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AFILIAS, PLC

8  
9 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

10  
11 WOLFGANG REILE and  
12 ANTHONY BELTRAN,  
13  
14 Plaintiffs,

15 vs.

16 AFILIAS, PLC,  
17 Defendant.

18 AFILIAS, PLC,  
19 Counterclaimant,

20 vs.

21 WOLFGANG REILE and  
22 ANTHONY BELTRAN,  
23 Counter-claim  
Defendants.

Case No. 2:18-cv-01549-DMG-JEM

**ANSWER TO COMPLAINT;**

**COUNTERCLAIM FOR  
INDEMNITY AND  
DECLARATORY RELIEF; AND  
JURY DEMAND**

1 Defendant AFILIAS, PLC (“Afilias”) responds to the complaint of plaintiffs  
2 WOLFGANG REILE and ANTHONY BELTRAN (“Plaintiffs”), and counterclaims  
3 against Plaintiffs as follows:

4 **INTRODUCTION**

5 1. Afilias admits that the allegations in the complaint relate to a stock  
6 purchase agreement, but otherwise lacks sufficient knowledge at this time to admit or  
7 deny the allegations in paragraph 1 of the complaint.

8 **THE PARTIES, JURISDICTION AND VENUE**

9 2. Afilias lacks sufficient knowledge at this time to admit or deny the  
10 allegations in paragraph 2 of the complaint.

11 3. Afilias lacks sufficient knowledge at this time to admit or deny the  
12 allegations in paragraph 3 of the complaint.

13 4. Afilias admits that it is an Irish public limited company, with a principal  
14 place of business in Horsham Pennsylvania.

15 5. Afilias admits that it owns all of the stock of 101Domain, Inc.  
16 (“101Domain”), a Nevada corporation registered to do business in California.

17 6. Afilias admits that it acquired the stock of 101Domain pursuant to a  
18 Stock Purchase Agreement (“SPA”) with Plaintiffs entered into on or about  
19 September 3, 2015. The remaining allegations in paragraph 6 are based on the SPA,  
20 which Plaintiffs allege in paragraph 12 is attached as Exhibit A, however, no Exhibit  
21 A was filed with the complaint or served on defendant, and for that reason, Afilias  
22 lacks sufficient knowledge at this time to admit or deny the remaining allegations in  
23 this paragraph.

24 7. Afilias lacks sufficient knowledge at this time to admit or deny the  
25 allegations in paragraph 7 of the complaint.

26 8. Afilias lacks sufficient knowledge at this time to admit or deny the  
27 allegations in paragraph 8 of the complaint.

28 9. The allegations in paragraph 9 are based on the SPA, which Plaintiffs

1 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
 2 the complaint or served on defendant, and for that reason, Afiliias lacks sufficient  
 3 knowledge at this time to admit or deny the allegations in this paragraph.

4 10. Afiliias lacks sufficient knowledge at this time to admit or deny the  
 5 allegations in paragraph 10 of the complaint.

## 6 **GENERAL ALLEGATIONS**

### 7 **I. The Stock Purchase Agreement**

8 11. Afiliias lacks sufficient knowledge at this time to admit or deny the  
 9 allegations in paragraph 11 of the complaint.

10 12. The allegations in paragraph 12 are based on the SPA, which Plaintiffs  
 11 allege is attached as Exhibit A, however, no Exhibit A was filed with the complaint or  
 12 served on defendant, and for that reason, Afiliias lacks sufficient knowledge at this  
 13 time to admit or deny the allegations in this paragraph.

14 13. The allegations in paragraph 13 are based on the SPA, which Plaintiffs  
 15 allege in paragraph 12 is attached as Exhibit A, and a Promissory Note, which plaintiff  
 16 alleges is attached as Exhibit B, however, no Exhibit A or Exhibit B was filed with the  
 17 complaint or served on defendant, and for that reason, Afiliias lacks sufficient  
 18 knowledge at this time to admit or deny the allegations in this paragraph.

19 14. The allegations in paragraph 14 are based on the Promissory Note, which  
 20 Plaintiffs allege in paragraph 13 is attached as Exhibit B, however, no Exhibit B was  
 21 filed with the complaint or served on defendant, and for that reason, Afiliias lacks  
 22 sufficient knowledge at this time to admit or deny the allegations in this paragraph.

23 15. The allegations in paragraph 15 are based on the Promissory Note, which  
 24 Plaintiffs allege in paragraph 13 is attached as Exhibit B, however, no Exhibit B was  
 25 filed with the complaint or served on defendant, and for that reason, Afiliias lacks  
 26 sufficient knowledge at this time to admit or deny the allegations in this paragraph.

### 27 **III. [sic] Indemnification Rights Under The Stock Purchase Agreement**

28 16. The allegations in paragraph 16 are based on the SPA, which Plaintiffs

1 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
 2 the complaint or served on defendant, and for that reason, Afiliás lacks sufficient  
 3 knowledge at this time to admit or deny the allegations in this paragraph.

4 17. The allegations in paragraph 17 are based on the SPA, which Plaintiffs  
 5 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
 6 the complaint or served on defendant, and for that reason, Afiliás lacks sufficient  
 7 knowledge at this time to admit or deny the allegations in this paragraph.

8 18. The allegations in paragraph 18 are based on the SPA, which Plaintiffs  
 9 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
 10 the complaint or served on defendant, and for that reason, Afiliás lacks sufficient  
 11 knowledge at this time to admit or deny the allegations in this paragraph.

12 19. The allegations in paragraph 19 are based on the SPA, which Plaintiffs  
 13 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
 14 the complaint or served on defendant, and for that reason, Afiliás lacks sufficient  
 15 knowledge at this time to admit or deny the allegations in this paragraph.

16 **II. [sic] Afiliás Breaches the Stock Purchase Agreement and Promissory Note**  
 17 (Afiliás denies the allegation incorporated in the misnumbered subheading.)

18 20. Afiliás admits that it paid Plaintiffs \$2,000,000 on or about September 3,  
 19 2016. The remaining allegations in paragraph 20 are based on the Promissory Note,  
 20 which Plaintiffs allege in paragraph 13 is attached as Exhibit B, however, no Exhibit  
 21 B was filed with the complaint or served on defendant, and for that reason, Afiliás  
 22 lacks sufficient knowledge at this time to admit or deny the allegations in this  
 23 paragraph.

24 21. Afiliás admits that it did not make a payment to Plaintiffs on or about  
 25 September 3, 2017. The remaining allegations in paragraph 20 are based on the  
 26 Promissory Note, which Plaintiffs allege in paragraph 13 is attached as Exhibit B,  
 27 however, no Exhibit B was filed with the complaint or served on defendant, and for  
 28 that reason, Afiliás lacks sufficient knowledge at this time to admit or deny the

1 allegations in this paragraph.

2 22. Afilias admits that on or about September 5, 2017, it caused a Notice of  
3 Indemnification Claim indicating an unpaid pre-closing Value Added Tax ("VAT")  
4 liability for the period of January 1, 2010 to September 3, 2015 with an estimated  
5 liability of \$874,543, but denies the remaining material allegations in the paragraph.

6 23. Afilias admits that it has asserted that it is entitled to indemnification  
7 under the SPA for pre-closing VAT liability in an amount that may be greater than  
8 \$1,000,000. The remaining allegations in paragraph 23 are based on the SPA and  
9 Promissory Note, which Plaintiffs allege in paragraphs 12 and 13 are attached as  
10 Exhibits A and B, however, no Exhibits A or B were filed with the complaint or  
11 served on defendant, and for that reason, Afilias lacks sufficient knowledge at this  
12 time to admit or deny the allegations in this paragraph.

13 24. Afilias admits that Plaintiffs delivered a Dispute Notice to Afilias. The  
14 allegations in paragraph 24 are based on the SPA, which Plaintiffs allege in paragraph  
15 12 is attached as Exhibit A, however, no Exhibit A was filed with the complaint or  
16 served on defendant, and for that reason, Afilias lacks sufficient knowledge at this  
17 time to admit or deny the allegations in this paragraph.

18 **FIRST CLAIM FOR RELIEF**

19 **(Breach of Contract)**

20 25. Afilias incorporates its responses to paragraphs 1 through 24 of the  
21 complaint.

22 26. Afilias admits that it and Plaintiffs are parties to a SPA and Promissory  
23 Note, however, Plaintiffs allege in paragraphs 12 and 13 that those documents are  
24 attached as Exhibits A and B, however, no Exhibits A or B was filed with the  
25 complaint or served on defendant, and for that reason, Afilias lacks sufficient  
26 knowledge at this time to admit or deny the allegations in this paragraph.

27 27. Afilias denies the allegations in paragraph 27 of the complaint.

28 28. Afilias denies the allegations in paragraph 28 of the complaint.

1           29. Afilias denies the allegations in paragraph 29 of the complaint.

2                                   **SECOND CLAIM FOR RELIEF**

3                                   **(Accounting)**

4           30. Afilias incorporates its responses to paragraphs 1 through 29 of the  
5 complaint.

6           31. The allegations in paragraph 31 are based on the SPA, which Plaintiffs  
7 allege in paragraph 12 is attached as Exhibit A, however, no Exhibit A was filed with  
8 the complaint or served on defendant, and for that reason, Afilias lacks sufficient  
9 knowledge at this time to admit or deny the allegations in this paragraph.

10          32. Afilias denies the allegations in paragraph 32 of the complaint.

11          33. Afilias admits that the amount stated in its initial Indemnification  
12 Demand likely understated the potential VAT liability by a significant amount. As  
13 discussed with Plaintiffs through counsel, Afilias has retained professionals to assess  
14 the actual liability, but those professionals have not yet rendered an opinion and for  
15 that reason Afilias lacks sufficient knowledge at this time to admit or deny the  
16 allegations in paragraph 33 of the complaint.

17          34. Afilias admits that it has not completed its efforts to fully document the  
18 unpaid VAT liability, and denies the remaining material allegations in paragraph 34 of  
19 the complaint.

20                                   **THIRD CLAIM FOR RELIEF**

21                                   **(Declaratory Relief under 28 U.S.C. § 2201 et seq.)**

22          35. Afilias incorporates its responses to paragraphs 1 through 35 of the  
23 complaint.

24          36. Afilias admits the allegations in paragraph 36 of the complaint.

25          37. Afilias admits the allegations in paragraph 37 of the complaint.

26          38. Afilias admits the allegations in paragraph 38 of the complaint.



1           39.     Afilias admits that Plaintiffs have sought declaratory relief, but deny that  
2 they are entitled to the relief that they have sought as alleged in paragraph 39 of the  
3 complaint.

4                               **RELIEF REQUESTED**

5           Afilias denies that plaintiffs are entitled to any relief, and seeks payment of  
6 attorneys' fees and costs incurred in this action.

7                               **AFFIRMATIVE DEFENSES**

8                               **FIRST AFFIRMATIVE DEFENSE**

9           1.     The complaint fails to state a cause of action.

10                              **SECOND AFFIRMATIVE DEFENSE**

11           2.     The complaint is premature and not ripe for resolution, because the VAT  
12 liability has not yet been determined.

13                              **THIRD AFFIRMATIVE DEFENSE**

14           3.     If plaintiffs suffered any damages, it is due in whole or in part to their  
15 failure to mitigate.

16                              **FOURTH AFFIRMATIVE DEFENSE**

17           4.     Plaintiffs are not entitled to the relief sought due to mistake of law or  
18 fact. Cal. Civ. Code §§ 1567, 1576, 1577 and 1578.

19                              **FIFTH AFFIRMATIVE DEFENSE**

20           5.     Plaintiffs are not entitled to the relief sought because defendant was  
21 privileged and justified in acting, or failing to act.

22                              **SIXTH AFFIRMATIVE DEFENSE**

23           6.     Plaintiffs are barred from relief due to the doctrine of unclean hands.

24                              **SEVENTH AFFIRMATIVE DEFENSE**

25           7.     Plaintiffs are barred from relief due to the doctrine of waiver.

26                              **EIGHTH AFFIRMATIVE DEFENSE**

27           8.     Plaintiffs are barred from relief due to the doctrine of unconscionability.  
28

1 **NINTH AFFIRMATIVE DEFENSE**

2 9. Plaintiffs are barred from relief due to lack or inadequacy of  
3 consideration.

4 **TENTH AFFIRMATIVE DEFENSE**

5 10. Plaintiffs are barred from relief due to a failure of consideration.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 11. Plaintiffs are barred from relief due to frustration of purpose.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 12. Plaintiffs are barred from relief due to their prevention of performance.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 13. Defendant reserves the right to assert additional affirmative defenses as  
12 the existence or relevant of additional facts and theories become known and  
13 appreciated.

14 **COUNTERCLAIMS**

15 1. Defendant and counterclaimant AFILIAS, PLC (“Afilias”) is an Irish  
16 public limited company, with a principal place of business in Horsham Pennsylvania.

17 2. Afilias is informed and believes that plaintiffs and counterclaim  
18 defendants WOLFGANG REILE (“Reile”) and ANTHONY BELTRAN (“Beltran”)  
19 are individuals residing in the County of San Diego, California.

20 **FIRST CLAIM FOR RELIEF**

21 **(Express Indemnity)**

22 3. On or about September 3, 2015, Afilias entered into a Stock Purchase  
23 Agreement with Reile and Beltran, in which Afilias was identified as the “Buyer” and  
24 Reile and Beltran were identified as the “Sellers,” a true and correct copy of which is  
25 attached hereto as **Exhibit 1** (the “SPA”).

26 4. Pursuant to the SPA, Sellers sold to Buyer all of the issued and  
27 outstanding shares of capital stock of 101domain, Inc., and agreed to indemnify Buyer  
28 for certain unpaid pre-closing tax liabilities owed by 101domains, Inc., including for



1 unpaid value added taxes ("VAT").

