

INTEGRATED DEVICE TECHNOLOGY INC

FORM 8-K (Current report filing)

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

February 13, 2017
Date of Report (Date of earliest event reported)

Integrated Device Technology, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

0-12695
(Commission
File Number)

94-2669985
(IRS Employer
Identification No.)

6024 Silver Creek Valley Road, San Jose, California 95138
(Address of principal executive offices)(Zip Code)

(408) 284-8200
Registrant's telephone number, including area code

Not Applicable
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On February 13, 2017, Integrated Device Technology, Inc., a Delaware corporation (“**IDT**”), Glider Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of IDT (“**Purchaser**”), and GigPeak, Inc., a Delaware corporation (“**GigPeak**”), entered into a definitive Agreement and Plan of Merger (the “**Merger Agreement**”), pursuant to which the Purchaser, will commence a tender offer (the “**Offer**”) to acquire all of the outstanding shares of GigPeak’s common stock, par value \$0.001 per share (the “**Shares**”), at a price of \$3.08 per share in cash (the “**Offer Price**”), without interest and subject to any applicable withholding taxes, on the terms and subject to the conditions set forth in the Merger Agreement.

The Purchaser will commence the Offer as promptly as reasonably practicable (and in any event within fifteen (15) business days from the date of the Merger Agreement). The Offer will expire at midnight (New York City time) at the end of the day on the date that is twenty (20) business days (calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) following the commencement of the Offer, unless extended in accordance with the terms of the Merger Agreement, including as required by the applicable rules and regulations of the United States Securities and Exchange Commission. Completion of the Offer is subject to several conditions, including: (i) there being validly tendered in the Offer and not properly withdrawn that number of Shares which, together with the number of Shares (if any) then owned by IDT or any of its wholly-owned subsidiaries represents at least a majority of the Shares then outstanding (determined on a fully-diluted basis) and no less than a majority of the voting power of the Shares then outstanding Shares (determined on a fully diluted basis); (ii) the expiration or early termination of any applicable waiting period or receipt of required clearance, consent authorization or approval relating to the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; and (iii) certain other customary conditions set forth on Annex I of the Merger Agreement.

As soon as practicable following the consummation of the Offer, and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, the Purchaser will merge with and into GigPeak, with GigPeak surviving as a wholly-owned subsidiary of IDT, pursuant to the provisions of Section 251(h) of the General Corporation Law of the State of Delaware, with no stockholder approval required to consummate the Merger (the “**Merger**”). Each Share issued and outstanding immediately prior to the effective time of the Merger (the “**Effective Time**”), other than any Shares (i) that are owned by or held in the treasury of GigPeak, or owned by IDT or any direct or indirect wholly-owned Subsidiaries of IDT or GigPeak or (ii) in respect of which appraisal rights were perfected in accordance with Section 262 of the General Corporation Law of the State of Delaware, will be automatically converted into the right to receive an amount in cash equal to the Offer Price without interest and subject to any applicable withholding taxes.

As a result of the Merger, (i) each option to purchase Shares (a “**GigPeak Option**”) with an exercise price that is less than the Offer Price that is outstanding immediately prior to the Effective Time will be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash equal to the product obtained by multiplying (a) the aggregate number of Shares subject to such GigPeak Option immediately prior to the Effective Time and (b) the excess, of the Offer Price over the exercise price per share of such GigPeak Option; (ii) each GigPeak Option with an exercise price greater than or equal to the Offer Price that is outstanding immediately prior to the Effective Time will be cancelled immediately prior to the Effective Time in exchange for no consideration; (iii) each restricted stock unit with respect to the Shares (a “**GigPeak RSU**”) that is outstanding and is not an Assumed RSU (as defined below) (including GigPeak RSUs for which the vesting is accelerated due to the consummation of the transactions contemplated by the Merger Agreement pursuant to a contract in effect as of the date of the Merger Agreement) shall vest in full to the extent unvested and be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash equal to the product obtained by multiplying (a) the aggregate number of Shares subject to such GigPeak RSU immediately prior to the Effective Time and (b) the Offer Price; (iv) each GigPeak RSU that is outstanding and unvested immediately prior to the Effective Time (after giving effect to any accelerated vesting that occurs solely due to the consummation of the transactions contemplated by the Merger Agreement pursuant to a contract in effect as of the date of the Merger Agreement) and is held by an employee or service provider of the GigPeak (an “**Assumed RSU**”) will be assumed by IDT and converted automatically at the Effective Time into a restricted stock unit covering common stock of

IDT having, subject to applicable Laws, the same terms and conditions as the GigPeak RSU, except that each such GigPeak RSU will entitle the holder, upon settlement, to that number of whole shares of common stock of IDT equal to the product of (a) the number of Shares that were issuable with regard to such GigPeak RSU immediately prior to the Effective Time, multiplied by (b) a fraction (such ratio, the “*Exchange Ratio*”), the numerator of which is the Offer Price and the denominator of which is the volume weighted average price for a share of common stock of IDT on the Nasdaq Global Select Market, calculated to four decimal places and determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours, for the five consecutive trading days ending on the third complete trading day prior to (and excluding) the Closing Date as reported by Bloomberg, L.P., and rounding such product down to the nearest whole number of shares of common stock of IDT; (v) each warrant to purchase Shares with an exercise price that is less than the Offer Price that is outstanding immediately prior to the Effective Time, in accordance with its terms, either (a) be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash equal to the product obtained by multiplying (I) the aggregate number of Shares for which such warrant was exercisable immediately prior to the Effective Time and (II) the excess of the Offer Price over the exercise price per share of such warrant or (b) exercised immediately prior to the Effective Time and the Shares issued upon the exercise of such warrant will be deemed outstanding and held by the holder thereof and will be deemed to have been cancelled in the Merger, and the holder will have the right to receive (I) the merger consideration payable with respect to such Shares in accordance with the Merger Agreement less (II) the amount of the aggregate exercise price of the Shares; and (vi) each warrant to purchase Shares with an exercise price equal to or greater than the Offer Price that is outstanding immediately prior to the Effective Time will be cancelled immediately prior to the Effective Time in exchange for no consideration.

IDT, the Purchaser and GigPeak have made customary representations, warranties and covenants in the Merger Agreement, including using commercially reasonable efforts to consummate and make effective the transactions contemplated by the Merger Agreement as promptly as practicable. GigPeak has agreed to (i) conduct its business in the ordinary course of business consistent with past practice, including not taking certain specified actions, prior to consummation of the Merger, (ii) use its commercially reasonable efforts to keep available the services of the current officers, employees and consultants of GigPeak, and (iii) use commercially reasonable efforts to preserve intact its business organization, the value of its assets, present relationships and goodwill with governmental authorities. Furthermore, GigPeak has agreed not to, directly or indirectly, (i) solicit, initiate, knowingly facilitate or encourage (including by way of furnishing non-public information) any competing proposal or competing inquiry, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other Person any information or afford to any other Person access to the business, properties, assets, books, records or any personnel of the Company or its subsidiaries, in each case in connection with or for the purpose of encouraging or facilitating, a competing proposal or competing inquiry, (iii) approve, endorse, recommend, execute or enter into any term sheet, letter of intent, acquisition agreement, or similar contract (other than an acceptable confidentiality agreement) with respect to any competing proposal or (iv) certain other restrictions set forth in the Merger Agreement. Subject to the satisfaction of certain conditions, GigPeak and its board of directors, as applicable, are permitted to take certain actions which may, as more fully described in the Merger Agreement, include changing the board of directors’ recommendation following receipt of an unsolicited proposal, if the board of directors of GigPeak concludes in good faith, after consultation with GigPeak’s independent financial advisors and outside legal counsel, that such unsolicited proposal constitutes a superior proposal and that the failure to enter into such definitive agreement would be reasonably likely to result in a breach of, or otherwise be inconsistent with, its fiduciary duties under applicable law.

