the current use or occupancy of such property; and (f) any minor imperfection of title or similar liens, charges or encumbrances or any easements, covenants, conditions and other restrictions of record and any minor defects or irregularities in title, in each case, which individually or in the aggregate with other such liens, charges and encumbrances does not impair the value of or the ability to use the property subject to such lien, charge or encumbrance or the use of such property in the conduct of the Company's business.

"***Person***" shall mean an individual or entity, including a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity.

"***Pre-Closing Tax Period***" shall mean any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"***Pro Rata Share***" shall mean, with respect to a particular Company Indemnitor, a fraction (a) whose numerator is the aggregate number of shares of the Company Indemnitor Share Number held by such Company Indemnitor as of immediately prior to the Effective Time and (b) whose denominator is the Company Indemnitor Share Number. For the avoidance of doubt the total of all Pro Rata Shares shall equal one (1).

"***R&W Policy***" shall mean the representation and warranty insurance policies obtained by Parent in connection with the Merger and the other transactions contemplated by this Agreement.

"***Reference Statement***" means the reference statement set forth on Exhibit M containing an example calculation of each of Closing Net Working Capital Amount, Closing Cash Amount and Closing Indebtedness Amount as of September 30, 2020.

"***Related Agreements***" shall mean the Escrow Agreement, the Paying Agent Agreement, the Joinder Agreements, the Warrant Cancellation Agreements and the Certificates.

"***Representatives***" shall mean, with respect to a Person, such Person's officers, directors, Affiliates or employees, or any investment banker, attorney, accountant, auditor or other advisor or representative retained by any of them.

"***Restricted Cash***" shall mean all cash that is not freely usable by the Company because it is subject to restrictions or limitations on use or distribution by Law, Contract or otherwise, or Taxes imposed on distributions thereof; *provided*, that any security deposits or cash held by a Company Subsidiary shall not be deemed to be "Restricted Cash".

"***Retention Agreements***" shall mean the agreements offered to Continuing Employees outlining the terms and conditions of the Retention Pool.

"***SEC***" shall mean the Securities and Exchange Commission.

"***Securities Act***" shall mean the Securities Act of 1933, as amended.

"***Specific Indemnity Escrow Account***" means the escrow account established by the Escrow Agent to hold the Specific Escrow Shares and the Specific Indemnity Escrow Cash in trust.

"***Specific Indemnity Escrow Cash***" shall mean, (a) as of the Closing, an aggregate amount of cash equal to (i) the Per Share Specific Indemnity Escrow Amount *multiplied by* (ii) the Company Indemnitor Share Number *minus* the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the amount of cash in the Specific Indemnity Escrow Account.

"***Specific Indemnity Escrow Shares***" shall mean, (a) as of the Closing, the aggregate number of shares of Parent Class A Common Stock equal to (i) the Per Share Specific Indemnity Escrow Amount *multiplied by* (ii) the Accredited Share Number, as set forth on the Allocation Schedule, and (b) thereafter, as of any time, the number of shares of Parent Class A Common Stock in the Indemnity Escrow Account.

"***Specific Indemnity Escrow Value***" shall mean an amount equal to $10,000,000.

"***Specific Indemnity Escrow Expiration Date***" shall mean the fifteen (15) month anniversary of the Closing Date.

"***Straddle Period***" shall mean any taxable period beginning on or prior to, and ending after, the Closing Date.

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

"***Suitability Documentation***" shall mean the accredited stockholder questionnaire and related documentation in the form of Exhibit H.

"***Tax***" or, collectively, "***Taxes***" shall mean (a) any and all U.S. federal, state, local and non-U.S. taxes, assessments and other governmental charges, duties (including stamp duty), impositions and liabilities in the nature of a tax, including capital gains tax, taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, value added, Code Section 59A, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes as well as social security charges (including health, unemployment, workers' compensation and pension insurance) or similar or other taxes governmental fee, governmental assessment or governmental charge in the nature of a tax and denominated by any name whatsoever, together with all interest, penalties, and additions imposed with respect to such amounts, (b) any liability for the payment of any amounts of the type described in clause (a) as a result of being a member of an affiliated, consolidated, combined, unitary or similar group (including any arrangement for group or consortium relief or similar arrangement) for any period, and (c) any liability for the payment of any amounts of the type described in clauses (a) or (b) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for taxes of a predecessor or transferor or otherwise by operation of Law.

"***Tax Forms***" shall mean a properly completed IRS Form W-9, or the appropriate version of IRS Form W-8, as applicable, from each of the Company and from each Person entitled to receive, as applicable, any payment of Closing Indebtedness Amount or Closing Third Party Expenses in connection with the Closing.