2       5. On or about September 3, 2015, Afilias entered into a Promissory Note  
3 whereby it agreed to pay Reile and Beltran certain amounts over time, which amounts  
4 could be withheld for reasons including, but not limited to, the failure of 101domains,  
5 Inc. to pay pre-closing tax liabilities, a true and correct copy of which is attached  
6 hereto as **Exhibit 2** (the "Promissory Note").

7       6. On or about September 5, 2017, Afilias delivered a Notice of  
8 Indemnification Claim to Reile and Beltran, indicating that it was withholding the  
9 final \$1,000,000 owed under the Promissory Note due to a pre-closing value added tax  
10 ("VAT") liability, which was then estimated to be approximately \$874,753, subject to  
11 further investigation and revision.

12       7. On or about April 12, 2018, Afilias delivered an Amended Notice of  
13 Indemnification Claim to Reile and Beltran, indicating that the estimate of pre-closing  
14 VAT liability had been revised to an amount in excess of \$1,000,000, subject to  
15 further investigation and revision.

16       8. Afilias has performed all conditions and obligations to be performed on  
17 its part under the SPA and Promissory Note, except for those conditions that were  
18 excused due to the unpaid pre-closing VAT liability.

19       9. Reile and Beltran have breached their obligation to indemnify Afilias for  
20 the unfunded pre-closing VAT liability.

21       10. By reason of the foregoing, Afilias is entitled to be indemnity by Reile  
22 and Beltran, in the amount of the unfunded pre-closing VAT liability, minus the  
23 \$1,000,000 withheld pursuant to the SPA and Promissory Note, as well as the legal  
24 and accounting fees necessary for this action and the determination of the VAT  
25 liability.

26                   **SECOND CLAIM FOR RELIEF**

27                   **(Declaratory Relief)**

28       11. Afilias incorporates the allegations in paragraphs 1 through 10.

12. Afilias is informed and believes that, pursuant to the SPA and Promissory Note, it is entitled to retain the final \$1,000,000 that would have otherwise been owed to Reile and Beltran were it not for the unpaid pre-closing VAT liability, and to receive from Reile and Beltran any additional amounts needed to fully fund that liability.

13. Afilias is informed and believes that Reile and Beltran dispute that, pursuant to the SPA and Promissory Note, Afilias is entitled to retain the final \$1,000,000 that would have otherwise been owed to Reile and Beltran were it not for the unpaid pre-closing VAT liability, and to receive from Reile and Beltran any additional amounts needed to fully fund that liability.

14. Afilias seeks a judicial declaration of the parties' rights and obligations with respect to the pre-closing VAT liability.

#### **PRAYER FOR RELIEF**

WHEREFORE, Afilias prays for judgment as follows:

1. For indemnity in an amount according to proof;
2. For attorneys' fees and costs;
3. For a declaration that it is entitled to retain the final \$1,000,000 that would have otherwise been owed to Reile and Beltran were it not for the unpaid pre-closing VAT liability, and to receive from Reile and Beltran any additional amounts needed to fully fund that liability.
4. For whatever further relief the Court deems to be just and proper.

DATED: April 19, 2018

BLANK ROME LLP

By: /s/ Jonathan Loeb  
 Jonathan Loeb  
 Jeffrey Rosenfeld  
 Attorneys for Defendant and  
 Counterclaimant Afilias, plc

**JURY DEMAND**

Affilias, plc demands trial by jury.

DATED: April 19, 2018

BLANK ROME LLP

By: /s/ Jonathan Loeb  
Jonathan Loeb  
Jeffrey Rosenfeld  
Attorneys for Defendant and  
Counterclaimant Afilias, plc

# EXHIBIT 1

**STOCK PURCHASE AGREEMENT**

**BY AND AMONG**

**WOLFGANG REILE AND ANTHONY M. BELTRAN**

**(“SELLERS”)**

**and**

**AFILIAS, PLC**

**(“BUYER”)**

**dated as of**

**September 3, 2015**

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**SCHEDULE OF EXHIBITS AND SCHEDULES**

Exhibit A	Promissory Note
Exhibit B	Consulting Agreement
Exhibit C	Employment Agreement
Exhibit D	Transaction Accounting Principles
Exhibit E	Sample Net Working Capital Statement
Schedule A	Sellers' Pro Rata Share
Company Disclosure Schedules	

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this “**Agreement**”), dated as of September 3, 2015, is entered into by and among Wolfgang Reile (“**Reile**”), an individual and Anthony M. Beltran (“**Beltran**”), an individual (each of Reile and Beltran sometimes referred to herein as a “**Seller**” and collectively as the “**Sellers**”) and Afilias, plc, an Irish public limited company (the “**Buyer**”), with reference to the following facts and objectives:

(i) Sellers own all of the issued and outstanding shares of capital stock (the “**Shares**”), of 101domain, Inc., a Nevada corporation doing business as 101 domain.com (the “**Company**”); and

(ii) Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Shares, subject to the terms and conditions set forth herein;

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

### ARTICLE I Definitions

The following terms have the meanings specified or referred to in this **Article I**:

“**Action**” means any claim, action, demand, lawsuit, arbitration, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, by or before any Governmental Authority.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliate Purchase Agreement**” means each of those three certain Agreements for Purchase and Sale of Shares dated September 2, 2015, by and between Sellers and the Company, pursuant to which Sellers transferred to the Company all of their shares of capital stock (representing in the aggregate 100% of the outstanding shares of capital stock of each such Person) of (i) Digital Privacy Corporation, a Delaware corporation, (ii) 101 Domain (Hong Kong) Limited, a company organized under the laws of Hong Kong, and (iii) 101Domain Limited, a limited liability company organized under the laws of England (the Persons set forth in clauses (i) through (iii) collectively, the

**“Subsidiaries”**). Although Buyer is not a direct party to any Affiliate Purchase Agreement, it is an express third party beneficiary thereof and it is the parties intention that the covenants and representations and warranties of Sellers therein, respectively, shall inure to the benefit of Buyer and may be enforced by Buyer in Buyer’s name or for the benefit of the Company pursuant to **Article VIII** herein.

**“Agreement”** has the meaning set forth in the preamble, and it includes all of the Exhibits and Schedules attached hereto.

**“Allocation Schedule”** has the meaning set forth in **Section 6.05(b)**.

**“Balance Sheet”** has the meaning set forth in **Section 3.06**.

**“Balance Sheet Date”** has the meaning set forth in **Section 3.06**.

**“Basket”** has the meaning set forth in **Section 8.04(a)**.

**“Beltran Restricted Period”** has the meaning set forth in **Section 5.03(b)**.

**“Benefit Plan”** has the meaning set forth in **Section 3.17(a)**.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of California are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer Indemnitees”** has the meaning set forth in **Section 8.02**.

**“Buyer’s Accountants”** means PriceWaterhouseCoopers LLP.

**“Capital Stock”** has the meaning set forth in **Section 3.03(a)**.

**“Closing”** has the meaning set forth in **Section 2.05**.

**“Closing Adjustment”** has the meaning set forth in **Section 2.04(a)(ii)**.

**“Closing Cash Payment”** has the meaning set forth in **Section 2.03(a)(i)**.

**“Closing Date”** has the meaning set forth in **Section 2.05**.

**“Closing Working Capital”** means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, excluding deferred tax assets and liabilities, determined as of the close of business on the Closing Date and set forth in the Final Closing Working Capital Statement.

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

“**Company**” has the meaning set forth in the recitals.

“**Company Intellectual Property**” means all Intellectual Property that is owned by the Company. For clarity, the covenants, representations, and warranties set forth in this Agreement with respect to the Company Intellectual Property are and shall be deemed to be applicable to the Company IP Registrations.

“**Company IP Agreements**” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary (expressly or oral), or otherwise bound.

“**Company IP Registrations**” means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and registered copyrights, issued and reissued patents, and pending applications for any of the foregoing.

“**Contracts**” means all contracts (registration or otherwise), leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral, whether with customers, vendors or any other parties.

“**Current Assets**” is defined in, and shall be calculated in accordance with the formula set forth on the Sample Net Working Capital Statement.

“**Current Liabilities**” is defined in, and shall be calculated in accordance with the formula set forth on the Sample Net Working Capital Statement.

“**D&O Indemnified Parties**” has the meaning set forth in **Section 5.09**.

“**Direct Claim**” has the meaning set forth in **Section 8.05(c)**.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

“**Disputed Amounts**” has the meaning set forth in **Section 2.04(b)(iv)**.

“**Dollars or \$**” means the lawful currency of the United States.

“**Employee Transaction Expenses**” means any amounts payable to employees of the Company set forth on Section 2.03 of the Disclosure Schedules.

**“Encumbrance”** means any charge, community property interest, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or similar restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Environmental Claim”** means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**“Environmental Law”** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**“Environmental Notice”** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**“Environmental Permit”** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, or

authorized by or made pursuant to a Governmental Authority under any Environmental Law.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**Estimated Closing Working Capital**” has the meaning set forth in **Section 2.04(a)(i)**.

“**Estimated Closing Working Capital Statement**” has the meaning set forth in **Section 2.04(a)(i)**.

“**Final Closing Working Capital Statement**” means a written statement setting forth the Closing Working Capital as finally determined pursuant to **Section 2.04**.

“**Financial Statements**” has the meaning set forth in **Section 3.06**.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Government Contracts**” has the meaning set forth in **Section 3.09(a)(vii)**.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mold, fungi, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**Indemnified Party**” has the meaning set forth in **Section 8.05**.



**“Indemnifying Party”** has the meaning set forth in **Section 8.05**.

**“Independent Accountant”** has the meaning set forth in **Section 2.04(b)(iv)**.

**“Insurance Policies”** has the meaning set forth in **Section 3.13**.

**“Intellectual Property”** as used as its own term and as part of the term **“Company Intellectual Property”** means all of the following intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to or arising under the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) rights in trademarks, service marks, trade names, brand names, logos, trade dress, and designs, and other similar designations of source, sponsorship, association or origin, together with the goodwill connected and associated with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) rights in internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content (including content on Twitter, Facebook and other social media companies), and URLs; (c) rights in works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights (including, for clarity, copyrights in software and firmware, source code, object code, application programming interfaces, architectures, files, records, schematics, computerized databases and other related specifications and documentation); (d) rights in inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein, including all rights in customer, affiliate, licensor and vendor lists; (e) patents rights (including all rights to reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), rights in patent applications, and other rights in any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents and patent utility models); and (f) rights in semiconductor chips and mask works.

**“Interim Financial Statements”** has the meaning set forth in **Section 3.06**.

**“Knowledge of Seller or Sellers’ Knowledge”** or any other similar knowledge qualification, means the actual knowledge of Wolfgang Reile or Anthony Beltran, after reasonable inquiry.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including Environmental Laws.

**“Legal Transaction Expenses”** means the amounts payable to outside legal counsel to the Sellers set forth on Section 2.03 of the Disclosure Schedules

**“Liabilities”** has the meaning set forth in **Section 3.07**.

**“Losses”** means losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind and actually suffered, incurred or paid, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that **“Losses”** shall not include consequential damages or, except in the case of intentional fraud or to the extent actually awarded to a Governmental Authority or other third party, punitive damages.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that has had, or would reasonably be expected to have a materially adverse effect on (a) the business, results of operations, condition (financial or otherwise) or assets of the Company, taken as a whole, excluding in each case the impact of any event, occurrence, fact, condition or change arising out of, resulting from or attributable to (i) an event or circumstances or series of events or circumstances affecting (A) the U.S., Canada or Mexico (or any other country or jurisdiction) or the global economy generally or capital, financial, banking, credit or securities markets generally, including changes in interest or exchange rates, (B) political conditions generally of the U.S. or any other country or jurisdiction in which the Company operates or (C) any industry generally in which Company or any of its customers thereof operates or in which products or services of the Company are used or distributed; (ii) the negotiation, execution, pendency or the announcement of, the consummation of the transactions contemplated by, or the performance of obligations under, this Agreement or any other Transaction Document, including adverse effects related to compliance with the covenants or agreements contained herein or the failure to take any action as a result of any restrictions or prohibitions set forth herein, and any adverse effect proximately caused by (A) shortfalls or declines in revenue, margins or profitability, (B) threatened or actual loss of, or disruption in, any customer, supplier, vendor, employee or landlord relationships, or (C) loss of any personnel; *provided, however*, that, in any such event the Material Adverse Event is not also caused by or relating to a breach of any representation or warranty or covenant of Sellers herein; (iii) any effect from any publicly available statement made by Buyer or its Affiliates concerning the Company, or any employees, customers or suppliers of the Company, or otherwise relating to the transactions contemplated hereby; (iv) any changes in applicable Law or GAAP, or accounting principles, practices or policies the Company is required to adopt, or the enforcement or interpretation thereof; (v) actions specifically permitted to be taken or omitted to be taken pursuant to this Agreement or actions taken or omitted to be taken at the request or with the consent of Buyer, including any changes or effects that are caused by actions taken or omitted to be taken at the request of Buyer; (vi) the effect of any action taken by Buyer or its Affiliates

with respect to any transaction or with respect to Sellers or the Company or their respective Affiliates, unless such action is taken in response to actions taken by Sellers or the Company and designed in good faith to mitigate against foreseeable damages to the Company; (vii) any acts of God, including any earthquakes, hurricanes, tornadoes, floods, tsunami, or other natural disasters, or any other damage to or destruction of assets caused by casualty; (viii) any hostilities, acts of war (whether or not declared), sabotage, terrorism or military actions, or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions; (ix) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded; (x) any adverse change or effect that is cured before Closing; (xi) the loss of one or more Material Contracts other than expressly pursuant to the “for cause” provisions of the applicable Material Contract or the filing of, or announcement of an intent to file, any challenge to the bidding process for any Material Contract or the negotiation or execution of any Material Contract, unless such loss was known to or anticipated by Sellers prior to the date of this Agreement and not disclosed to Buyer; (xii) changes or effects that are caused by any delay in consummating the Closing as a result of (A) any violation or breach by Buyer of any covenant, representation or warranty contained in this Agreement or (B) the institution of any Action challenging the validity or legality, or seeking to restrain the consummation of, the Transactions by a Person unaffiliated with Sellers; or (xiii) the initiation by any Person other than Sellers or the Company of proceedings under Chapter 11 of the U.S. Bankruptcy Code or other similar statutes or Laws or any adverse developments related to such proceedings, or (b) the lawful ability of Sellers to consummate the transactions contemplated hereby.