The Merger Agreement contains certain termination rights for each of GigPeak and IDT, including if the Offer is not consummated on or prior to June 30, 2017. Upon termination of the Merger Agreement under specified circumstances, including IDT’s termination due to a change in the recommendation of GigPeak’s board of directors, GigPeak will be required to pay to IDT a termination fee of \$9,250,000.

The Merger Agreement has been unanimously approved by the board of directors of each of IDT, the Purchaser and GigPeak. The board of directors of GigPeak unanimously recommends that stockholders of GigPeak tender their Shares in the Offer.

The foregoing description of the Offer, the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is attached hereto as Exhibit 2.1. The Merger Agreement has been incorporated herein by reference to provide information regarding the terms of the Merger Agreement and is not intended to modify or supplement any factual disclosures about GigPeak, IDT or the Purchaser in any public reports filed with the U.S. Securities and Exchange Commission (“**SEC**”) by GigPeak or IDT. In particular, the assertions embodied in the representations, warranties and covenants contained in the Merger Agreement were made only for the purposes of the Merger Agreement, were solely for the benefit of the parties to the Merger Agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by information in confidential disclosure schedules provided by GigPeak to IDT in connection with the signing of the Merger Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, the representations and warranties in the Merger Agreement were used for the purpose of allocating risk between GigPeak, IDT and the Purchaser, rather than establishing matters of fact. Accordingly, the representations and warranties in the Merger Agreement may not constitute the actual state of facts about GigPeak, IDT or the Purchaser. The representations and warranties set forth in the Merger Agreement may also be subject to a contractual standard of materiality different from that generally applicable to investors under federal securities laws. Therefore, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement, and not to provide investors with any other factual information regarding the parties or their respective businesses.

Tender and Support Agreement

On February 13, 2017, in connection with the Merger Agreement, IDT and the Purchaser entered into Tender and Support Agreements (the “**Support Agreements**”) with each of the members of the board of directors of GigPeak (together, the “**Supporting Stockholders**”), which provide, among other matters, that the Supporting Stockholders will (i) tender their Shares in the Offer and (ii) support the Merger. As of February 10, 2017, the Supporting Stockholders owned an aggregate of approximately 1.7% of the Shares. The Supporting Stockholders’ obligations under the Support Agreements terminate in the event that the Merger Agreement is terminated in accordance with its terms.

The foregoing description of the Support Agreements does not purport to be complete and is qualified in its entirety by reference to the form of the Support Agreement, which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Debt Commitment Letter

In connection with the Merger Agreement, IDT entered into a commitment letter (the “**Debt Commitment Letter**”) with JPMorgan Chase Bank, N.A. (“**JPMorgan**”) on February 13, 2017, pursuant to which JPMorgan has committed to provide \$200 million of senior secured term loans (the “**Financing**”), the proceeds of which would be used (i) to repay outstanding debt of GigPeak, (ii) to fund a portion of the consideration payable in the Offer and the Merger, (iii) to pay fees and expenses related to the Offer, the Merger and the Financing and (iv) for general corporate purposes. The definitive documentation governing the Financing has not been finalized, and accordingly, the actual terms may differ from the description of such terms in the Debt Commitment Letter. The consummation of the Offer and the Merger is not conditioned upon receipt of the proceeds from the Financing or any replacement financing.

The above description of the Debt Commitment Letter does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Debt Commitment Letter, which is attached hereto as Exhibit 10.1.

Item 8.01 Other Events.

On February 13, 2017, IDT and GigPeak issued a joint press release in connection with the Merger. A copy of the press release is attached hereto as Exhibit 99.2 and is incorporated by reference herein.

Additional Information and Where to Find It

This report does not constitute an offer to sell or the solicitation of an offer to buy any securities. The tender offer for the outstanding shares of GigPeak's common stock described in this report has not commenced. At the time the tender offer is commenced, IDT will file or cause to be filed a Tender Offer Statement on Schedule TO with the SEC and GigPeak will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC related to the tender offer. The Tender Offer Statement (including an Offer to Purchase, a related Letter of Transmittal and other tender offer documents) and the Solicitation/Recommendation Statement will contain important information that should be read carefully before any decision is made with respect to the tender offer. Those materials will be made available to GigPeak's stockholders at no expense to them by the information agent to the tender offer, which will be announced. In addition, all of those materials (and any other documents filed with the SEC) will be available at no charge on the SEC's website at www.sec.gov.

Forward-Looking Statements

This report contains forward-looking statements, including, but not limited to, statements related to the anticipated consummation of the acquisition of GigPeak and the timing, benefits and financing thereof, IDT's strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, anticipated product portfolio, development programs, patent terms and other statements that are not historical facts. These forward-looking statements are based on IDT's current expectations and inherently involve significant risks and uncertainties. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to IDT's ability to complete the transaction on the proposed terms and schedule; whether IDT or GigPeak will be able to satisfy their respective closing conditions related to the transaction; whether sufficient stockholders of GigPeak tender their shares of GigPeak common stock in the transaction; whether IDT will obtain financing for the transaction on the expected timeline and terms; the outcome of legal proceedings that may be instituted against GigPeak and/or others relating to the transaction; the possibility that competing offers will be made; risks associated with acquisitions, such as the risk that the businesses will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of the transaction will not occur; risks related to future opportunities and plans for the acquired company and its products, including uncertainty of the expected financial performance of the acquired company and its products; disruption from the proposed transaction, making it more difficult to conduct business as usual or maintain relationships with customers, employees or suppliers; the calculations of, and factors that may impact the calculations of, the acquisition price in connection with the proposed merger and the allocation of such acquisition price to the net assets acquired in accordance with applicable accounting rules and methodologies; and the possibility that if the acquired company does not achieve the perceived benefits of the proposed transaction as rapidly or to the extent anticipated by financial analysts or investors, the market price of IDT's shares could decline, as well as other risks related to IDT's and GigPeak's businesses detailed from time-to-time under the caption "Risk Factors" and elsewhere in IDT's and the GigPeak's respective SEC filings and reports, including the Annual Report of GigPeak on Form 10-K for the year ended December 31, 2015 and the Annual Report of IDT on Form 10-K for the year ended April 3, 2016. IDT undertakes no duty or obligation to update any forward-looking statements contained in this presentation as a result of new information, future events or changes in its expectations.

Item 9.01 Financial Statements and Exhibits.**(d) Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
2.1*	Agreement and Plan of Merger, dated February 13, 2017, by and among Integrated Device Technology, Inc., Glider Merger Sub, Inc. and GigPeak, Inc.
10.1	Commitment Letter, dated February 13, 2017, between JP Morgan Chase Bank, N.A. and Integrated Device Technology, Inc.
99.1	Tender and Support Agreement by and among Integrated Device Technology, Inc., Glider Merger Sub, Inc. and certain stockholders of GigPeak, Inc.
99.2	Joint press release issued by GigPeak, Inc. and Integrated Device Technology, Inc. on February 13, 2017

* Schedules and exhibits to the Agreement and Plan of Merger have been omitted pursuant to Item 601(b)(2) of Regulation S-K. IDT will furnish copies of any such schedules and exhibits to the SEC upon request.