"***Tax Return***" shall mean any return, declaration, notice, statement, claim for refund, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) or other document filed or required to be filed with respect to Taxes and including all amendments or supplements thereof.

"***Third Party Expenses***" shall mean all out-of-pocket costs, fees and expenses, including all legal, accounting, financial advisory, consulting and all other costs, fees and expenses of third parties incurred by the Company or any of its Subsidiaries (or those of the Company Security Holders for which the Company is responsible) prior to the Effective Time in connection with the negotiation, consummation or effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, including: (a) any payments made or required to be made by the Company as a brokerage or finders' fee, agents' commission or any similar charge, in connection with the transactions contemplated by this Agreement; (b) any bonus, severance, change-in-control payments, bonus in lieu of any previously promised but ungranted equity award, or similar payment obligations of the Company that become due and payable in whole or in part as a result of the consummation of the transactions contemplated by this Agreement; (c) any Liability of the Company under deferred compensation plans, phantom equity plans, severance or bonus plans, or similar arrangements made payable solely as a result of the transactions contemplated by this Agreement (and not contingent upon the occurrence of any subsequent event to the extent such event has not occurred prior to the Closing); (d) any Transaction Payroll Taxes; (e) an amount equal to one-half of the premium cost for the R&W Policy; and (f) the cost of the D&O Tail Policy and the Cyber Tail Policy; *provided* that "Third Party Expenses" shall not include (i) any amounts payable pursuant to the Offer Letters or the Retention Awards, and any Transaction Payroll Taxes with respect thereto, or (ii) bonuses, severance or any other payments to Continuing Employees (including vesting acceleration) that contain "double-triggers" where the Merger is the first trigger and termination of employment after the Closing is the second trigger.

"***Total Merger Consideration***" shall mean an amount equal to (a) $3,200,000,000.00, *plus* (b) the Closing Cash Amount, *plus* (c) the Closing Working Capital Adjustment Amount (which may be a positive or negative number), *less* (d) the Closing Indebtedness Amount, *less* (e) the Closing Third Party Expenses.

"***Transaction Payroll Taxes***" shall mean the employer's portion of any employment, payroll or similar Taxes with respect to any bonuses, option cashouts, option exercises or other payments in respect of Company Options or Company RSUs, payments on Company Capital Stock (to the extent applicable), bonus in lieu of any previously promised but ungranted equity award, severance, change-in-control or other compensatory payments in connection with the transactions contemplated by this Agreement paid at, prior to, or following the Closing Date, whether payable by Parent, the Company, the Surviving Corporation or any of their respective Affiliates, in each case, that shall have accrued on or before the Closing Date for applicable Tax purposes.

"***Transfer Taxes***" shall mean any transfer, stamp, documentary, sales, use, registration, goods and services, harmonized sales, recording, filing, value-added and other similar Taxes incurred in connection with the transactions contemplated by this Agreement.

"***Unaccredited Stockholder***" shall mean a Company Stockholder or Company Warrantholder that is not an Accredited Stockholder.