“**Material Contracts**” has the meaning set forth in **Section 3.09(a)**.

“**Material Customers**” has the meaning set forth in **Section 3.12**.

“**Multiemployer Plan**” has the meaning set forth in **Section 3.17(c)**.

“**Non-U.S. Benefit Plan**” has the meaning set forth in **Section 3.17(a)**.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities, or pursuant to any Law.

“**Permitted Encumbrances**” has the meaning set forth in **Section 3.10(a)**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

**“Post-Closing Adjustment”** has the meaning set forth in **Section 2.04(b)(vii)**.

**“Post-Closing Tax Period”** means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

**“Post-Closing Taxes”** means Taxes of the Company for any Post-Closing Tax Period.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on and including the end of the Closing Date.

**“Pre-Closing Taxes”** means Taxes of the Company for any Pre-Closing Tax Period.

**“Pro Rata Share”** means, as between Sellers and with respect to a particular Seller, the proportional percentage of their ownership of the Shares as set forth opposite such Seller’s name in the column entitled “Pro Rata Share” in Schedule “A”.

**“Proposed Closing Working Capital Statement”** has the meaning set forth in **Section 2.04(b)(i)**.

**“Purchase Price”** has the meaning set forth in **Section 2.02**.

**“Real Property”** means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

**“Reile Restricted Period”** has the meaning set forth in **Section 5.03(a)**.

**“Release”** means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

**“Representative”** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**“Resolution Period”** has the meaning set forth in **Section 2.04(b)(iii)**.

**“Restricted Business”** means (i) an Internet domain name registrar, or a (ii) business that provides domain name registration services; provided, however, that the entities and businesses set forth in **Section 5.03** of the Disclosure Schedules shall not be

deemed a Restricted Business provided that any domain registration services provided by such entities or businesses are provided only as a reseller of the Company's services.

**"Restricted Period"** means, with respect to Reile, the Reile Restricted Period and, with respect to Beltran, the Beltran Restricted Period.

**"Review Period"** has the meaning set forth in **Section 2.04(b)(ii)**.

**"Sample Net Working Capital Statement"** means the sample net working capital statement prepared by Sellers included in Part III of the Transaction Accounting Principles and attached hereto as Exhibit E.

**"Section 338(h)(10) Election"** has the meaning set forth in **Section 6.05(a)**.

**"Seller"** has the meaning set forth in the preamble. If an obligation is written to apply to both Sellers, the response or action or breach by one is deemed to be the response or action or breach of the other and, solely in that regard, each Seller is deemed to be an agent and representative and attorney in fact for the other. Notwithstanding the foregoing, each Seller must sign this Agreement individually or any document contemplated by Section 2.03. Whenever in this Agreement there is a reference to a duty to Sellers, such duty or obligation applies to each of them.

**"Seller Indemnitees"** has the meaning set forth in **Section 8.03**.

**"Sellers' Accountants"** means White, Nelson Diehl Evans LLP.

**"Shares"** has the meaning set forth in the recitals.

**"Statement of Objections"** has the meaning set forth in **Section 2.04(b)(iii)**.

**"Straddle Period"** has the meaning set forth in **Section 6.04**.

**"Target Working Capital"** has the meaning set forth in **Section 2.04(a)(ii)**.

**"Taxes"** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, or similar assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**"Tax Claim"** has the meaning set forth in **Section 6.07**.



“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Territory**” means all of the jurisdictions into which the Company solicits customers, including, but not limited to, all of the world.

“**Third Party Claim**” has the meaning set forth in **Section 8.05(a)**.

“**Transaction Accounting Principles**” means the accounting policies and exceptions described in Exhibit D.

“**Transaction Documents**” means this Agreement, including the Exhibits and Schedules attached hereto, the Promissory Note (**Section 2.03(a)(ii)**), the Employment Agreement (**Section 5.08**), the Consulting Agreement (**Section 5.08**), and each Affiliate Purchase Agreement (**Definitions**).

“**Transaction Expenses**” means the aggregate amount of the Employee Transaction Expenses and the Legal Transaction Expenses.

“**Undisputed Amounts**” has the meaning set forth in **Section 2.04(b)(iv)**.

“**Union**” has the meaning set forth in **Section 3.18(b)**.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“**Working Capital**” is defined in, and shall be calculated in accordance with the formula set forth in the Sample Net Working Capital Statement.

## **ARTICLE II**

### **Purchase and Sale**

**Section 2.01 Purchase and Sale.** Subject to the terms and conditions set forth herein, at the Closing, Sellers shall sell to Buyer, and Buyer shall purchase from Sellers, all of Sellers’ right, title and interest in and to the Shares, free and clear of all Encumbrances for the consideration specified in **Section 2.02**.

**Section 2.02 Purchase Price.** The aggregate purchase price for the Shares shall be \$15,500,000, subject to adjustment pursuant to **Section 2.04** hereof (the “**Purchase Price**”). The parties agree to allocate the Purchase Price for tax purposes as provided in **Section 6.05(b)**.



**Section 2.03 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall deliver to Sellers:

(i) an amount in cash equal to twelve million five hundred thousand dollars (\$12,500,000) (the “**Closing Cash Payment**”) subject to any Closing Adjustment pursuant to **Section 2.04(a)**, *less* any Transaction Expenses, allocated to the Sellers based on their respective Pro Rata Share, by wire transfer of immediately available funds to an account or accounts of Sellers designated in writing by Sellers to Buyer no later than two (2) Business Days prior to the Closing Date;

(ii) a duly executed unsecured non-negotiable promissory note in the amount of three million dollars (\$3,000,000) and payable at the rate of five percent (5%) per annum, with interest payable quarterly and otherwise on the terms and conditions of the form of promissory note attached hereto as Exhibit A (the “**Promissory Note**”);

(iii) counterparts to the Consulting Agreement and Employment Agreement, duly executed by the Company;

(iv) a duly executed certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and

(v) a duly executed certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names of the officers of Buyer authorized to sign this Agreement, the Transaction Documents, and the other documents to be delivered hereunder and thereunder.

(b) At the Closing, Sellers shall deliver to Buyer:

(i) stock certificates evidencing the Shares, free and clear of all Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank, with all required stock transfer tax stamps affixed thereto;

(ii) a counterpart to the Employment Agreement, duly executed by Beltran;

(iii) a counterpart to the Consulting Agreement, duly executed by Reile;

(iv) a counterpart to the Promissory Note, duly initialed by the Sellers;

(v) a duly executed certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of the Company authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby;

(vi) a duly executed certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder;

(vii) duly executed resignations of the directors and officers of the Company, and a resignation of Reile as an employee, pursuant to **Section 5.01**;

(viii) a good standing certificate (or its equivalent) for the Company from the secretary of state or similar Governmental Authority of each jurisdiction under the Laws in which the Company is organized and qualified; and

(ix) a duly executed certificate pursuant to Treasury Regulations Section 1.1445-2(b) that neither of Sellers is a foreign person within the meaning of Section 1445 of the Code.

(c) At or prior to the Closing, Buyer shall deliver to the following parties:

(i) To the Company, an amount in cash equal to the Employee Transaction Expenses, by wire transfer of immediately available funds to an account or accounts of the Company designated in writing by Sellers to Buyer no later than two (2) Business Days prior to the Closing Date, which amount will be treated as a short term loan to the Company payable to Buyer pursuant to **Section 2.03(a)(i)** herein ; and

(ii) to Paul Hastings LLP, an amount in cash equal to the Legal Transaction Expenses, by wire transfer of immediately available funds pursuant to the wire instructions set forth on Section 2.03 of the Disclosure Schedules under the heading "Paul Hastings Wire Information;" provided, however, that Sellers acknowledge that such payment is subtracted from the Closing Cash Payment pursuant to Section 2.03(a)(i) herein and that Buyer is held harmless by Sellers for any claims that the amount set forth on Section 2.03 of the Disclosure Schedule is incorrect, not due, or subject to claim or offset.

## Section 2.04 Purchase Price Adjustment.

### (a) Closing Adjustment.

(i) At least one (1) Business Days before the Closing, Sellers shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the “**Estimated Closing Working Capital**”), which statement shall contain an estimated balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital (the “**Estimated Closing Working Capital Statement**”), and a certificate of the Group Compliance Officer of the Company that the Estimated Closing Working Capital Statement was prepared in accordance with the Transaction Accounting Principles and in a format substantially similar to the Sample Net Working Capital Statement.

(ii) The “**Closing Adjustment**” shall be an amount equal to the Estimated Closing Working Capital minus -\$1,195,426 (the “**Target Working Capital**”). If the Closing Adjustment is a positive number, the cash portion of the Purchase Price shall be increased by the amount of the Closing Adjustment. If the Closing Adjustment is a negative number, the cash portion of the Purchase Price shall be reduced by the amount of the Closing Adjustment.

### (b) Post-Closing Adjustment.

(i) Proposed Closing Working Capital Statement. Within ninety (90) days after the Closing Date, Buyer shall prepare and deliver to Sellers a statement setting forth its calculation of Closing Working Capital, which statement shall contain a balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the “**Proposed Closing Working Capital Statement**”) and a certificate of the Group Compliance Officer of Buyer that the Closing Working Capital Statement was prepared in accordance with the Transaction Accounting Principles and in a format substantially similar to the Sample Net Working Capital Statement. If Buyer fails to timely deliver the Proposed Closing Working Capital Statement, the Estimated Closing Working Capital Statement shall become conclusive and binding upon the parties and enforceable by any court of competent jurisdiction as the Final Closing Working Capital Statement.

(ii) Examination. After receipt of the Proposed Closing Working Capital Statement, Sellers shall have forty-five (45) days (the “**Review Period**”) to review the Proposed Closing Working Capital Statement. During the Review Period, Sellers and Sellers’ Accountants shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer and Buyer’s Accountants to the extent that they relate to the Proposed Closing Working Capital Statement and to such historical financial information (to the extent in Buyer’s

possession) relating to the Proposed Closing Working Capital Statement as Sellers may reasonably request for the purpose of reviewing the Proposed Closing Working Capital Statement and to prepare a Statement of Objections (defined below); *provided*, that such access shall be in a manner that does not unreasonably interfere with the normal business operations of Buyer or the Company. The parties agree that the Review Period shall be extended on a day-for-day basis for any period in which Buyer does not provide the access and/or information required by the preceding sentence. Buyer agrees that, following the Closing through the date that the Final Closing Working Capital Statement becomes conclusive and binding upon the parties in accordance with this **Section 2.04**, it will not (and will cause its Affiliates not to) take any actions with respect to any books, records, policies, or procedures on which the Proposed Closing Working Capital Statement is based or on which the Final Closing Working Capital Statement is to be based that are inconsistent with or that would impede or delay the determination of the amount of Closing Working Capital or the preparation of the Statement of Objections or the Final Closing Working Capital Statement in the manner and utilizing the methods required by this Agreement.

(iii) Objection. On or prior to the last day of the Review Period, Sellers may object to the Proposed Closing Working Capital Statement by delivering to Buyer a written statement setting forth Sellers' objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers' disagreement therewith (the "**Statement of Objections**"). If Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Proposed Closing Working Capital Statement shall be deemed to have been accepted by Sellers as the Final Closing Working Capital Statement. If Sellers deliver the Statement of Objections before the expiration of the Review Period, Buyer and Sellers shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Proposed Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Sellers, shall be final and binding as the Final Closing Working Capital Statement.

(iv) Resolution of Disputes. If Sellers and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**") and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of Deloitte LLP, or if Deloitte LLP is unable to serve or if they are no longer independent, Buyer and Sellers shall appoint by mutual agreement the office of an impartial globally recognized firm of independent certified public accountants other than Sellers' Accountants or Buyer's Accountants (the "**Independent Accountant**") who, acting as experts and not arbitrators, based solely on written presentations of Sellers and Buyer submitted to the Independent Accountant and not by independent review, shall resolve the Disputed Amounts only and make any

adjustments to the Proposed Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Proposed Closing Working Capital Statement and the Statement of Objections, respectively.

(v) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by either Sellers or by Buyer based upon the percentage that the amount actually contested but not awarded to Sellers or Buyer, respectively, bears to the aggregate amount actually contested by Sellers and Buyer. If the parties are unable to agree to this allocation, the Independent Accountant shall decide the allocation of fee and cost payments among the parties in accordance with the provisions hereof.

(vi) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Proposed Closing Working Capital Statement and enforceable by any court of competent jurisdiction as the Final Closing Working Capital Statement absent manifest mathematical error.

(vii) Post-Closing Adjustment. The “**Post-Closing Adjustment**” shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working Capital. If the Post-Closing Adjustment is a positive number, the amount of principal due under the Promissory Note shall be increased by the amount of the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, the amount due under the Promissory Note shall be offset by the amount of the Post-Closing Adjustment. If the amount of the Post-Closing Adjustment owed by Sellers pursuant to the preceding sentence exceeds the amount owed by Buyer under the Promissory Note, then each Seller shall pay to Buyer an amount in cash equal to such Seller’s Pro Rata Share of such excess.