SIGNATURE

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

Date: February 13, 2017

INTEGRATED DEVICE TECHNOLOGY, INC.

By: /s/ Brian C. White

Name: Brian C. White

Title: Vice President and Chief Financial Officer
(duly authorized officer)

EXHIBIT INDEX

Exhibit No.	Description
2.1*	Agreement and Plan of Merger, dated February 13, 2017, by and among Integrated Device Technology, Inc., Peak Merger Sub, Inc. and GigPeak, Inc.
10.1	Commitment Letter, dated February 13, 2017, between JP Morgan Chase Bank, N.A. and Integrated Device Technology, Inc.
99.1	Tender and Support Agreement by and among Integrated Device Technology, Inc., Glider Merger Sub, Inc. and certain stockholders of GigPeak, Inc.
99.2	Joint press release issued by GigPeak, Inc. and Integrated Device Technology, Inc. on February 13, 2017

* Schedules and exhibits to the Agreement and Plan of Merger have been omitted pursuant to Item 601(b)(2) of Regulation S-K. IDT will furnish copies of any such schedules and exhibits to the SEC upon request.

AGREEMENT AND PLAN OF MERGER

by and among

INTEGRATED DEVICE TECHNOLOGY, INC.,

GLIDER MERGER SUB, INC.,

and

GIGPEAK, INC.

Dated as of February 13, 2017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I THE OFFER AND THE MERGER	2
1.1 The Offer	2
1.2 Company Actions	5
1.3 The Merger	6
1.4 Certificate of Incorporation and Bylaws	7
1.5 Directors and Officers	7
1.6 Necessary Further Action	8
ARTICLE II CONVERSION OF SECURITIES IN THE MERGER	8
2.1 Conversion of Securities	8
2.2 Payment for Securities; Surrender of Certificates	9
2.3 Dissenting Shares	12
2.4 Treatment of Company Options, Company RSUs	12
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY	15
3.1 Organization and Qualification; Subsidiaries	15
3.2 Capitalization	16
3.3 Authority	18
3.4 No Conflict	20
3.5 Required Filings and Consents	20
3.6 Permits; Compliance With Law	21
3.7 SEC Filings; Financial Statements	22
3.8 Internal Controls; Sarbanes-Oxley Act	23
3.9 Books and Records	24
3.10 No Undisclosed Liabilities	25
3.11 Absence of Certain Changes or Events	25
3.12 Employee Benefit Plans	25
3.13 Labor and Other Employment Matters	28
3.14 Contracts; Indebtedness	29
3.15 Litigation	33
3.16 Environmental Matters	33
3.17 Intellectual Property	34
3.18 Product Warranty	39
3.19 Tax Matters	39
3.20 Insurance	41
3.21 Properties and Assets	42
3.22 Real Property	42
3.23 Opinion of Financial Advisor	43
3.24 Information in the Offer Documents and Schedule 14D-9	43

Table of Contents

3.25	Brokers	44
3.26	No Other Representations or Warranties	44
3.27	Disclaimer of Other Representations and Warranties	44
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND THE PURCHASER		44
4.1	Organization and Qualification	45
4.2	Authority	45
4.3	No Conflict	46
4.4	Required Filings and Consents	46
4.5	Litigation	46
4.6	Information in the Offer Documents and Schedule 14D-9	47
4.7	Sufficiency of Funds	47
4.8	Ownership of the Purchaser; No Prior Activities	47
4.9	DGCL Section 203	47
4.10	Brokers	47
4.11	No Other Representations or Warranties	48
4.12	Disclaimer of Other Representations and Warranties	48
ARTICLE V COVENANTS		48
5.1	Conduct of Business	48
5.2	Access to Information	52
5.3	No Solicitation	53
5.4	Appropriate Action; Consents; Filings	56
5.5	Certain Notices	59
5.6	Public Announcements	59
5.7	Indemnification of Directors and Officers	59
5.8	State Takeover Laws	60
5.9	Section 16 Matters	61
5.10	Employees and Employee Benefit Plan Matters	61
5.11	Rule 14d-10(d) Matters	62
5.12	Stockholder Litigation	63
5.13	Exchange Delisting Matters	63
5.14	Obligations of the Purchaser	63
5.15	FIRPTA Certificate	64
5.16	Directors and Officers	64
5.17	Financing Cooperation	64
ARTICLE VI CONDITIONS TO CONSUMMATION OF THE MERGER		65
6.1	Conditions to Obligations of Each Party Under This Agreement	65
6.2	Frustration of Closing Conditions	66

[Table of Contents](#)

ARTICLE VII TERMINATION, AMENDMENT AND WAIVER	66
7.1 Termination	66
7.2 Effect of Termination	67
7.3 Amendment	69
7.4 Waiver	69
ARTICLE VIII GENERAL PROVISIONS	70
8.1 Non-Survival of Representations and Warranties	70
8.2 Fees and Expenses	70
8.3 Notices	70
8.4 Certain Definitions	71
8.5 Terms Defined Elsewhere	83
8.6 Headings	85
8.7 Severability	85
8.8 Entire Agreement	85
8.9 Assignment	85
8.10 No Third-Party Beneficiaries	85
8.11 Provisions Applicable to Financing Sources	85
8.12 Mutual Drafting; Interpretation	86
8.13 Governing Law; Consent to Jurisdiction; Enforcement; Waiver of Trial by Jury	87
8.14 Counterparts	88
8.15 Specific Performance	88
8.16 Non-Recourse	89

ANNEXES AND EXHIBITS

Annex I	Conditions to the Offer
Exhibit A	Form of Tender and Support Agreement
Exhibit B	Form of Certificate of Incorporation of the Surviving Corporation
Exhibit C	Form of By-Laws of the Surviving Corporation

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of February 13, 2017 (as amended, restated, modified or supplemented from time to time, this “**Agreement**”), by and among Integrated Device Technology, Inc., a Delaware corporation (“**Parent**”), Glider Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (the “**Purchaser**”) and GigPeak, Inc., a Delaware corporation (the “**Company**”). All capitalized terms used in this Agreement shall have the meanings assigned to such terms in Section 8.4 or as otherwise defined elsewhere in this Agreement, unless the context clearly indicates otherwise.