"***Unpaid Pre-Closing Taxes***" shall mean (a) any Taxes of the Company or any of its Subsidiaries for any Pre-Closing Tax Period (including Deferred Payroll Taxes and any Taxes imposed pursuant to Sections 951 or 951A of the Code with respect to income earned by a Subsidiary in any Pre-Closing Tax Period), (b) any Taxes of a Person (other than the Company and its Subsidiaries) for which the Company or any of its Subsidiaries (or any predecessor of the foregoing) is liable (i) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Tax Law) as a result of having been a member of an affiliated, consolidated, combined, unitary or similar group (including any arrangement for group or consortium relief or similar arrangement) before the Closing or (ii) as a result of an express or implied obligation to indemnify such Person, as a transferee or successor, by Contract, by operation of Law or otherwise as a result of an event or transaction occurring before the Closing, and (c) any Transaction Payroll Taxes and Transfer Taxes; provided, however, that (except for purposes of the definition of "Indebtedness") Unpaid Pre-Closing Taxes shall not include Taxes taken into account in the Closing Indebtedness Amount or in Closing Third Party Expenses as finally determined pursuant to Section 2.9. For this purpose, in the case of Taxes based on income, sales, proceeds, profits, receipts, wages, compensation or similar items and all other Taxes that are not imposed on a periodic basis, the amount of such Taxes that have accrued through the Closing Date for a Straddle Tax Period shall be deemed to be the amount that would be payable if the taxable year or period ended at the end of the day on the Closing Date based on an interim closing of the books (and in the case of any Taxes attributable to the ownership of any equity interest in any partnership or other "flowthrough" entity or "controlled foreign corporation" (within the meaning of Section 957(a) of the Code or any comparable state, local or non-U.S. Law), as if the taxable period of such partnership or other "flowthrough" entity or "controlled foreign corporation" ended as of the end of the Closing Date), except that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions, other than with respect to property placed in service after the Closing), shall be allocated on a per diem basis. In the case of any other Taxes that are imposed on a periodic basis for a Straddle Period, the amount of such Taxes that have accrued through the Closing Date shall be the amount of such Taxes for the relevant period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction the numerator of which shall be the number of calendar days from the beginning of the period up to and including the Closing Date and the denominator of which shall be the number of calendar days in the entire period. For the avoidance of doubt, for purposes of allocating Taxes imposed under Section 951A of the Code in respect of a Subsidiary of the Company, the "qualified business asset investment" (as such term is used in Section 951A(d) of the Code) in respect of the Pre-Closing Tax Period shall equal the product of (i) the Subsidiary's "qualified business asset investment" (as defined in Section 951A(d)(1) of the Code) for the taxable year of the Subsidiary that includes the Closing Date (determined as though such taxable year ended on the Closing Date), and (ii) a fraction, the numerator of which is the number of days in the portion of such taxable year ending on the Closing Date and the denominator of which is the total number of days in such taxable year.

"***Unvested Company Option***" shall mean any Company Option (or portion thereof) that is unvested and outstanding immediately prior to the Effective Time.

"***Unvested Company RSU***" shall mean any Company RSU (or portion thereof) that is unvested and outstanding immediately prior to the Effective Time.

"***Vested Company Option***" shall mean any Company Option (or portion thereof) that is vested and outstanding immediately prior to the Effective Time.

"***Vested Company RSU***" shall mean any Company RSU (or portion thereof) that is vested and outstanding immediately prior to the Effective Time, including any Company RSU that vests in connection with Closing.

"***WARN***" shall mean the Worker Adjustment and Retraining Notification Act.

"***WKSI***" shall mean a "well-known seasoned issuer" as such term is defined under Rule 405 under the Securities Act.

EXHIBIT 5.1

Cooley

Jon C. Avina
+1 650 843 5307
javina@cooley.com

November 5, 2020

Twilio Inc.
101 Spear Street, First Floor
San Francisco, CA 94105

Ladies and Gentlemen:

You have requested our opinion, as counsel to Twilio Inc., a Delaware corporation (the "***Company***"), with respect to certain matters in connection with the filing by the Company of a Registration Statement on Form S-3 (the "***Registration Statement***") with the Securities and Exchange Commission, including a related prospectus (the "***Prospectus***")**,** covering the registration for resale of 9,522,489 shares of Class A common stock, $0.001 par value, of the Company (the "***Shares***")**.** We have been advised that the Shares have been issued by the Company pursuant to that certain Agreement and Plan of Reorganization, dated as of October 12, 2020, by and among the Company, Scorpio Merger Sub, Inc., Segment.io, Inc. and Shareholder Representative Services, LLC (the "***Merger Agreement***").

In connection with this opinion, we have examined and relied upon the Registration Statement, the Prospectus, the Company's Amended and Restated Certificate of Incorporation, and Amended and Restated Bylaws, as amended, the Merger Agreement and originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials, and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares have been validly issued and are fully paid and non-assessable.

We consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

COOLEY LLP

By: /s/ Jon C. Avina
Jon C. Avina

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Twilio Inc.:

We consent to the use of our reports dated March 2, 2020, with respect to the consolidated balance sheets of Twilio Inc. as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes (collectively, the "consolidated financial statements"), and the effectiveness of internal control over financial reporting as of December 31, 2019, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

The audit report on the effectiveness of internal control over financial reporting as of December 31, 2019, contains an explanatory paragraph that states that the Company acquired SendGrid, Inc. (SendGrid) during fiscal 2019, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2019, SendGrid's internal control over financial reporting associated with $271.4 million, or 5%, of the Company's total assets and $177.1 million, or 16%, of total revenues included in the consolidated financial statements as of and for the year ended December 31, 2019. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of SendGrid.

Our report on the consolidated financial statements refers to the change in method of accounting for leases on the adoption of Financial Accounting Standards Board's Accounting Standards Codification (ASC) Topic 842, Leases, as of January 1, 2019.

/s/ KPMG LLP

Santa Clara, California
November 5, 2020