(viii) Payments of Post-Closing Adjustment. Except as otherwise provided in this **Section 2.04**, any increase in the principal due under the Promissory Note in respect of the Post-Closing Adjustment owed by Buyer or any offset of the Post-Closing Adjustment from the Promissory Note owed by Sellers, together with interest (if applicable) calculated as set forth below, shall be paid in addition to or offset from, as applicable, the amount otherwise due under the Promissory Note on the date that is twelve (12) months after the date hereof, in accordance with the Promissory Note; provided, however, that interest due on any such increase in principal shall accrue as of the Closing Date, and any such offset shall be subtracted as of the Closing Date for purposes of calculating interest. Pursuant to the terms of the Promissory Note, and subject to the foregoing, the amount of any Post-Closing Adjustment payable to Sellers



shall bear interest at a rate per annum equal to five percent (5%) and be paid quarterly. Any cash payment of the Post-Closing Adjustment owed by Sellers pursuant to his **Section 2.04**, together with interest calculated as set forth below, shall (A) be due (x) within five (5) Business Days of acceptance of the Final Closing Working Capital Statement in accordance with this **Section 2.04** or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in subsection 2.04(b)(vi) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer. If not paid with such five (5) Business Day period, the amount of any Post-Closing Adjustment shall bear interest at a rate per annum equal to five percent (5%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(c) **Adjustments for Tax Purposes.** Any payments made pursuant to **Section 2.04** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 2.05 Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the “**Closing**”) to be held at 11 a.m., at the offices of counsel to the Buyer at 2029 Century Park East, Sixth Floor, Los Angeles, CA 90067, no later than two (2) Business Days after the last of the conditions to Closing set forth in **Article VII** has been satisfied or waived (other than conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time), or at such other time or on such other date or at such other place as Sellers and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”).

**Section 2.06 Withholding Tax.** Buyer and the Company shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer and the Company may be required to deduct and withhold under any provision of Tax Law. Any amounts so withheld and timely paid over to the appropriate Governmental Authority shall be treated as delivered to Sellers hereunder.

### **ARTICLE III**

#### **Representations and Warranties of Sellers**

Except as set forth in the Disclosure Schedules, Sellers severally (and not jointly) in proportion to their Pro Rata Share of the Company, represent and warrant to Buyer that the statements contained in this **Article III** are true and correct as of the date hereof.

**Section 3.01 Authority of the Sellers.** The Sellers have full power and authority to enter into this Agreement and the other Transaction Documents to which Sellers are individually or collectively a party, to carry out their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Sellers of this Agreement and any other



Transaction Document to which Sellers are individually or collectively a party, the performance by Sellers of their respective obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated hereby and thereby are within the power and authority of Sellers, respectively. This Agreement has been duly executed and delivered by each Seller, and (assuming due execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of each Seller enforceable against each Seller in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws, now or hereafter in effect, affecting creditors' rights and remedies generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Action therefor may be brought. When each other Transaction Document to which a Seller is or will be a party has been duly executed and delivered by such Seller (assuming due execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such signatory Seller enforceable against him in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights and remedies generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Action therefor may be brought.

### **Section 3.02 Organization, Authority and Qualification of the Company.**

The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. **Section 3.02** of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except for jurisdictions in which the failure to be so licensed, qualified, or in good standing would not have a Material Adverse Effect. All corporate actions taken by the Company in connection with this Agreement and the other Transaction Documents will be duly authorized on or prior to the Closing.

### **Section 3.03 Capitalization.**

(a) The authorized capital stock of the Company consists of 50,000 shares of capital stock (the "**Capital Stock**"), of which 9,750 shares are issued and outstanding and constitute the Shares. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by Sellers, free

and clear of all Encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Shares, free and clear of all Encumbrances.

(b) All of the Shares were issued in compliance with applicable Laws. None of the Shares was issued in violation of any agreement, arrangement or commitment to which either Seller or the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(c) Except as set forth in Schedule 3.03(c), there are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the Capital Stock of the Company or obligating Sellers or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

**Section 3.04 Subsidiaries.** Except for the Subsidiaries, which were acquired by the Company immediately prior to the Closing, the Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

**Section 3.05 No Conflicts; Consents.** The execution, delivery and performance by Sellers of this Agreement and the other Transaction Documents to which each is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company; (b) fail to comply with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Sellers or the Company; (c) except as set forth in **Section 3.05** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract to which either Seller or the Company is a party or by which either Seller or the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company, except in the case of clauses (c) and (d), where the failure to obtain such consent, notice or other action, or such conflicts, violations, breaches, defaults or acceleration of or creation of rights, or the creation or imposition of an Encumbrance would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Sellers or the Company in connection with the execution and delivery of this Agreement and the other Transaction Documents and the

consummation of the transactions contemplated hereby and thereby, except (i) for such filings as may be required under the HSR Act and (ii) any applicable federal or state securities laws.

**Section 3.06 Financial Statements.** Complete copies of the Company's compiled financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2014 and 2013 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at March 31, 2015, and the related statements of income and retained earnings, stockholders' equity and cash flow for the three (3) month period then ended (the "**Interim Financial Statements**," which, when the context supports, are included in the definition of the "**Financial Statements**") have been delivered to Buyer. The Financial Statements and the Interim Financial Statements have been prepared in accordance with Transaction Accounting Principles applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Financial Statements). The Financial Statements and the Interim Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2014 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**."

**Section 3.07 Undisclosed Liabilities.** The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those that are adequately reflected or reserved against in the Balance Sheet as of the Interim Balance Sheet Date, (b) any Liabilities not required to be disclosed on the Disclosure Schedules due to dollar thresholds or materiality limitations specifically provided for in this Agreement, (c) Liabilities identified in **Section 3.07** of the Disclosure Schedules, and (d) those that have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date and that are not, individually or in the aggregate, material in amount.

**Section 3.08 Absence of Certain Changes, Events and Conditions.** Since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, except as disclosed on **Section 3.08** of the Disclosure Schedules, there has not been, with respect to the Company, any:

(a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the charter, by-laws or other organizational documents of the Company;

(c) split, combination or reclassification of any shares of its capital stock;

(d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of the Company, except as disclosed in the notes to the Financial Statements;

(g) material change in the Company's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(h) entry into any Contract that would constitute a Material Contract;

(i) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;

(k) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;

(l) material damage, destruction or loss (whether or not covered by insurance) to its property;

(m) any capital investment in, or any loan to, any other Person;

(n) acceleration, termination, material modification to or cancellation of any Material Contract to which the Company is a party or by which it is bound;

(o) any material capital expenditures;

(p) imposition of any Encumbrance, other than a Permitted Encumbrance, upon any of the Company properties, capital stock or assets, tangible or intangible;

(q) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$5,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(r) hiring or promoting any person as or to (as the case may be) a senior manager or officer, or hiring or promoting any employee except to fill a vacancy in the ordinary course of business;

(s) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(t) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees;

(u) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(v) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(w) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$5,000, individually (in the case of a lease, per annum) or \$15,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(x) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(y) action by the Company to make, change or rescind any Tax election or amend any Tax Return; or

(z) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.



### Section 3.09 Material Contracts.

(a) **Section 3.09(a)** of the Disclosure Schedules lists each of the following Contracts of the Company in effect as of the date of this Agreement; provided, that, for purposes of Sections 3.09(a)(i), (iii) and (v), the term “Contract” shall be deemed to exclude any Contract (1) with a vendor with aggregate consideration less than \$50,000, (2) with an employee or independent contractor that has not received compensation in excess of \$50,000 in any fiscal year since January 1, 2010, (3) with a registrar or trustee, whose non-financial terms do not materially deviate from the form of registrar or trustee agreement provided to Buyer prior to the date hereof, and (4) with a customer, if such Contract is not required to be collected pursuant to ICANN’s policies in effect as of the date of this Agreement, (such Contracts, together with all Contracts that the Company is a party to concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in **Section 3.10(b)** of the Disclosure Schedules and all Company IP Agreements set forth in **Section 3.11(b)** of the Disclosure Schedules, being “**Material Contracts**”):

(i) each Contract of the Company involving aggregate consideration in excess of \$50,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than thirty (30) days’ notice;

(ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;

(iii) all Contracts that provide for the assumption of any Tax, environmental or other Liability, or for uncapped indemnification in favor, of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or tangible assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise) since January 1, 2012;

(v) all material broker, distributor, dealer, manufacturer’s representative, franchise, agency, license, registration, registry, registrar, servicing, sales promotion, market research, marketing consulting, advertising, employment Contracts and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party, which Contracts are not terminable by the Company at will or by giving sixty (60) days or less notice;

(vi) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees) of the Company;

(vii) all Contracts with any Governmental Authority to which the Company is a party ("**Government Contracts**");

(viii) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(ix) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;

(x) all Contracts between or among the Company and Seller or any Affiliate of Seller (other than the Company);

(xi) all collective bargaining agreements or Contracts with any Union to which the Company is a party that relate to the representation of the Company's employees by such Union; and

(xii) any other Contract that is material to the Company and not previously disclosed pursuant to this **Section 3.09**.

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to Sellers' Knowledge, any other party thereto, is in material breach of or material default under (or is alleged to be in material breach of or material default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or obligation or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

### **Section 3.10 Title to Assets; Real Property.**

(a) The Company does not own any Real Property. The Company has good and valid title to, or a valid leasehold interest in, all Real Property and material, tangible personal property reflected in the Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date, *provided, however*, that the foregoing shall not be deemed to be a representation or warranty of any kind with respect to Intellectual Property (which representations and warranties are addressed exclusively in **Section 3.11** of this Agreement). All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**");



(i) those items set forth in **Section 3.10(a)** of the Disclosure Schedules;

(ii) Encumbrances for Taxes, assessments or other governmental charges or levies that are not yet due and payable or that are being contested in good faith;

(iii) mechanics, carriers', workmen's, repairmen's or other like Encumbrances arising or incurred in the ordinary course of business consistent with past practice for amounts that are not delinquent and that are not, individually or in the aggregate, material to the business of the Company;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property that are not, individually or in the aggregate, material to the business of the Company;

(v) Encumbrances imposed under applicable Laws or Government Orders; or

(vi) other than with respect to owned Real Property, Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice that are not, individually or in the aggregate, material to the business of the Company.

(b) **Section 3.10(b)** of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property. With respect to leased Real Property, Sellers have delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. The Company is not a sub-lessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. There are no Actions pending nor, to the Sellers' Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

### **Section 3.11 Intellectual Property.**

(a) **Section 3.11(a)** of the Disclosure Schedules lists all Company IP Registrations. All required fees related to the Company IP Registrations have been

timely paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. Sellers have provided Buyer with true and complete copies of all domain names and trademarks of the Company, including, with respect to any pending trademark applications, all office actions related to such pending trademark applications.

(b) **Section 3.11(b)** of the Disclosure Schedules lists all Company IP Agreements involving aggregate consideration in excess of \$50,000, excluding licenses for commercially available, off-the-shelf software. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Company IP Agreement. The consummation of the transactions contemplated hereby does not constitute an event of default under any Company IP Agreement or result in a termination thereof.

(c) Except as set forth in **Section 3.11(c)** of the Disclosure Schedules, the Company is the sole and exclusive, and with respect to the Company IP Registrations, record, owner of all right, title and interest in and to the Company Intellectual Property, free and clear of Encumbrances other than Permitted Encumbrances. The Company has the valid right to use all of the Company Intellectual Property used in or necessary for the conduct of the Company's business or operations as currently conducted. Without limiting the generality of the foregoing, the Company has a policy, and has implemented such policy, requiring each employee and independent contractor of the Company involved in the development of material Intellectual Property for the Company to (i) assign to the Company any ownership interest and right such Person may have in the Company Intellectual Property; and (ii) acknowledge the Company's exclusive ownership of all Company Intellectual Property. Sellers have provided Buyer with true and complete copies of all such agreements referenced above with employees and independent contractors of the Company who have received consideration from the Company in excess of \$50,000 in any fiscal year since January 1, 2012.

(d) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's right to own the Company Intellectual Property or to use or hold for use the Company Intellectual Property as used in the conduct of the Company's business or operations as currently conducted.

(e) The Company has taken all reasonable steps to protect and preserve the confidentiality of all trade secrets included in the Company Intellectual Property, including requiring all Persons engaged by the Company and having access thereto, to execute written non-disclosure agreements.

(f) To Sellers' Knowledge, and except as set forth on **Schedule 3.11(f)**, the conduct of the Company's business as currently and formerly conducted, and the products, processes and services of the Company, have not, in the past three (3) years, infringed, misappropriated, diluted or otherwise violated, and do not infringe, dilute, misappropriate or otherwise violate the Intellectual Property or other rights of any Person in any actionable respect. To Sellers' Knowledge, no Person has, in the past three (3) years, infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Company Intellectual Property in any material respect.

(g) There are no Actions (including any oppositions, interferences or re-examinations) settled in the past two (2) years, or, to Sellers' Knowledge, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company or the Sellers; (ii) challenging the validity, enforceability, registrability or ownership of any Company Intellectual Property or the Company's rights with respect to any Company Intellectual Property; or (iii) by the Company or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of the Company Intellectual Property. The Company is not subject to any outstanding Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

(h) **Section 3.11(b)** of the Disclosure Schedules lists those accounts which are maintained by the Company with Facebook, Twitter, and other social media companies. To the Sellers' Knowledge, the consummation of the transactions contemplated hereunder will not result in the loss or impairment of any such accounts.