RECITALS

WHEREAS, pursuant to this Agreement, the Purchaser has agreed to commence a tender offer (as it may be extended, amended and supplemented from time to time, as permitted by this Agreement, the “**Offer**”) to acquire all of the outstanding shares of common stock, par value \$0.001 per share, of the Company, including all associated Rights under the Company Rights Agreement (the “**Shares**”) at a price per Share of \$3.08 in cash (such amount or any different amount per Share that may be paid pursuant to the Offer in accordance with this Agreement, the “**Offer Price**”), without interest, subject to any applicable withholding taxes;

WHEREAS, following the acceptance for payment of Shares pursuant to the Offer, upon the terms and subject to the conditions set forth in this Agreement, the Purchaser will be merged with and into the Company, with the Company continuing as the Surviving Corporation (the “**Merger**”);

WHEREAS, the parties intend that the Merger shall be governed by Section 251(h) of the General Corporation Law of the State of Delaware (the “**DGCL**”) and shall be effected as soon as practicable following consummation of the Offer upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the board of directors of the Company (the “**Company Board**”) has, upon the terms and subject to the conditions set forth herein, unanimously (i) determined that the transactions contemplated by this Agreement, including the Offer and the Merger, are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger, and (iii) recommended that the Company’s stockholders accept the Offer and tender their Shares to the Purchaser in the Offer (the “**Board Recommendation**”);

WHEREAS, the Continuing Directors of the Company, voting separately and as a subclass of the Company Board have, upon the terms and subject to the conditions set forth herein, unanimously (i) determined that the transactions contemplated by this Agreement, including the Offer and the Merger, are fair to and in the best interests of the Company and its stockholders, (ii) approved the transactions contemplated by this Agreement, including the Offer and the Merger, as a “**Business Combination**” (as defined in the Company Charter) for purposes of Article XI.D of the Company Charter; (iii) approved the amendment of the Company Charter in accordance with Section 1.4(a) for purposes of Article VII.C of the Company Charter;

[Table of Contents](#)

(iv) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger and (v) recommended that the Company's stockholders accept the Offer and tender their Shares to the Purchaser in the Offer (the "**Continuing Director Recommendation**" and together with the Board Recommendation, the "**Company Board Recommendation**");

WHEREAS, the boards of directors of Parent and the Purchaser have, upon the terms and subject to the conditions set forth herein, approved, adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger;

WHEREAS, as a condition to and inducement of Parent's and the Purchaser's willingness to enter into this Agreement, simultaneously with the execution of this Agreement, certain stockholders of the Company have executed and delivered to Parent and the Purchaser a Tender and Support Agreement in substantially the form attached hereto as Exhibit A, with such changes thereto as may have been approved by Parent prior to the date hereof (each, a "**Tender Agreement**"), dated as of the date hereof, pursuant to which such stockholders have, among other matters, agreed to (i) tender the Shares beneficially owned by them in the Offer and (ii) support the Merger and the other transactions contemplated hereby, each on the terms and subject to the conditions set forth in the Tender Agreements; and

WHEREAS, Parent, the Purchaser and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Offer and the Merger and also to prescribe various conditions to the Offer and the Merger.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement agree as follows:

ARTICLE I THE OFFER AND THE MERGER

1.1 The Offer.

(a) As promptly as reasonably practicable (and in any event within fifteen (15) Business Days after the date of this Agreement, as such period may be extended by Parent and the Purchaser if and to the extent the Company fails to satisfy its obligations pursuant to the Section 1.1(g)(iv)), the Purchaser shall commence, within the meaning of Rule 14d-2 under the Exchange Act, the Offer to purchase all of the outstanding Shares for cash at the Offer Price. The consummation of the Offer, and the obligation of the Purchaser to accept for payment and pay for Shares tendered pursuant to the Offer (and any obligation of Parent to cause Purchaser to accept for payment and pay for Shares tendered pursuant to the Offer), shall be subject to: (i) there being validly tendered in the Offer and not properly withdrawn prior to the Expiration Date that number of Shares which, together with the number of Shares (if any) then owned by Parent or any of its wholly-owned direct or indirect Subsidiaries, including the Purchaser, represents at least a majority of the Shares then outstanding (determined on a fully diluted basis) and no less than a majority of the voting power of the shares of capital stock of the Company

[Table of Contents](#)

then outstanding (determined on a fully diluted basis) and entitled to vote upon the adoption of this Agreement and approval of the Merger (excluding from the number of tendered Shares, but not from the number of outstanding Shares, Shares tendered pursuant to guaranteed delivery procedures (to the extent such procedures are permitted by the Purchaser) that have not yet been delivered in settlement or satisfaction of such guarantee) (collectively, the “**Minimum Condition**”) and (ii) the satisfaction, or waiver by the Purchaser (to the extent permitted in [Annex I](#)), of each of the other conditions and requirements set forth in [Annex I](#). Subject to [Annex I](#), the conditions and requirements to the Offer set forth in this [Section 1.1](#) and [Annex I](#) are for the sole benefit of the Purchaser and may be asserted by the Purchaser regardless of the circumstances giving rise to such condition or may be waived by the Purchaser, in its sole discretion, in whole or in part at any time and from time to time.

(b) Subject to the satisfaction of the Minimum Condition and the satisfaction, or waiver by the Purchaser (to the extent permitted by [Annex I](#)), of each of the other conditions and requirements set forth in [Annex I](#), the Purchaser shall, and Parent shall cause the Purchaser to, upon the first Expiration Date (as it may be extended in accordance with [Section 1.1\(e\)](#)) upon which such conditions are satisfied or waived, cause the Acceptance Time to occur, and the Purchaser shall, and the Parent shall cause the Purchaser to, pay for all Shares validly tendered and not properly withdrawn pursuant to the Offer as promptly as practicable (and in any event not more than three (3) Business Days) following the Acceptance Time. The Offer Price payable in respect of each Share validly tendered and not properly withdrawn pursuant to the Offer shall be paid, without interest, subject to any applicable withholding taxes. To the extent any such amounts are so withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(c) The Offer shall be made by means of an offer to purchase (the “**Offer to Purchase**”) that describes the terms and conditions of the Offer in accordance with this Agreement, including the Minimum Condition and the other conditions and requirements set forth in [Annex I](#). The Purchaser expressly reserves the right to increase the Offer Price or to make any other changes in the terms and conditions of the Offer; provided, however, that unless otherwise contemplated by this Agreement or as previously approved by the Company in writing, which approval may be withheld in Company’s sole discretion, the Purchaser shall not (i) decrease the Offer Price, (ii) change the form of consideration payable in the Offer (other than adding consideration), (iii) reduce the maximum number of Shares to be purchased in the Offer, (iv) amend or waive the Minimum Condition or the condition set forth in clause (b) of [Annex I](#), (v) impose any condition or requirement on the Offer other than those set forth in [Annex I](#), (vi) except as provided in [Section 1.1\(e\)](#), extend the Offer or (vii) otherwise amend the Offer in any manner that is adverse to the holder of Shares. Notwithstanding anything to the contrary in this Agreement, the Offer Price shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Shares), cash dividend, reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to the Shares, occurring on or after the date of this Agreement and prior to the Acceptance Time, and such adjustment to the Offer Price shall provide to the holders of Shares the same economic effect as contemplated by this Agreement prior to such action; provided, that nothing in this sentence shall be construed to permit the Company to take any action with respect to its securities that is not permitted by the terms of this Agreement.

[Table of Contents](#)

(d) Unless extended in accordance with the terms of this Agreement, the Offer shall initially expire at midnight (New York City time) at the end of the day on the date that is twenty (20) Business Days (calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) following the commencement of the Offer (within the meaning of Rule 14d-2 under the Exchange Act) (such date and time, the “**Initial Expiration Date**”) or, if the Initial Expiration Date has been extended as required by or otherwise permitted by this Agreement, the date and time to which the Offer has been so extended (the Initial Expiration Date, or such later date and time to which the Initial Expiration Date has been extended in accordance with this Agreement, the “**Expiration Date**”).

(e) If on or prior to any then scheduled Expiration Date, any condition to the Offer (including the Minimum Condition and the other conditions and requirements set forth in Annex I) has not been satisfied, or, where permitted by applicable Law, this Agreement and Annex I, waived by the Purchaser, the Purchaser shall (and Parent shall cause the Purchaser to), extend the Offer on one or more occasions, for successive periods of up to ten (10) Business Days each, the length of each such period (subject to such ten (10) Business Day maximum) to be determined by Parent in its sole discretion, in order to permit the satisfaction of such conditions. In addition, the Purchaser shall (and Parent shall cause the Purchaser to) extend the Offer for any period or periods required by applicable Law or applicable rules, regulations, interpretations or positions of the United States Securities and Exchange Commission (the “**SEC**”) or its staff. If on or prior to any then scheduled Expiration Date, all the conditions to the Offer have been satisfied, or, where permitted by applicable Law, this Agreement and Annex I, waived by the Purchaser (other than conditions that, by their nature, are to be satisfied at the Closing), and the full amount of the Debt Financing has not been funded and will not be available to be funded at the Acceptance Time, then the Purchaser shall have the right, in its sole discretion, to extend the Offer for one (1) period of up to ten (10) Business Days, so long as no such extension would result in the Offer being extended beyond the third (3rd) Business Day immediately preceding the Outside Date. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall not be required to extend the Offer beyond June 30, 2017 (the “**Outside Date**”). Nothing in this Section 1.1(e) shall be deemed to impair, limit or otherwise restrict in any manner the right of Parent or the Company to terminate this Agreement pursuant to ARTICLE VII hereof.

(f) The Purchaser shall not terminate the Offer prior to any scheduled Expiration Date without the prior written consent of the Company, except if this Agreement is terminated pursuant to ARTICLE VII. If this Agreement is terminated pursuant to ARTICLE VII, the Purchaser shall promptly (and in any event within 48 hours of such termination), irrevocably and unconditionally terminate the Offer. If the Offer is terminated or withdrawn by the Purchaser, or this Agreement is terminated prior to the purchase of Shares in the Offer, the Purchaser shall promptly return, and shall cause any depositary acting on behalf of the Purchaser to return, in accordance with applicable Law, all tendered Shares to the registered holders thereof.

(g) (i) As soon as practicable on the date of the commencement of the Offer, the Purchaser shall file with the SEC, in accordance with Rule 14d-3 under the Exchange Act, a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments, supplements and exhibits thereto, the “**Schedule TO**”), which shall include, as exhibits, the Offer

[Table of Contents](#)

to Purchase, a form of letter of transmittal and a form of summary advertisement (collectively, together with any amendments, supplements and exhibits thereto, the “**Offer Documents**”). (ii) The Purchaser may, in its sole discretion, provide guaranteed delivery procedures for the tender of Shares in the Offer. (iii) The Purchaser agrees to cause the Offer Documents to be disseminated to holders of Shares, as and to the extent required by the Securities Act and the Exchange Act. (iv) The Company shall promptly furnish to Parent and the Purchaser in writing all information concerning the Company and its Subsidiaries and stockholders that may be required by applicable securities Laws or reasonably requested by Parent or the Purchaser for inclusion in the Offer Documents. (v) The Purchaser, on the one hand, and the Company, on the other hand, agree to promptly correct any information provided by it for use in the Offer Documents, if and to the extent that it shall have become false or misleading in any material respect or as otherwise required by applicable Law, and the Purchaser agrees to cause the Offer Documents, as so corrected, to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by the Securities Act or the Exchange Act. (vi) The Company and its counsel shall be given a reasonable opportunity to review the Offer Documents before they are filed with the SEC, and the Purchaser shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Company and its counsel. (vii) In addition, the Purchaser shall provide the Company and its counsel with copies of any written comments, and shall inform them of any oral comments, that the Purchaser or its counsel may receive from time to time from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments, and any written or oral responses thereto. (viii) The Company and its counsel shall be given a reasonable opportunity to review any such written responses and the Purchaser shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Company and its counsel. (ix) Notwithstanding the foregoing, Parent and the Purchaser’s obligations pursuant to the immediately preceding three sentences shall not apply if an Adverse Recommendation Change has occurred.

1.2 Company Actions.

(a) On the date of the filing of the Schedule TO with the SEC (which filing shall not take place prior to the fifteenth (15th) Business Day after the date of this Agreement without the Company’s prior written consent), the Company shall, in a manner that complies with Rule 14d-9 under the Exchange Act, file with the SEC a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 with respect to the Offer (together with all amendments, supplements and exhibits thereto, the “**Schedule 14D-9**”) that shall, subject to the provisions of [Section 5.3\(e\)](#), contain the Company Board Recommendation. The Company shall include in the Schedule 14D-9 a notice of appraisal rights in accordance with Section 262 of the DGCL. The Company shall also include in the Schedule 14D-9, and represents that it has obtained all necessary consents of the Company Financial Advisors to permit the Company to include in the Schedule 14D-9, in its entirety, the Fairness Opinions, together with a summary thereof in accordance with Item 1015(b) of Regulation M-A under the Exchange Act (regardless of whether such item is applicable). The Company hereby approves and consents to the Offer and hereby approves and consents to the inclusion in the Offer Documents of a description of the Company Board Recommendation. The Company further agrees to cause the Schedule 14D-9 to be disseminated to holders of Shares, as and to the extent required by the Exchange Act. To the extent requested by the Purchaser, the Company shall cause the Schedule 14D-9 to be mailed or otherwise disseminated to the holders of Shares

[Table of Contents](#)

together with the Offer Documents disseminated to the holders of Shares. The Company, on the one hand, and the Purchaser, on the other hand, agree to promptly correct any information provided by it for use in the Schedule 14D-9, if and to the extent that it shall have become false or misleading in any material respect or as otherwise required by applicable Law, and the Company agrees to cause the Schedule 14D-9, as so corrected, to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by the Exchange Act. The Purchaser and its counsel shall be given a reasonable opportunity to review the Schedule 14D-9 before it is filed with the SEC, and the Company shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Purchaser and its counsel. In addition, the Company shall provide the Purchaser and its counsel with copies of any written comments, and shall inform them of any oral comments, that the Company or its counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments, and any written or oral responses thereto. The Purchaser and its counsel shall be given a reasonable opportunity to review any such written responses and the Company shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Purchaser and its counsel.

(b) Promptly after the date hereof and otherwise from time to time as requested by the Purchaser or its agents, the Company shall furnish or cause to be furnished to the Purchaser mailing labels, security position listings, non-objecting beneficial owner lists and any other listings or computer files containing the names and addresses of the record or beneficial holders of the Shares as of the most recent practicable date, and shall promptly furnish the Purchaser with such information (including updated lists of holders of the Shares and their addresses, mailing labels, security position listings and non-objecting beneficial owner lists) (the date of the list used to determine the Persons to whom the Offer Documents and Schedule 14D-9 are first disseminated, the “**Stockholder List Date**”) and such other assistance as the Purchaser or its agents may reasonably request in communicating with the record and beneficial holders of Shares. The Company Board shall set the Stockholder List Date as the record date for the purpose of receiving the notice required by Section 262(d)(2) of the DGCL. In addition, in connection with the Offer, the Company shall, and shall use its commercially reasonable efforts to cause any Third Parties to, cooperate with the Purchaser to disseminate the Offer Documents to holders of Shares held in or subject to any Company Employee Plan, and to permit such holders of Shares to tender Shares in the Offer. Should the Offer terminate or if this Agreement shall be terminated, Parent and Purchaser shall, upon request, deliver to the Company or destroy (and confirm such destruction in writing) all copies of such information provided by Company under this Section 1.2(b), then in their possession, and Company shall have no further obligations under this Section 1.2(b).