### **Section 3.12 Customers; Accounts Receivable.**

(a) **Section 3.12** of the Disclosure Schedules sets forth (i) the top ten (10) customers by paid aggregate consideration to the Company for each of the two (2) most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in **Section 3.12** of the Disclosure Schedules, as of the date of this Agreement, the Company has not received any written or, to Sellers' Knowledge, oral notice that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company.

(b) The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (i) have arisen from bona fide transactions entered into by the Company involving the rendering of services in the ordinary course of business consistent with past practice; (ii) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of

business consistent with past practice; and (iii) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company, are collectible in full within thirty days after billing.

**Section 3.13 Insurance.** Section 3.13 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Neither of the Sellers nor any of their Affiliates (including the Company) has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. Except as set forth on **Section 3.13** of the Disclosure Schedules, there are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

**Section 3.14 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in **Section 3.14(a)** of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened (a) against the Company affecting any of its properties or assets (or against Sellers or any Affiliate thereof and relating to the Company); or (b) against the Company, Sellers or any Affiliate of Sellers that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or would impair or delay the ability of Sellers to consummate the transaction contemplated by this Agreement or any other Transaction Document.

(b) Except as set forth in **Section 3.14(b)** of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets. The Company is in compliance with the terms of each Governmental Order set forth in **Section 3.14(b)** of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

### **Section 3.15 Compliance With Laws; Permits.**

(a) Except as set forth in **Section 3.15(a)** of the Disclosure Schedules, the Company is in compliance in all material respects with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect. The Company is in compliance with the terms and conditions of all material Permits and has not received any written notices that it is in violation of any material Permit. **Section 3.15(b)** of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any material Permit set forth in **Section 3.15(b)** of the Disclosure Schedules.

### **Section 3.16 Environmental Matters.**

(a) Except as disclosed on **Section 3.16**, the Company is currently and, since January 1, 2010 has been, in material compliance with all Environmental Laws and has not, and the Sellers have not, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to any Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) There are no Environmental Permits necessary for the ownership, lease, operation or use of the business or assets of the Company.

(c) To Sellers' Knowledge, no real property currently or formerly operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or any real property currently or formerly operated or leased by the Company, and neither the Company nor Sellers have received an Environmental Notice that any real property currently or formerly operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Sellers or the Company.



(e) Neither Sellers nor the Company have received any Environmental Notice regarding potential liabilities with respect to off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company or Sellers.

(f) Neither Sellers nor the Company have retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

### **Section 3.17 Employee Benefit Matters.**

(a) **Section 3.17(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, employment, profit-sharing, deferred compensation, medical reimbursement, health savings account, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, sick day plan, paid time off, welfare, and fringe-benefit agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, or retiree of the Company or any spouse or dependent of such individual, or under which the Company has any Liability in connection with or with respect to any current or former employee, officer, director, or retiree of the Company or any spouse or dependent of such individual, but in each such case, excluding any such agreement, plan, policy, program or arrangement, that does not result in a Liability to the Company of at least \$50,000 per year (each, a “**Benefit Plan**”). The Company has separately identified in **Section 3.17(a)** of the Disclosure Schedules (i) each Benefit Plan that contains a change in control provision and (ii) each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the Company primarily for the benefit of employees outside of the United States (a “**Non-U.S. Benefit Plan**”).

(b) With respect to each Benefit Plan, Sellers have made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, and investment management or investment advisory agreements, now in effect; (iv) copies of any summary plan descriptions, summaries of material modifications, and employee handbooks relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter relating to such Benefit Plan from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the three (3) most recently filed Form 5500, with

schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the three (3) most recently completed plan years; (viii) the nondiscrimination tests under Sections 410(b), 401(a)(4), 401(k), 401(m) and 125 of the Code for the three (3) most recently completed plan years; and (ix) copies of notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan received in the past three (3) years.

(c) Except as set forth in **Section 3.17(c)** of the Disclosure Schedules, each Benefit Plan and related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a “**Multiemployer Plan**”)) has been established, administered and maintained in material accordance with its terms and in material compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Benefit Plan intended to be qualified under Section 401(a) of the Code. The Company has not (i) incurred and does not reasonably expect to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan subject to Title IV of ERISA; or (iv) engaged in any transaction which would give rise to material liability under Section 4069 or Section 4212(c) of ERISA.

(d) With respect to each Benefit Plan, no such plan is a Multiemployer Plan or a plan subject to Sections 412 or 430 of the Code or Title I, Part 3 or Title IV of ERISA.

(e) Except as set forth in **Section 3.17(e)** of the Disclosure Schedules and other than as required under Section 601 et. seq. of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason, and the Company does not have any Liability to provide post-termination or retiree welfare benefits to any individual.

(f) Except as set forth in **Section 3.17(f)** of the Disclosure Schedules, there is no pending or, to Sellers’ Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(g) Each Benefit Plan that is subject to Section 409A of the Code has been administered in material compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any contractual obligation to gross up, indemnify or otherwise reimburse



any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(h) Except as set forth in **Section 3.17(h)** of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, or employee of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of the Company to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (vi) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code. Sellers have made available to Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions.

### **Section 3.18 Employment Matters.**

(a) **Section 3.18(a)** of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in **Section 3.18(a)** of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Closing Working Capital Statement) and there are no outstanding agreements, understandings or commitments of the Company with respect to any compensation, commissions or bonuses.

(b) Except as set forth in **Section 3.18(b)** of the Disclosure Schedules, the Company is not, and has not been for the past three (3) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”), and there is not, and has not been for the past three (3) years, any Union representing or purporting to represent any employee of the Company, and, to Sellers’ Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining.

(c) The Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Company, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Except as set forth in **Section 3.18(c)**, there are no Actions against the Company pending, or to the Sellers' Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage and hours or any other employment related matter arising under applicable Laws.

(d) The Company has complied in all material respects with the WARN Act, and it has no plans to undertake any action that would trigger the WARN Act prior to the Closing Date.

**Section 3.19 Taxes.** Except as set forth in **Section 3.19** of the Disclosure Schedules:

(a) Except as set forth on **Schedule 3.19(a)** with respect to certain extensions to file, all Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owed (whether or not shown on any Tax Return) have been, or will be, timely paid. ✓

(b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law. ✓

(c) No claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations have been given to or requested by any taxing authority with respect to any Taxes of the Company.

(e) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before December 31, 2014 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. Except as set forth on **Schedule 3.19(e)**, the amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) **Section 3.19(f)** of the Disclosure Schedules sets forth:

(i) the taxable years of the Company as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired;

(ii) those years for which examinations by the taxing authorities have been completed; and

(iii) those taxable years for which examinations by taxing authorities are presently being conducted.

(g) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(h) The Company is not a party to any Action by any taxing authority. The Company has not received written notice of any pending or, to Sellers' best knowledge, threatened Actions by any taxing authority.

(i) Sellers have delivered to Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2011.

(j) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable or Taxes being contested in good faith by appropriate proceedings, and for which there are sufficient reserves on the Balance Sheet) upon the assets of the Company.

(k) The Company is not a party to, or bound by, any Tax indemnity, Tax sharing, Tax allocation agreement, or any similar agreement, other than agreements entered into in the ordinary course of business the primary subject matter of which is not Taxes.

(l) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to the Company.

(m) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(n) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(o) Each Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it 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) of the Code.

(p) The Company has not been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code.

(q) The Company is not, and has not been, a party to, or a promoter of, a "reportable transaction" or a "listed transaction" within the meaning of Section 6707A(c)(1), (2) of the Code and Treasury Regulations Section 1.6011-4(b).

(r) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Company under applicable state, local or foreign Law.

(s) **Section 3.19(r)** of the Disclosure Schedules sets forth all foreign jurisdictions in which the Company is subject to Tax or has a permanent establishment. The Company has not entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8. The Company has not transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code. No property owned by the Company is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code. ✓

(t) The Company has been a validly electing S corporation since inception within the meaning of Sections 1361 and 1362 of the Code, and the Company will be an S corporation up to and including the Closing Date.

**Section 3.20 Books and Records.** The corporate minute books and stock record books of the Company, all of which have been made available to Buyer, are complete and correct and have been maintained in all material respects in accordance with sound business practices. The corporate minute books of the Company contain accurate and complete records of all meetings, and material corporate actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of the Company, and no meeting, or material corporate action taken by written consent, of any such stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

**Section 3.21 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of the Sellers.

**Section 3.22 No Other Representations or Warranties.** Except for the representations and warranties expressly set forth in this **Article III** (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, and Section 4 of each of the Affiliate Purchase Agreements, none of Sellers, the Company or any other Person has made, makes or shall be deemed to make any other representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, on behalf of Sellers, Company, or any of their respective Affiliates, and Sellers hereby disclaim all other representations and warranties of any kind whatsoever, express or implied, written or oral, at law or in equity, whether made by or on behalf of Sellers, the Company or any other Person. No representation or warranty by Sellers in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make



the statements contained therein, in light of the circumstances in which they are made, not misleading. Except to the extent included in the representations and warranties in this Article III (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, and Section 4 of each of the Affiliate Purchase Agreements, Sellers hereby disclaim all Liability and responsibility for all projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished (orally or in writing, including electronically) to Buyer or any of Buyer's Affiliates or any Representatives of Buyer or any of Buyer's Affiliates, including omissions therefrom. Without limiting the foregoing, Sellers make no representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, to Buyer or any of its Affiliates or any Representatives of Buyer of any of its Affiliates regarding the success or profitability of Company.

#### **ARTICLE IV**

##### **Representations and Warranties of Buyer**

Except as set forth in the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.01 Organization and Authority of Buyer.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of Ireland. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer, and no shareholder approval (or other similar approval) is required in connection with Buyer's execution, delivery, and performance of this Agreement and the other Transaction Documents. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights and remedies generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Action therefor may be brought. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will

constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights and remedies generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any Action therefor may be brought.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) fail to comply with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; (c) except as set forth in **Section 4.02** of the Disclosure Schedules require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify, or cancel any material Contract to which Buyer is a party or by which Buyer is bound or to which any of their respective properties and assets are subject or any permit affecting the properties, assets or business of Buyer, or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Buyer, except in the cases of clauses (c) and (d), where the failure to obtain such consent, notice or other action, or such conflicts, violations, breaches, defaults or acceleration of or creation of rights, or the creation or imposition of an Encumbrance would not have a material adverse effect on the Buyer or materially impair or delay the ability of Buyer to consummate the transaction contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except (i) for such filings as may be required under the HSR Act and (ii) any applicable federal or state securities law filings.

**Section 4.03 Investment Purpose.**

(a) Buyer is not a "U.S. person" as defined in Regulation S of the Securities Act and is acquiring the Shares in an "offshore transaction" as defined in Regulation S of the Securities Act. Buyer is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer or its advisors have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of its investment in the Shares, and Buyer is capable of bearing the economic risks of such investment, including



a complete loss of the investment in the Shares. Buyer acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and may be subject to state securities laws and regulations, as applicable.

(b) Buyer is aware that each certificate evidencing the Shares shall bear the following legend: "THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE OR NON-U.S. SECURITIES LAWS, AND AS SUCH ARE RESTRICTED SECURITIES. THE SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR PLEDGED, IN WHOLE OR IN PART, EXCEPT BOTH AS PERMITTED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE OR OTHER SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM."

**Section 4.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 4.05 Sufficiency of Funds.** Buyer has, and will have at the Closing, (a) sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement and (b) the resources and capabilities (financial and otherwise) to perform its obligations under the Transaction Documents.

**Section 4.06 Legal Proceedings.** Except as set forth in **Section 4.06** of the Disclosure Schedules, there are no Actions pending or, to Buyer's knowledge, threatened against Buyer or any Affiliate of Buyer, or before any Governmental Authority, that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or would impair or delay the ability of Buyer to consummate the transaction contemplated by this Agreement or any other Transaction Document.

**Section 4.07 Solvency.** Immediately after giving effect to the consummation of the transactions contemplated hereby, and conditioned on the accuracy of the representations and warranties contained in **Article III** of this Agreement (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, and Section 4 of each of the Affiliate Purchase Agreements:

(a) the fair saleable value (determined on a going concern basis) of the assets of Buyer and Company and their respective subsidiaries will be greater than the total amount of their Liabilities;

(b) Buyer, Company and their respective subsidiaries will be solvent and able to pay their respective debts and obligations in the ordinary course of business as they become due;

(c) no transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of any of Buyer and its subsidiaries (which, for purposes of this **Section 4.07(c)** shall include the Company) in connection with the transactions contemplated hereby. Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured; and

(d) Buyer, Company and their respective subsidiaries will have adequate capital to carry on their respective businesses and all businesses in which they are about to engage.

**Section 4.08 Investigation.** Buyer acknowledges and agrees that it (a) has completed such inquiries and investigations as it has deemed appropriate into, and, based thereon, has formed an independent judgment, to the extent of disclosed information requested, concerning, the Company, the Shares, the assets of the Company, the Liabilities of Company, the business of the Company and transactions contemplated hereby, and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Documents, and (b) has requested and received certain projections, forecasts, estimates, appraisals, statements, promises, advice, data or information about Sellers, the Company, the Shares, the assets of the Company, the Liabilities of Company, the business of the Company and any other rights or obligations to be transferred, directly or indirectly, pursuant to the Transaction Documents. Buyer further acknowledges and agrees that (i) the only representations and warranties made by Sellers are the representations and warranties expressly set forth in **Article III** (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, and Section 4 of each of the Affiliate Purchase Agreements and Buyer has not relied upon any other express representations, warranties or other projections, forecasts, estimates, appraisals, statements, promises, advice, data or information made, communicated or furnished by or on behalf of Sellers or any of their respective Affiliates, any Representatives of Sellers or any of their respective Affiliates or any other Person that were not contained in the foregoing representations and warranties (as modified by the Disclosure Schedules, as applicable), and (ii) any claims Buyer may have for breach of any representation or warranty shall be based solely on the representations and warranties of Sellers expressly set forth in **Article III** (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, or Section 4 of each of the Affiliate Purchase Agreements. Except as otherwise expressly set forth in this Agreement, Buyer understands and agrees that Company and the assets of the Company are being furnished “as is” and “where is” subject to the representations and warranties contained in **Article III** (as modified by the Disclosure Schedules or as contained in the Transaction

Documents, Schedules or Exhibits hereto) without any other representations or warranties of any nature whatsoever; provided, however, that (i) nothing herein shall make inapplicable the other provisions of this Agreement, including remedies and indemnification, covenants and conditions, on all of which the Buyer is entitled to continue to rely, and (ii) nothing in this Section 4.08 removes, dilutes or interferes with the ability of the Buyer to seek causes of action for intentional fraud, intentional misrepresentation, or related causes of action with respect to the representations and warranties of Sellers contained in Article III (as modified by the Disclosure Schedules), Section 9.1 of the Employment Agreement, or Section 4 of each of the Affiliate Purchase Agreements.

## **ARTICLE V**

### **Covenants**

**Section 5.01 Resignations.** Sellers shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company set forth on **Section 5.01** of the Disclosure Schedules, together with a resignation by Reile as an employee, at least two (2) Business Days prior to the Closing.

**Section 5.02 Confidentiality.** From and after the Closing, Sellers shall, and shall cause their respective Affiliates to, hold, and shall use their commercially reasonable efforts to cause their respective Representatives to hold, in confidence any and all confidential information, whether written or oral, concerning the Company, except to the extent that Sellers can show that such information (a) is generally available to and known by the public through no fault of Sellers, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by Sellers, any of their Affiliates or their respective Representatives from and after the Closing from sources that, to Sellers' Knowledge, are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Sellers or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Sellers shall promptly notify Buyer in writing and shall disclose only that portion of such information that the affected Seller is advised by its counsel is legally required to be disclosed; *provided, however*, that Sellers shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance, at Buyer's sole cost and expense, that confidential treatment will be accorded such information.

### **Section 5.03 Non-competition; Non-solicitation.**

(a) For a period of sixty (60) months, commencing on the Closing Date (the "**Reile Restricted Period**"), Reile shall not, and shall not permit any of his Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory, (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including, but not limited to, as a

partner, shareholder, member, employee, principal, agent, lender, trustee or consultant, or (iii) intentionally interfere in any respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company, such prohibited interference including, but not limited to, solicitation of business, defamatory or disparaging comments or writings with respect to the Company or any of its executive officers or directors, or any discussions with any customer or supplier about its relationship with the Company or any of its agents. Notwithstanding the foregoing, Reile may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group that controls, such Person and does not, directly or indirectly, own one percent (1%) or more of any class of securities of such Person.

(b) For a period of thirty-six (36) months, commencing on Closing Date (the “**Beltran Restricted Period**”), Beltran shall not, and shall not permit any of his Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory, (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including, but not limited to, as a partner, shareholder, member, employee, principal, agent, lender, trustee or consultant, or (iii) intentionally interfere in any respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company, such prohibited interference including, but not limited to, solicitation of business, defamatory or disparaging comments or writings with respect to the Company or any of its executive officers or directors, or any discussions with any customer or supplier about its relationship with the Company or any of its agents. Notwithstanding the foregoing, Beltran may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group that controls, such Person and does not, directly or indirectly, own one percent (1%) or more of any class of securities of such Person.

(c) As a further refinement to the restrictions on Reile and Beltran set forth in subsections (a) and (b) above, and not as a limitation, during their respective Restricted Period, Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment within nine months prior to such solicitation, except pursuant to a general public solicitation that is not directed specifically to any such employees or competition with the Company.

(d) Sellers acknowledge that a breach or threatened breach of this **Section 5.03** could give rise to irreparable harm to Buyer, for which monetary damages might not be an adequate remedy, and hereby agree that, in the event of a breach or a threatened



breach by Sellers of any such obligations (acting alone or together), Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Sellers acknowledge that the restrictions contained in this **Section 5.03** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 5.03** should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this **Section 5.03** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(f) Beltran's Restricted Period shall terminate to the extent not yet terminated immediately on Beltran's resignation from the Company with "Good Reason" or on Beltran's termination from the Company without "Cause" as such terms are defined in the Employment Agreement attached hereto as Exhibit C.

(g) **Section 5.03(f)** shall not apply, and the Beltran Restricted Period will continue to the extent not yet terminated by its own terms, if the Buyer (i) within five days of Beltran's termination of Employment for Good Reason or without Cause, notifies Beltran in writing of its election, which election is in the Buyer's sole discretion, to have the Beltran Restricted Period end on the 36-month anniversary of the Closing Date and (ii) pays Beltran three times Beltran's Base Salary, as referred to in Section 3.1 of his Employment Agreement multiplied by the Employee Payment Ratio, as defined in Section 11.2(c) of the Employment Agreement. In the event of such election by Buyer, such amount must be paid to Beltran on the same payment schedule in effect on the effective date of Beltran's termination of employment until the 36-month anniversary of the Closing Date as if Beltran were still employed by the Company, less any required tax withholdings.

#### **Section 5.04 Governmental Approvals and Consents.**

(a) Each party-hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best

efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its or his Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Sellers and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 3.05** and **Section 4.02** of the Disclosure Schedules.

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

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any agreement or document contemplated hereby, including the Transaction Documents;

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

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any agreement or document contemplated hereby, including any Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Sellers or the Company with Governmental Authorities in the ordinary course of business, any disclosure that is not permitted by Law or any disclosure containing confidential information) shall be



disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

#### **Section 5.05 Books and Records.**

(a) In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Closing, or for any other reasonable purpose, for a period of three (3) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Sellers reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such books and records; *provided, however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in **Article VI**.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of three (3) years following the Closing, Sellers shall:

(i) retain the books and records (including personnel files) of Sellers that relate to the Company and its operations for periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records; *provided, however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in **Article VI**.

(c) Neither Buyer nor Sellers shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 5.05** where such access would violate any Law.

**Section 5.06 Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.07 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement; *provided, however*, that nothing in this **Section 5.07** shall require either party or its Affiliates to pay money to, commence, or participate in any Action with respect to, or offers or grant of any accommodation (financial or otherwise) to any third party following the Closing.

**Section 5.08 Post-Closing Employment and Consulting.** Concurrently with the Closing Date, and as a material condition thereto, Reile will enter into and deliver that certain Consulting Agreement (the “**Consulting Agreement**”) attached hereto as Exhibit B, pursuant to which Reile will agree to consult with the Company or its designee for a period of six (6) months following the Closing, which consulting arrangement will be subject to the terms and conditions set forth in Exhibit B. Concurrently with the Closing Date, and as a material condition thereto, Beltran will enter into and deliver that certain Employment Agreement (the “**Employment Agreement**”) attached hereto as Exhibit C, pursuant to which Beltran will agree to be employed by the Company or its designee subject to the terms and conditions set forth in Exhibit C.

**Section 5.09 Directors’ and Officers’ Indemnification.**

(a) From and after the Closing, Buyer shall cause the Company to (i) honor any then applicable existing legal or contractual obligation to indemnify, defend and hold harmless, all of their respective past and present directors, officers and employees (in all of their capacities) (collectively, the “**D&O Indemnified Parties**”) against any and all Losses incurred in connection with any Action, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that such D&O Indemnified Party is or was a director, officer or employee of the Company, provided such Loss is asserted after the Closing, unless disclosed prior to the Closing and accepted by the Buyer (including with respect to acts or omissions occurring in connection with the Transaction Documents), and (ii) not settle, compromise or consent to the entry of any judgment in any proceeding or threatened proceeding (and in which indemnification could be sought by a D&O Indemnified Party hereunder), without advising and consulting with the D&O Indemnified Party; provided that the Company may settle in its discretion without the consent of the Indemnified Party as long as the Company continues to honor any existing

legal obligation to indemnify. The foregoing obligation to indemnify shall be subject to the exceptions and exclusions of indemnification protection under applicable law, and the Sellers acknowledge that, without limitation, they are not entitled to indemnification if their alleged act or failure to act constituted a crime or a breach of his fiduciary duties as a director or officer and the breach of those duties involved intentional misconduct, intentional fraud or a knowing violation of law. All indemnification granted by the Company will be through counsel selected and directed by the Company in its absolute discretion.

(b) Subject to the exclusions set forth above, the obligations of Buyer and the Company under this **Section 5.09** shall not be terminated, amended or modified in any manner so as to adversely affect any D&O Indemnified Party (including their successors, heirs and legal representatives, if such Persons are legally entitled to indemnification) without the written consent of such affected D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties to whom this **Section 5.09** applies shall be third party beneficiaries of this **Section 5.09**), and this **Section 5.09** shall be enforceable by such D&O Indemnified Parties and their respective successors, heirs and legal representatives (if legally applicable) and shall be binding on all successors and assigns of Buyer and the Company, as applicable.

(c) If the Company, or any of its respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Company, or any of its respective successors or assigns, as the case may be, shall assume all of the obligations set forth in this **Section 5.09**.

#### **Section 5.10 Seller Guaranties.**

(a) With respect to each Seller Guaranty (defined below), Buyer shall use its reasonable best efforts to arrange for the release or replacement, as soon following the Closing as is reasonably practicable, of the Sellers from their respective obligations under each such Seller Guaranty, and the Sellers shall cooperate with such efforts. “**Seller Guaranty**” means, and is limited to, any guaranty or surety bond set forth on **Section 5.10** of the Disclosure Schedules issued by the Sellers on behalf of the Company, which **Section 5.10** includes any keep well, net worth maintenance agreement, letter of credit, reimbursement obligation or letter of comfort imposing any financially related obligations on the Sellers, it being the intention of the parties that neither of the Sellers shall from and after the Closing have any obligation whatsoever arising from or in connection with the Seller Guaranties. In the event that any such Seller Guaranty remains outstanding as of the Closing, Buyer shall indemnify the Sellers and hold them harmless against any Losses that Sellers may incur under any Seller Guaranty from and after the Closing.

(b) To the extent Buyer is unable to terminate or replace a Seller Guaranty or obtain the beneficiary's consent to the substitution thereof prior to Closing, Buyer shall have a continuing obligation after the Closing to use its reasonable best efforts to have any such Seller Guaranty terminated or replaced. To the extent that Sellers or any or their Affiliates have performance obligations under any Seller Guaranty during such period, Buyer shall use its reasonable best efforts to perform such obligations on behalf of such party or otherwise take such action as reasonably requested by the applicable Seller so as to put such party in the same position as if Buyer, and not such party, had performed or were performing such obligations. Neither Seller nor either of his respective Affiliates shall have any obligation to extend the term, or otherwise agree to any amendment or waiver, of any Seller Guaranty that remains outstanding after the Closing.

## ARTICLE VI

### Tax Matters

#### Section 6.01 Tax Covenants.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Sellers shall cooperate with respect thereto as necessary).

(b) Sellers shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company for any taxable period ending on or before the Closing Date. Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company for any Straddle Period; any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least forty-five (45) days prior to the due date (including extensions) of such Tax Return. If Sellers object to any item on any such Tax Return, they shall, within ten (10) days after delivery of such Tax Return, notify Buyer in writing that they so object, specifying with particularity any such item and stating the basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Sellers shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within ten (10) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax



Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer (50%) and Sellers (50%).

**Section 6.02 Termination of Existing Tax Sharing Agreements.** Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company nor the Sellers nor any of Sellers' Affiliates or their respective Representatives shall have any further rights or liabilities thereunder.

**Section 6.03 Tax Indemnification.** Except to the extent treated as a liability in the calculation of Closing Working Capital, Sellers shall severally (and not jointly) in proportion to their Pro Rata Share of the Company, indemnify the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against, and without the benefit of any limitation of liability otherwise provided in **Section 8.04(a)**, which is specifically not applicable to this tax indemnification (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in **Section 3.19**; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in **Article VI**; (c) all Pre-Closing Taxes; (d) all Taxes arising in a Pre-Closing Tax Period of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. Each Seller shall reimburse Buyer for the pro rata portion of any Taxes of the Company for which each Seller is responsible pursuant to this **Section 6.03** within ten (10) Business Days after payment of such Taxes by Buyer or the Company. Notwithstanding anything to the contrary in this Agreement, the Buyer Indemnitees shall not have any right to indemnification for any Loss under this Agreement with respect to, or based on, Taxes that (i) are attributable to a Post-Closing Tax Period, (ii) are due to the unavailability in any Tax period of any net operating loss, credit or other Tax attribute of the Company, or (iii) result from transactions or actions taken by Buyer or any of its Affiliates (including, for the avoidance of doubt, the Company) on or after the Closing Date that are not contemplated by this Agreement, including a breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this **Article VI**.

**Section 6.04 Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins on or before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount that would be payable if the taxable year ended at the end of the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period including and ending on the Closing Date and the denominator of which is the number of days in the entire period.

All other Taxes for a Straddle Period shall be treated as Post-Closing Taxes.