1.3 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the applicable provisions of the DGCL, at the Effective Time, the Purchaser shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of the Purchaser shall cease, and the Company shall continue as the surviving corporation of the Merger (the “**Surviving Corporation**”). The Merger shall be effected pursuant to Section 251(h) of the DGCL and shall be effected as soon as practicable following the Acceptance Time.

[Table of Contents](#)

(b) The closing of the Merger (the “**Closing**”) shall take place at the offices of Latham & Watkins LLP, 140 Scott Drive, Menlo Park, California 95025, as soon as practicable following the Acceptance Time and the satisfaction or, if permitted, waiver of the last to be satisfied of the conditions set forth in **ARTICLE VI** (other than conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction (or waiver, if permitted by applicable Law) of those conditions), and in any event within two (2) Business Days thereafter, or at such other location, date and time as is agreed to in writing by the parties hereto. The date upon which the Closing shall actually occur pursuant hereto is referred to herein as the “**Closing Date** .”

(c) Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, or on such other date as Parent and the Company may agree to in writing, Parent, the Purchaser and the Company shall cause the Merger to be consummated under the DGCL by filing a certificate of merger in such a form as required by, and executed in accordance with, the DGCL (the “**Certificate of Merger**”) with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall take such further actions as may be required to make the Merger effective. The date and time of such filing and acceptance by the Secretary of State of the State of Delaware, or such later date and time as is agreed upon by the parties and specified in the Certificate of Merger, shall be referred to herein as the “**Effective Time**”.

(d) At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, all of the property, rights, privileges, immunities, powers and franchises of the Company and the Purchaser shall vest in the Surviving Corporation, and all of the debts, liabilities and duties of the Company and the Purchaser shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Certificate of Incorporation and Bylaws.

(a) Certificate of Incorporation. At the Effective Time, the certificate of incorporation of the Surviving Corporation shall, by virtue of the Merger and all other applicable action by Parent and the Surviving Corporation, be amended so as to read in its entirety in the form set forth as Exhibit B hereto, until thereafter changed or amended as provided therein or by applicable Law.

(b) Bylaws. The Company and the Company Board shall take all necessary action such that the bylaws of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated as of the Effective Time so as to read in their entirety in the form set forth as Exhibit C hereto, until thereafter changed or amended as provided therein, in the certificate of incorporation of the Surviving Corporation or by applicable Law.

1.5 Directors and Officers.

(a) Directors. The directors of the Purchaser immediately prior to the Effective Time shall, from and after the Effective Time, become the directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

[Table of Contents](#)

(b) Officers. The officers of the Purchaser immediately prior to the Effective Time, from and after the Effective Time, shall continue as the officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

1.6 Necessary Further Action. Each of the Company, Parent and Purchaser agree to take all necessary action to cause the Merger to become effective as soon as practicable following the Acceptance Time without a meeting of the Company Stockholders, as provided in Section 251(h) of the DGCL and upon the terms and subject to the conditions of this Agreement. In furtherance, and without limiting the generality of the foregoing, none of the Company, Parent or Purchaser shall, and each of the Company, Parent and Purchaser shall cause their respective Subsidiaries and Representatives not to, take any action that could render Section 251(h) of the DGCL inapplicable to the Merger. If at any time after the Effective Time, the Surviving Corporation shall determine, in its sole discretion, or shall be advised, that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or the Purchaser acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or the Purchaser, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE II CONVERSION OF SECURITIES IN THE MERGER

2.1 Conversion of Securities. Subject to the terms hereof, at the Effective Time, by virtue of the Merger and without any action on the part of the Purchaser, the Company or the holders of any of the following securities:

(a) Conversion of Company Common Stock. Each Share issued and outstanding immediately prior to the Effective Time, other than Shares to be cancelled in accordance with Section 2.1(b) and any Dissenting Shares, shall be converted into the right to receive cash in an amount equal to the Offer Price (the “*Merger Consideration*”), without interest, subject to any applicable withholding taxes, upon surrender of such Shares in accordance with Section 2.2.

[Table of Contents](#)

(b) Cancellation of Treasury Stock and Parent-Owned Stock. All Shares that are owned by or held in the treasury of the Company, and all Shares owned by Parent or any direct or indirect wholly-owned Subsidiaries of Parent (including the Purchaser) or the Company, shall be automatically cancelled and shall cease to exist, with no payment being made in exchange therefor.

(c) Purchaser Common Stock. Each share of common stock, par value \$0.001 per share, of the Purchaser (the “**Purchaser Common Stock**”) issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each certificate evidencing ownership of such shares of common stock of the Purchaser shall thereafter evidence ownership of shares of common stock of the Surviving Corporation.

2.2 Payment for Securities; Surrender of Certificates

(a) Paying Agent. At or prior to the Effective Time, the Purchaser shall designate a nationally recognized bank or payment company to act as the paying agent for purposes of effecting the payment and distribution of the Merger Consideration in connection with the Merger (the “**Paying Agent**”). At or promptly after the Effective Time (and, in any event, on the Closing Date), the Purchaser shall deposit, or cause to be deposited, with the Paying Agent, cash in an amount equal to the aggregate consideration that the holders of Shares are entitled to receive pursuant to Section 2.1(a) (which, for the avoidance of doubt, shall not include the Option Consideration, the RSU Consideration or the Warrant Consideration). Such funds shall be invested by the Paying Agent as directed by the Purchaser, in its sole discretion, pending payment thereof by the Paying Agent to the holders of the Shares. Earnings from such investments shall be the sole and exclusive property of the Purchaser, and no part of such earnings shall accrue to the benefit of holders of Shares. If, at any time following the Closing and prior to the delivery of funds held by the Paying Agent to the Surviving Corporation pursuant to Section 2.2(e), the cash deposited with the Paying Agent is insufficient to pay the consideration that the holders of Shares are entitled to receive pursuant to Section 2.1(a), Parent shall promptly deposit or cause to be deposited with the Paying Agent an amount of cash sufficient to pay such consideration.

(b) Procedures for Surrender. As promptly as practicable after the Effective Time, but in no event later than five (5) Business Days thereafter, the Surviving Corporation shall cause the Paying Agent to mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented Shares (the “**Certificates**”) or non-certificated Shares represented by book-entry (“**Book-Entry Shares**”), in each case, which Shares were converted into the right to receive the Merger Consideration at the Effective Time pursuant to this Agreement: (i) a letter of transmittal in customary form, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates or Book-Entry Shares shall pass, only upon delivery of the Certificates to the Paying Agent or, in the case of Book-Entry Shares, upon adherence to the procedures set forth in the letter of transmittal, and (ii) instructions for effecting the surrender of the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for payment of the Merger Consideration pursuant to Section 2.1(a). As promptly as practicable (but in no event later than five (5) Business Days thereafter), upon (A) surrender of Certificates for cancellation to the Paying Agent or such other agent or agents as

[Table of Contents](#)

may be appointed by the Purchaser and delivery of a letter of transmittal, duly completed and validly executed in accordance with the instructions thereto or (B) receipt of an “agent’s message” by the Paying Agent (or such other evidence, if any, of transfer as the Paying Agent may reasonably request) and delivery of a letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, as applicable, the holders of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor an amount in cash equal to the product obtained by multiplying (y) the aggregate number of Shares represented by such holder’s transferred Certificates or Book-Entry Shares that were converted into the right to receive the Merger Consideration pursuant to [Section 2.1\(a\)](#), by (z) the Merger Consideration (less any applicable withholding Tax pursuant to [Section 2.2\(f\)](#)), and the Certificates or transferred Book-Entry Shares so surrendered shall forthwith be cancelled. The Paying Agent shall accept such Certificates and transferred Book-Entry Shares upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. No interest shall be paid or accrued for the benefit of holders of the Certificates and Book-Entry Shares on the Merger Consideration payable upon the surrender of such Certificates and Book-Entry Shares. Until surrendered as contemplated hereby, and subject to [Section 2.3](#), each Certificate or Book-Entry Share shall be deemed from and after the Effective Time to represent only the right to receive the Merger Consideration payable therefor upon surrender thereof in accordance with the provisions of this [Article II](#).

(c) [Transfers of Ownership](#). In the event that a transfer of ownership of Shares is not registered in the stock transfer books or ledger of the Company, or if the Merger Consideration is to be paid in a name other than that in which the Certificate or Book-Entry Share surrendered in exchange therefor are registered in the stock transfer books or ledger of the Company, the Merger Consideration may be paid to a Person other than the Person in whose name the Certificate or Book-Entry Share so surrendered is registered in the stock transfer books or ledger of the Company only if such Certificate or Book-Entry Share is properly endorsed and otherwise in proper form for surrender and transfer and the Person requesting such payment has paid any transfer Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of such Certificate or Book-Entry Share, and established to the reasonable satisfaction of Parent (or any agent designated by Parent) that such transfer Taxes have been paid or are otherwise not payable.

(d) [Transfer Books; No Further Ownership Rights in Shares](#). From and after the Effective Time, all Shares shall no longer be outstanding and shall automatically be cancelled, retired and cease to exist, and each holder of a Certificate or Book-Entry Shares theretofore representing any Shares shall (other than Certificates or Book-Entry Shares representing Dissenting Shares, which shall be subject to [Section 2.3](#)) cease to have any rights with respect thereto, except the right to receive the Merger Consideration payable therefor upon the surrender thereof in accordance with the provisions of this [Article II](#) (or, for the avoidance of doubt and without duplication, any consideration that remains payable with respect to any Shares validly tendered and not withdrawn in the Offer). The Merger Consideration paid in accordance with the terms of this [Article II](#) shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares. From and after the Effective Time, the stock transfer books of the Surviving Corporation shall be closed and there shall be no further registration of transfers on the records of the Surviving Corporation of Company Shares that were issued and outstanding

[Table of Contents](#)

immediately prior to the Effective Time, other than transfers to reflect, in accordance with customary settlement procedures, trades effected prior to the Effective Time. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this [Article II](#). The Company shall take all actions necessary to ensure that, from and after the Effective Time, neither Parent nor the Surviving Corporation shall be required to deliver Shares or other capital stock of the Company, Parent or the Surviving Corporation to any Person as a result of the exercise of or in settlement of Cashed Out Company Options, Cashed Out Company RSUs or Company Warrants, and that such Cashed Out Company Options, Cashed Out Company RSUs and Company Warrants shall be cancelled and the holders of such Cashed Out Company Options, Cashed Out Company RSUs and Company Warrants shall only be entitled to receive the consideration, if any, provided to them under [Section 2.4](#) and shall not have any other rights or remedies with respect thereto.

(e) [Termination of Fund; Abandoned Property; No Liability](#). At any time following twelve (12) months after the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any cash funds (including any interest received with respect thereto) made available to the Paying Agent and not disbursed to holders of Certificates or Book-Entry Shares, and thereafter such holders shall be entitled to look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) only as general creditors thereof with respect to the Merger Consideration payable upon due surrender of their Certificates or Book-Entry Shares and compliance with the procedures in [Section 2.2\(b\)](#), without interest and subject to any applicable withholding taxes. If immediately prior to such time on which any payment in respect hereof would escheat to or become the property of any Governmental Authority pursuant to any applicable abandoned property, escheat or similar Laws, any holder of Certificates or Book-Entry Shares has not complied with the procedures in [Section 2.2\(b\)](#) to receive payment of the Merger Consideration to which such holder would otherwise be entitled, the Merger Consideration payable in respect of such Certificates or Book-Entry Shares shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto. Notwithstanding the foregoing, neither the Surviving Corporation nor the Paying Agent shall be liable to any holder of a Certificate or Book-Entry Shares for Merger Consideration delivered to a Governmental Authority pursuant to any applicable abandoned property, escheat or similar Law.

(f) [Withholding Rights](#). Parent, the Purchaser, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Agreement such amounts that Parent, the Purchaser, the Surviving Corporation or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Code or any other provision of applicable Law. To the extent that amounts are so withheld and paid to the applicable Governmental Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

[Table of Contents](#)

(g) Lost, Stolen or Destroyed Certificates. In the event that any Certificates shall have been lost, stolen or destroyed, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, the Merger Consideration payable in respect thereof pursuant to Section 2.1(a) hereof; provided, however, that the Purchaser may, in its sole discretion and as a condition precedent to the payment of such Merger Consideration, require the owners of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent, the Purchaser, the Surviving Corporation or the Paying Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.3 Dissenting Shares. Notwithstanding anything to the contrary set forth in this Agreement, no Shares issued and outstanding immediately prior to the Effective Time and in respect of which appraisal rights shall have been perfected in accordance with Section 262 of the DGCL in connection with the Merger (collectively, “Dissenting Shares”) shall be converted into a right to receive that portion of the Merger Consideration otherwise payable to the holder of such Dissenting Shares as provided in Section 2.1(a), but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to the DGCL. Each holder of Dissenting Shares who, pursuant to the provisions of the DGCL, becomes entitled to payment of the fair value of such Dissenting Shares shall receive payment therefor in accordance with the DGCL (but only after the value therefor shall have been agreed upon or finally determined pursuant to the DGCL). In the event that any holder of Shares fails to make an effective demand for payment or fails to perfect its appraisal rights as to the Shares or any Dissenting Shares shall otherwise lose their status as Dissenting Shares, then any such Shares shall be converted into the right to receive the Merger Consideration issuable pursuant to Section 2.1(a) in respect of such Shares as if such Shares had never been Dissenting Shares, in accordance with and following the satisfaction of the applicable requirements and conditions set forth in Section 2.2. The Company shall give Parent prompt notice (and in no event more than one (1) Business Day) of (i) any demand received by the Company for appraisal of Shares (and shall give Parent the opportunity (at Parent’s election) to direct and control all negotiations and proceedings with respect to any such demand) or (ii) any notice of exercise by any holder of Shares of appraisal rights in accordance with the DGCL. The Company shall not (and shall not agree to), without the prior written consent of Parent, voluntarily make any payment with respect to, or settle, or offer to settle, any such demands or applications, or waive any failure to timely deliver a written demand for appraisal or timely take any other action to perfect appraisal rights in accordance with the DGCL.