#### **Section 6.05 Section 338(h)(10) Election.**

(a) **Election.** Sellers shall join with Buyer in making a timely election under Section 338(h)(10) of the Code (and any corresponding election under state, local, and foreign Law) with respect to the purchase and sale of the Shares of the Company hereunder (collectively, a “**Section 338(h)(10) Election**”). Sellers shall pay any Tax attributable to the making of the Section 338(h)(10) Election and Sellers shall indemnify Buyer and the Company against any adverse consequences arising out of any failure to pay any such Taxes. The Sellers shall cooperate with any reasonable requests of Buyer, including executing and filing all forms, returns, elections, schedules, and documents required to effect the Section 338(h)(10) Election, subject to **Section 6.05(b)**.

(b) **Allocation of Purchase Price.** Sellers and Buyer agree that the Purchase Price and the Liabilities of the Company (plus other relevant items) shall be allocated among the assets of the Company for all purposes (including Tax and financial accounting) as shown on the allocation schedule (the “**Allocation Schedule**”); provided, however, that the amount allocated on such Allocation Schedule to (i) all assets under the category of “property, plant, and equipment,” and (ii) all assets the sale of which shall give rise to ordinary income, shall not exceed the aggregate adjusted tax basis of such assets, which the parties agree represents the fair market value of such assets. A draft of the Allocation Schedule shall be prepared by Buyer and provided to Sellers within ten days following the Closing Date for their review and approval, which shall be given absent any manifest errors. If Sellers assert that the Allocation Schedule contains any such errors, the parties shall negotiate in good faith to resolve such errors. If Sellers and Buyer are unable to resolve any such dispute within twenty (20) days following the Closing Date, such dispute shall be resolved by the Independent Accountant. The fees and expenses of such accounting firm shall be borne in proportion that Sellers and Buyer, as the case may be, are in error with respect to the Allocation Schedule. Buyer, the Company and Sellers shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to **Section 2.04** herein shall be allocated in a manner consistent with the Allocation Schedule.



**Section 6.06 Post-Closing Actions.** Without the prior written consent of Sellers (which shall not be unreasonably withheld, conditioned or delayed), neither Buyer nor the Company shall make or change any Tax election, change an accounting period or method, file any amended Tax Return, enter into any closing agreement, extend or waive the limitation period applicable to any Tax claim or assessment, surrender any right to claim a refund of Taxes, or take any other similar action, or omit to take any action, relating to the filing of any Tax Return or the payment of any Tax, if such action or omission would have the effect of increasing the Tax liability of the Sellers in a Pre-Closing Tax Period.

**Section 6.07 Contests.** Buyer agrees to give written notice to Sellers of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates that involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this **Article VI** (a "**Tax Claim**"), *provided, however, that* failure to comply with this provision shall not affect Buyer's right to indemnification hereunder, but only so long as such failure does not prejudice the ability of Sellers to effectively contest such Tax Claim. Sellers shall control the contest or resolution of any Tax Claim; *provided, however,* that Sellers shall obtain the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim if doing so would increase the Taxes of the Company in a Post-Closing Tax Period; and, *provided further,* that Buyer shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Buyer.

**Section 6.08 Cooperation and Exchange of Information.** Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this **Article VI** or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of the Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.09 Tax Treatment of Indemnification Payments.** Any indemnification payments pursuant to this **Article VI** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 6.10 Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of **Section 3.19** and this **Article VI** shall survive for the full period of all applicable statutes of limitations governed by state and federal taxing authorities as well as state and federal law (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days. ✓

**Section 6.11 Conflict.** To the extent that any obligation or responsibility pursuant to **Article VIII** may overlap or conflict with an obligation or responsibility pursuant to this **Article VI**, the provisions of this **Article VI** shall govern.

## **ARTICLE VII**

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## **ARTICLE VIII**

### **Indemnification**

**Section 8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in **Section 3.19**, which are subject to **Article VI**) shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; *provided, however*, that the representations and warranties in (a) **Section 3.01**, **Section 3.02**, **Section 3.03**, **Section 3.20**, **Section 3.21**, **Section 4.01** and **Section 4.04** shall survive for a period of six (6) years after the Closing. All of the covenants and agreements of the parties contained herein (other than any covenants or agreements contained in **Article VI**, which are subject to **Article VI**) shall survive the Closing to the extent that, by their terms, they continue to apply or are to be performed in whole or in part after the Closing Date, and those covenants and agreements shall survive for the applicable period or for any other specific period provided in such covenants and agreements. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the alleged breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification by Sellers.** Subject to the other terms and conditions of this **Article VIII**, Sellers shall severally (and not jointly) in proportion to their Pro Rata Share of the Company, indemnify and defend each of Buyer and its

Affiliates (including the Company) and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) prior to their expiration in accordance with **Section 8.01**, any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement, any Affiliate Purchase Agreement or in any certificate or instrument delivered by or on behalf of Sellers pursuant to this Agreement as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers pursuant to this Agreement or any Transaction Document; or

(c) any Transaction Expenses.

Notwithstanding anything to the contrary herein, other than as otherwise specifically set forth in this Article VIII, Sellers shall have no obligation to indemnify the Buyer Indemnitees against, hold any Buyer Indemnatee harmless from and against, or pay and reimburse any Buyer Indemnatee for, any Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees as a result of any claim that (i) solely by virtue of the purchase by the Company of any Subsidiary under an Affiliate Purchase Agreement, any third party makes a claim that the Company or such Subsidiary is in breach of any (A) Law imposed on the Company or the Subsidiary by any Governmental Authority, or (B) any rule, regulation or policy of ICANN, HKIRC, CNNIC, or any domain name registry or (ii) arises from the operations of the Subsidiaries from and after the Closing.

**Section 8.03 Indemnification by Buyer.** Subject to the other terms and conditions of this **Article VIII**, Buyer shall indemnify and defend each Seller and his Affiliates and his respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) prior to their expiration to their expiration in accordance with **Section 8.01**, any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or any Transaction Document.

**Section 8.04 Certain Limitations.** The indemnification provided for in **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Sellers shall not be liable to the Buyer Indemnitees for indemnification under **Section 8.02(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 8.02(a)** exceeds \$232,500 (the “Basket”), after which Sellers shall only be obligated for such aggregate Losses of Buyer Indemnitees in excess of the Basket, subject to the limitations set forth in **Section 8.04(b)**.

(b) Sellers shall not be liable to the Buyer Indemnitees for indemnification under **Section 8.02(a)** if the same specifically calculated and identified Loss was reflected and paid by Sellers in connection with the Final Closing Working Capital Statement.

(c) The cumulative indemnification obligation of Sellers under **Section 8.02(a)** (other than the indemnification obligation of Seller with respect to representations and warranties made in (i) with respect to this Agreement, **Sections 3.01, Section 3.02, Section 3.03, 3.19** (including any claim under **Article VI** hereunder), and **Section 3.21**) and (ii) with respect to the Affiliate Purchase Agreements, Sections 4.1, 4.2 and 4.3), shall in no event exceed \$2,500,000.

(d) The cumulative indemnification obligation of Sellers with respect to the representations and warranties made in (i) with respect to this Agreement, Sections 3.01, 3.02, 3.03, 3.19 (including any claim under Article VI hereunder) and 3.21 (in each case as modified by the Disclosure Schedules), (ii) with respect to an Affiliate Purchase Agreement, Sections 4.1, 4.2 and 4.3, and (iii) claims for intentional fraud and claims brought under Section 8.02(b), shall in no event exceed the Purchase Price. For the avoidance of doubt, the aggregate indemnification obligation of Sellers pursuant to Sections 8.04(c) and 8.04(d) shall not exceed the Purchase Price.

(e) Buyer shall not be liable to the Seller Indemnitees for indemnification under **Section 8.03(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 8.03(a)** exceeds the Basket, after which Buyer shall only be obligated for such aggregate Losses of Seller Indemnitees in excess of the Basket.

(f) Notwithstanding the foregoing, the limitations or “deductible” relating to the Basket set forth in **Section 8.04(a)** and **Section 8.04(a)** shall not apply to Losses (A) based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in, (i) with respect to this Agreement, **Section 3.01, Section 3.02, Section 3.03, Section 3.19** (including any claim under **Article VI** hereunder), **Section 3.21, Section 4.01** and **Section 4.04**, or, (ii) with respect to the

Affiliate Purchase Agreement, Sections 4.1, 4.2 and 4.3, (B) for any claim brought under Section 8.02(b) or (C) for any claim based on intentional fraud.

(g) For the sole purpose of determining the amount of Losses pursuant to a breach or inaccuracy of a representation or warranty (and not for determining whether or not any breaches or inaccuracies of representations or warranties have occurred), the representations and warranties shall not be deemed qualified by references to materiality or to Material Adverse Effect.

**Section 8.05 Indemnification Procedures.** The party making a claim under this **Article VIII** is referred to as the “**Indemnified Party**,” and the party against whom such claims are asserted under this **Article VIII** is referred to as the “**Indemnifying Party**.”

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than five (5) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is materially prejudiced by such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof provided by the claimant and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right (but not the obligation) to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, however*, that if the Indemnifying Party is the Sellers, such Indemnifying Party shall not have the right to control or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In such event, the Indemnified Party will have the right to select counsel of its choosing and to control the defense of the Third Party Claim at its own expense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it, subject to the



Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided, however, that*, if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of one (1) counsel to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 5.02**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which will not be unreasonably withheld, conditioned, or delayed) except (i) if the proposed settlement involves only the payment of money damages by the Indemnifying Party without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and (ii) provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 8.05(a)**, it shall not agree to any settlement without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss that does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than fifteen (15) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has



been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim (unless the Direct Claim is pursuant to a filed Action, in which case the Indemnifying Party has the period of time allowed at law to file a responsive pleading) (the “**Dispute Period**”). The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Company’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party disagrees with the validity or amount of all or a portion of such Direct Claim, the Indemnifying Party will deliver to the Indemnified Party written notice thereof (the “**Dispute Notice**”) prior to the expiration of the Dispute Period. If no Dispute Notice is received by the Indemnified Party within the Dispute Period or if Indemnifying Party provides notice that it does not have a dispute with respect to the Direct Claim, then such claim will be deemed approved and consented to and payable by the Indemnifying Party. If a Dispute Notice is received by the Indemnified Party within the Dispute Period, no payment will be made by the Indemnifying Party until such disputed Direct Claim is resolved, whether by adjudication of the matter, agreement between the Indemnifying Party and the Indemnified Party, or otherwise.

(d) **Tax Claims.** Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in **Section 3.19** hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in **Article VI**) shall be governed exclusively by **Article VI** hereof; provided, however, that, except for provisions in Article VI that conflict with this Article VIII, in which case Article VI controls, general indemnity provisions set forth in this Article VIII that are not covered by Article VI will remain solely subject to this Article VIII.

**Section 8.06 Suspension Rights under Promissory Note.** In the event that a Buyer Indemnitee is an Indemnified Party under a Third Party Claim or a Direct Claim, it shall, as its sole source of recourse until the Promissory Note has been cancelled, paid in full, or until there are pending claims for Losses equal to or greater than the amount due under the Promissory Note (in which event the Buyer Indemnitee may bring a concurrent claim or Action), suspend any payment of principal or interest becoming due under the Promissory Note, up to the amount in dispute in good faith in connection with the Third Party Claim or Direct Claim, but such suspended amount may not exceed the amount in dispute. Thereafter, subject to the provisions on this **Article VIII**, each Seller shall have liability for such Seller’s Pro Rata Share of the amount of any Losses. The suspension rights hereunder will not be considered a default under the Promissory Note and the

parties agree that the use of the Promissory Note as part of the initial Purchase Price for the Shares was designed as a holdback device and security to provide Buyer with an available fund should an indemnification claim arise. The parties agree that the use of such suspension is not inconsistent with the exclusive nature of this **Article VIII** as a remedy to resolve claims among the parties arising from the contemplated transaction. Once the Third Party Claim or Direct Claim is settled or otherwise resolved, and if the disposition requires the Indemnifying Party to pay the Indemnified Party, the Buyer may calculate all Losses consistent with such settlement or other resolution, offset against the Promissory Note, and apply the appropriate amount of suspended payments to the applicable recipients in payment of the Losses, in accordance with any court disposition or the terms hereof. No interest shall have accrued on any correctly suspended amounts. To the extent that any suspension involved amounts in excess of the applicable Losses (including a determination of zero Losses), such excess shall be immediately paid by Buyer to Sellers (assuming the initial due date has occurred) allocated to the Sellers based on their respective Pro Rata Share, together with accrued interest thereon at the rate required by the Promissory Note; provided, that, if pursuant to a Direct Claim only, the amount of Losses (excluding attorneys' fees) finally settled or otherwise resolved is equal to or less than ten percent (10%) of the amount suspended by Buyer under the Promissory Note with respect to that Direct Claim, then Buyer shall immediately pay Sellers (i) the difference between the suspended amount and the amount of Losses (excluding attorneys' fees) finally settled or otherwise resolved, (ii) accrued interest thereon at a rate of ten percent (10%) per annum from the date of suspension, and (iii) the reasonable attorneys' fees incurred by Sellers in connection with the defense of the Direct Claim in issue.

**Section 8.07 Payments.** The amount of any Loss for which a party can be indemnified under this Agreement shall be determined net of any Tax benefit, including without limitation a Tax deduction, derived by the Indemnified Party as a result of sustaining such Loss. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VIII**, and only after utilizing the suspension and offset rights against the Promissory Note as set forth in **Section 8.06**, if applicable, the Indemnifying Party shall satisfy its obligations within twenty (20) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

**Section 8.08 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.09 Exclusive Remedies.** Subject to **Section 5.03** and **Section 10.11**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from intentional fraud or criminal activity on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or

obligation set forth herein or in any Affiliate Purchase Agreement or otherwise relating to the subject matter of this Agreement or any Affiliate Purchase Agreement, shall be pursuant to the indemnification provisions set forth in **Article VI** and this **Article VIII**, or to specific remedial provisions in any of the Transaction Documents, including the right to accelerate payment obligations, that relate to the particular dispute in issue. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or in any Affiliate Purchase Agreement or otherwise relating to the subject matter of this Agreement or any Affiliate Purchase Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, *except* pursuant to the indemnification provisions set forth in **Article VI** and this **Article VIII** and the Transactional Documents, which exception also includes all Laws applicable to the enforcement of the referenced provisions or Documents, whether or not such Laws are specifically referenced herein or in the Transactional Documents. Nothing in this **Section 8.09** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's intentional fraud or criminal activity.

#### **Section 8.10 Additional Indemnification Provisions.**

(a) With respect to each indemnification obligation contained in this Agreement: (i) all Losses shall be net of any amounts that have been recovered or are recoverable by the Indemnified Party pursuant to any indemnification by, or indemnification agreement with, any third party or any insurance policy or other cash receipts or sources of reimbursement in respect of such Loss, and (ii) the Indemnifying Party shall not be liable for any Losses to the extent that such Losses suffered by any Indemnified Party result from any improper or illegal act or omission by such Indemnified Party or an act by such party outside the ordinary course of business as currently conducted.

(b) If an Indemnifying Party makes any payment for any Losses suffered or incurred by an Indemnified Party pursuant to the provisions of this **Article VIII**, such Indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Indemnified Party to any insurance benefits or other claims of the Indemnified Party with respect to such Losses and with respect to the claim giving rise to such Losses, but only to the extent that net payments recovered from an insurer or other third party (net of the costs of pursuing such claim), which payments relate to the same claim covered by the Indemnifying Party and, when such net payments are added to any indemnification payments made by the Indemnifying Party, exceed the actual losses suffered by the Indemnified Party.

**Section 8.11 Mitigation.** Each party shall, and shall cause its applicable Affiliates (including the Company) and Representatives to, take all commercially

reasonable steps to mitigate their respective Losses upon and after becoming actually aware with no duty of inquiry of any fact, event, circumstance or condition that has given rise to or would reasonably be expected to give rise to, any Losses for which it would have the right to seek indemnification hereunder.

**Section 8.12 Third Party Remedies.** If any Indemnified Party or any of its Affiliates is at any time entitled (whether by reason of a contractual right, a right to take or bring an Action, availability of insurance, or a right to require a payment discount or otherwise) to recover from another Person any net after cost amount in respect of any matter giving rise to a Loss (whether before or after the Indemnifying Party has made a payment to an Indemnified Party hereunder and in respect thereof), the Indemnified Party shall (and shall cause its applicable Affiliates and Representatives to) (a) promptly notify the Indemnifying Party and provide such information as the Indemnifying Party may require relating to such right of recovery and the steps taken or to be taken by the Indemnified Party in connection therewith, (b) if so requested by the Indemnifying Party (subject to the Indemnified Party being indemnified to its reasonable satisfaction by the Indemnifying Party against all reasonable out-of-pocket costs and expenses incurred by the Indemnified Party in respect thereof) consider in its reasonable judgment concurrently taking all steps (whether by making a claim against its insurers, commencement of an Action or otherwise) to pursue such recovery, and (c) keep the Indemnifying Party fully informed of the progress of any action taken in respect thereof. Thereafter, any claim against the Indemnifying Party shall be limited (in addition to the other limitations referred to in this Agreement) to the amount by which the total Losses suffered by the Indemnified Party exceed the amounts then so recovered by the Indemnified Party or any such Affiliate. If the Indemnified Parties recover any amounts in respect of Losses from any third party at any time after the Indemnifying Party has paid all or a portion of such Losses to the Indemnified Parties pursuant to the provisions of this Article VIII, the Indemnified Party shall, promptly (and in any event within five Business Days after receipt) pay over to the Indemnifying Party the amount so received (to the extent previously paid by the Indemnifying Party), but only to the extent that all net recoveries from the Indemnified Party, when added to the Losses received from third parties or insurers, exceed the gross amount of Losses suffered by the Indemnified Party.

**Section 8.13 Indemnification for Attorneys' Fees.** Notwithstanding anything to the contrary in this Agreement, including Sections 8.04(c) and 8.04(d), any reasonable attorneys' fees actually incurred and paid by an Indemnified Party and included in the calculation of Losses, shall be reimbursed by the Indemnifying Party.

**ARTICLE IX**  
**Intentionally Left Blank**

**ARTICLE X**  
**Miscellaneous**

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred. With respect to Sellers, the fees and costs incurred by them must be incurred individually and not by the Company.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Sellers:

Wolfgang Reile  
3120 Verde Avenue  
Carlsbad, CA 92009  
Facsimile: (760) 736-3701  
E-mail: [rwg@rwgusa.com](mailto:rwg@rwgusa.com)

Anthony Beltran  
3750 Saddle Drive  
Carlsbad CA, 92010  
Facsimile: (760) 536-0509  
E-mail: [yes@anthony.rocks](mailto:yes@anthony.rocks)

with a copy to:

Paul Hastings LLP  
Facsimile: (858) 458-3130  
E-mail: [carlsanchez@paulhastings.com](mailto:carlsanchez@paulhastings.com)  
Attention: Carl R. Sanchez, Esq.



If to Buyer:

Afilias, plc  
Buyer U.S. Address  
Facsimile: \_\_\_\_\_  
E-mail: shemphill@afilias.info  
Attention: Scott Hemphill, Esq.

with a copy to:

Blank Rome, LLP  
Facsimile: (424) 239-3810  
E-mail: jrichter@blankrome.com  
Attention: Jeffrey R. Richter, Esq.

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein, as well as the preamble and recitals hereto, shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in **Section 5.03(e)**, upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with

respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries, *provided*, that no such assignment shall release Buyer from any liability under this Agreement. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.08 No Third-party Beneficiaries.** Except as provided in **Section 5.09**, **Section 6.03** and **Article VIII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto, including each Seller. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving, which waiver only requires the signature of one Seller. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### **Section 10.10 Governing Law; Submission to Jurisdiction**

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

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF CALIFORNIA IN EACH CASE LOCATED IN THE CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR 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 SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

**Section 10.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

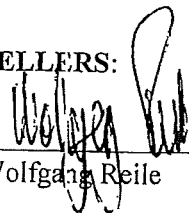
**Section 10.12 Attorneys' Fees.** In the event of any Action brought in connection with this Agreement or any Transaction Document seeking any of the remedies authorized hereby, the non-prevailing party will reimburse the prevailing party for its reasonable attorneys' fees incurred in such Action.

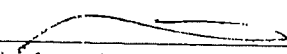
**Section 10.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above individually, with respect to Sellers, or by its duly authorized officer, with respect to Buyer.

**SELLERS:**

  
\_\_\_\_\_  
Wolfgang Reile

  
\_\_\_\_\_  
Anthony Beltran

**BUYER:**

Afilias, plc

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to SPA]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above individually, with respect to Sellers, or by its duly authorized officer, with respect to Buyer.

**SELLERS:**

\_\_\_\_\_  
Wolfgang Reile

\_\_\_\_\_  
Anthony Beltran

**BUYER:**

Afilias, plc

By: HW SPIERS  
Name: HW SPIERS  
Title: CFO

[Signature Page to SPA]



# **EXHIBIT 2**

**PROMISSORY NOTE**

\$3,000,000.00

September 3, 2015

**FOR VALUE RECEIVED, AFILIAS, PLC**, an Irish public limited company (the “**Buyer**”) hereby promises to pay to **Wolfgang Reile**, an individual (“**Reile**”) and **Anthony M. Beltran**, an individual (“**Beltran**”, together with Reile, collectively the “**Sellers**” and each a “**Seller**”), in lawful money of the United States of America and in immediately available funds, the principal amount of THREE MILLION DOLLARS (\$3,000,000.00) plus all accrued and payable interest pursuant to the terms hereof, or such greater or lesser sum, if any, as may be due pursuant to that certain Stock Purchase Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”), by and among the Buyer and the Sellers. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement.

As set forth in the Agreement, pursuant to Section 8.06 of the Agreement, in the event that the Buyer is an Indemnified Party under the Agreement, it has the right to suspend any payment of principal or interest becoming due under this Promissory Note up to the amount in dispute and subject to the other terms and conditions of Section 8.06 and otherwise in the Agreement. Moreover, once the applicable claim is settled or otherwise resolved, and if the disposition requires the Sellers to pay the Buyer, the Buyer may calculate all Losses consistent with such settlement or other resolution and offset such amounts against this Promissory Note to the extent of any remaining balance and apply the appropriate amount of suspended payments to the Sellers in payment of the Losses, in accordance with any court disposition or the terms of the Agreement. Nothing herein shall limit the ability of Buyer to seek further remedy if the offset against this Promissory Note exhausts the principal balance hereunder and does not represent repayment for all Losses, subject to limitations on indemnification set forth in this Agreement. In the event that finally determined or otherwise mutually agreed upon Losses result in offsets that reduce the principal balance and all accrued interest to zero, this Promissory Note shall automatically be deemed cancelled and retired without any further action necessary on the part of Buyer or any Seller.

As set forth in the Agreement, pursuant to Section 2.04 of the Agreement, in the event that the Post-Closing Adjustment is (i) a positive number as finally determined under the Agreement, the principal amount due under this Promissory Note shall be increased by such Post-Closing Adjustment amount, such increase shall be deemed to have occurred on the Closing Date for purposes of calculating accrued interest hereunder, and such Post-Closing Adjustment amount, together with all accrued and unpaid interest on such Post-Closing Adjustment amount, shall be paid on the one-year anniversary of the date hereof, or (ii) a negative number as finally determined under the Agreement, the principal amount due under this Promissory Note shall be decreased by such Post-Closing Adjustment amount to the extent of any remaining balance, and such decrease shall be deemed to have occurred on the Closing Date for purposes of calculating accrued interest hereunder.

Nothing herein shall limit the ability of Buyer to seek further remedy if the offset against this Promissory Note exhausts the principal balance hereunder and does not represent repayment for the Post-Closing Adjustment owed by Sellers under the Agreement. In the event that the

finally determined Post-Closing Adjustment results in an offset that reduce the principal balance and all accrued interest to zero, this Promissory Note shall automatically be deemed cancelled and retired without any further action necessary on the part of Buyer or any Seller.

Interest on the principal amount hereunder remaining unpaid from time to time shall accrue at the rate of five percent (5%) per annum (computed based on the actual number of days elapsed in any year and calculated on the principal amount of the Promissory Note outstanding from time to time until paid in full), commencing on the date hereof, and shall be payable in cash quarterly in arrears, commencing on the fifth (5<sup>th</sup>) Business Day following the final determination of the Post-Closing Adjustment under the Agreement, and continuing on the first Business Day of each fiscal quarter thereafter.

On September 3, 2016, the one-year anniversary of the date first written above, Buyer shall make a payment of principal outstanding hereunder in an amount equal to two thirds ( $\frac{2}{3}$ ) of such outstanding principal balance (calculated after giving effect to one hundred percent (100%) of any Post-Closing Adjustment pursuant to Section 2.04 of the Agreement), together with any accrued and unpaid interest thereon, of this Promissory Note after giving effect to any suspensions or offsets thereof pursuant to Section 8.06 and Section 2.04 of the Agreement. On September 3, 2017, the two-year anniversary of the date first written above, Buyer shall make a payment of the remaining principal balance of this Promissory Note, together with all accrued and unpaid interest thereon, subject to all rights of suspension and offset set forth in Section 8.06 of the Agreement. Payments will be directed among the Sellers as directed under the Agreement, or as instructed by Sellers in a jointly executed instruction received in writing by Buyer within thirty days prior to any payment due hereunder.

Notwithstanding anything to the contrary set forth herein, the entire then-outstanding principal balance due under this Promissory Note (calculated after giving effect to one hundred percent (100%) of any adjustments to such principal balance pursuant to the Agreement, as set forth herein), together with all accrued and unpaid interest thereon, shall be immediately due and payable (and collectible by the Sellers pursuant to any applicable Law) if: (i) Buyer fails to timely pay any interest payment due under this Promissory Note within five (5) days after receiving notice from Sellers that Sellers have not received such payment when the same was due and payable; (ii) Buyer fails to timely pay any principal payment due under this Promissory Note within five (5) days after receiving notice from Sellers that Sellers have not received such payment when the same was due and payable; (iii) Buyer makes any assignment for the benefit of its creditors or enters into any composition assignment or arrangement with any of its creditors; (iv) Buyer files any petition or complaint pursuant to bankruptcy or insolvency laws seeking (a) the adjudication of Buyer as bankrupt or insolvent, (b) an "order for relief" under such statutes or (c) a reorganization of or a plan of arrangement for Buyer; (v) Buyer is the subject of the filing of any petition or complaint pursuant to bankruptcy or insolvency laws seeking any of the actions specified in clause (iv) above and such petition or complaint is not dismissed within thirty (30) days from the filing thereof; (vi) any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments under this Promissory Note other than a suspension authorized by the terms of this Promissory Note pursuant to Section 8.06 of the Agreement, a moratorium of any indebtedness, winding-up, dissolution, examination, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of Buyer; or (vii) the appointment of a liquidator, receiver,

examiner, administrator, administrative receiver, compulsory manager or other similar officer in respect of Buyer or any of its assets.

This Promissory Note is the "Promissory Note" referred to in the Agreement and shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction). All provisions of the Agreement regarding enforcement of rights and remedies are incorporated herein by reference to the extent applicable.

*[signature page follows]*

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note the day and year first written above intending to be legally bound hereby.


Affias, plc

By:

Name:

Title:

L. S.  
K. S. P. O. R.  
CFO

 AB

[Signature Page to Promissory Note]