2.4 Treatment of Company Options, Company RSUs and Company Warrants.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each In-the-Money Company Option that is outstanding as of immediately prior to the Effective Time (“Cashed Out Company Options”) shall be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash equal to the product obtained by multiplying (i) the aggregate number of Shares subject to such Company Option immediately prior to the Effective Time and (ii) the excess, if any, of the Offer Price over the exercise price per share of such Company Option (the “Option Consideration”). In the event that any Cashed Out Company Option is subject to Section 409A of the Code, the payment of the amount of cash with respect thereto shall be delayed to the extent necessary to comply with Section 409A of the Code. Each holder of an outstanding In-the-Money Company Option shall be entitled to receive in exchange for the cancellation thereof the Option Consideration with respect to each Share subject to such outstanding In-the-Money Company

[Table of Contents](#)

Option and the Company shall cause such payment to be made to the holder of such Company Option, if a current or former employee of the Company, through the payroll system of the Surviving Corporation or, if not a current or former employee of the Company, through the Paying Agent, in each case, payable as soon as practicable following the Closing Date (and, in the case of current or former employees of the Company, in no event later than the next regularly scheduled payroll run of the Surviving Corporation following the Closing Date).

(b) All Company Options which are not In-the-Money Company Options shall be cancelled as of immediately prior to the Effective Time in exchange for no consideration. In no event shall the Company Options be assumed by Parent or the Surviving Corporation.

(c) At the Effective Time, each Company RSU that is outstanding and unvested immediately prior to the Effective Time (after giving effect to any accelerated vesting that occurs solely due to the consummation of the transactions contemplated by this Agreement pursuant to a Contract as in effect as of the date of this Agreement) and is held by a Company Employee or Company Service Provider shall be assumed by Parent and converted automatically at the Effective Time into a restricted stock unit covering Parent Common Stock having, subject to applicable Laws, the same terms and conditions as the Company RSU (each, an “**Assumed RSU**”), except that (i) each such Company RSU will entitle the holder, upon settlement, to that number of whole shares of Parent Common Stock equal to the product of (A) the number of Shares that were issuable with regard to such Company RSU immediately prior to the Effective Time, multiplied by (B) a fraction (such ratio, the “**Exchange Ratio**”), the numerator of which is the Offer Price and the denominator of which is the volume weighted average price for a share of Parent Common Stock on the Nasdaq Global Select Market, calculated to four decimal places and determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours, for the five (5) consecutive trading days ending on the third complete trading day prior to (and excluding) the Closing Date as reported by Bloomberg, L.P., and rounding such product down to the nearest whole number of shares of Parent Common Stock, and (ii) all references to the “Company” in the applicable Company Stock Plans and the Company RSU agreements will be references to Parent. The Company will not take any action to accelerate the vesting of any Company RSU (other than to implement any existing agreements or arrangements for such acceleration in effect as of the date of this Agreement and set forth on Section 3.2(b) of the Company Disclosure Schedule). As soon as reasonably practicable following the Effective Time, Parent will issue to each Person who holds an Assumed RSU a document evidencing the foregoing assumption of such Assumed RSU by Parent.

(d) At the Effective Time, each Company RSU that is outstanding immediately prior to the Effective Time and is not an Assumed RSU (including Company RSUs for which the vesting is accelerated solely due to the consummation of the transactions contemplated by this Agreement pursuant to a Contract as in effect as of the date of this Agreement) (“**Cashed Out Company RSUs**”) shall vest in full to the extent unvested and be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash equal to the product obtained by multiplying (i) the aggregate number of Shares subject to such Company RSU immediately prior to the Effective Time and (ii) the Offer Price (the “**RSU Consideration**”). In the event that any Cashed Out Company RSU is subject to Section 409A of the Code, the payment of the amount of cash with respect thereto shall be

[Table of Contents](#)

delayed to the extent necessary to comply with Section 409A of the Code. Each holder of an outstanding Cashed Out Company RSU shall be entitled to receive in exchange for the cancellation thereof the RSU Consideration with respect to each Share subject to such outstanding Company RSU and the Company shall cause such payment to be made to the holder of such Company RSU, if a current or former employee of the Company, through the payroll system of the Surviving Corporation or, if not a current or former employee of the Company, through the Paying Agent, in each case, payable as soon as practicable following the Closing Date (and, in the case of current or former employees of the Company, in no event later than the next regularly scheduled payroll run of the Surviving Corporation following the Closing Date).

(e) At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each In-the-Money Company Warrant that is outstanding immediately prior to the Effective Time shall, in accordance with its terms, either (i) be cancelled immediately prior to the Effective Time and converted into the right to receive an amount in cash (“**Cashed Out Company Warrant**”) equal to the product obtained by multiplying (A) the aggregate number of Shares for which such In-the-Money Company Warrant was exercisable immediately prior to the Effective Time and (B) the excess, if any, of the Offer Price over the exercise price per share of such In-the-Money Company Warrant (the “**Warrant Consideration**”) or (ii) exercised immediately prior to the Effective Time and the Shares issued upon the exercise of such In-the-Money Company Warrant shall be deemed outstanding and held by the holder of such In-the-Money Company Warrant and shall be deemed to have been cancelled in the Merger, and the holder shall have the right to receive (A) the Merger Consideration payable with respect to such Shares in accordance with Section 2.1(a) less (B) the amount of the aggregate exercise price of the Shares; provided, however, such In-the-Money Company Warrant may be exercised in a cashless manner in accordance with its terms. Each holder of an outstanding Cashed Out Company Warrant shall be entitled to receive in exchange for the cancellation thereof the Warrant Consideration with respect to each Share subject to such outstanding Cashed Out Company Warrant and the Company shall cause such payment to be made to the holder of such Cashed Out Company Warrant through the Paying Agent, payable as soon as practicable following the Closing Date. All Company Warrants which are not In-the-Money Company Warrants shall be cancelled as of immediately prior to the Effective Time in exchange for no consideration. In no event shall the Company Warrants be assumed by Parent or the Surviving Corporation.

(f) The Company shall send a written notice in a form provided in advance, and reasonably acceptable, to Parent (i) to each holder of an outstanding Company Option or Company RSU in accordance with the Company Stock Plan, and (ii) to each holder of a Company Warrant in accordance with its terms, that shall inform such holder of the treatment of the Company Options, Company RSUs or Company Warrants, as applicable provided in this Section 2.4.

(g) Notwithstanding anything in this Section 2.4 or otherwise in this Agreement to the contrary, the conversion of Company Options and Company RSUs provided for in this Section 2.4 shall be effected in a manner consistent with Section 409A of the Code.

[Table of Contents](#)

(h) Following the Effective Time, no holder of a Company Warrant or any participant in any Company Stock Plan, or other Company Employee Plan or employee benefit arrangement of the Company or under any employment agreement shall have any right hereunder to acquire any capital stock or other equity interests (including any “phantom” stock or stock appreciation rights) in Parent, the Company, any of their Subsidiaries or the Surviving Corporation.

(i) The Company shall, prior to the Effective Time, take (or cause to be taken) any and all action, and shall obtain all such consents, as may be necessary to effect the foregoing provisions of this [Section 2.4](#), including the cancellation without consideration of Company Options which are not In-the-Money Company Options in accordance with [Section 2.4\(b\)](#) and cancellation of Company Warrants that are not In-the-Money Company Warrants in accordance with [Section 2.4\(e\)](#).

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except (i) as expressly disclosed in the Company SEC Documents, in each case filed on or after January 1, 2016 and prior to the date hereof, and only to the extent reasonably apparent from the disclosure therein (but excluding (A) any forward-looking disclosures contained in “Forward Looking Statements” and “Risk Factors” sections of the Company SEC Documents and any other disclosures included therein to the extent they are primarily predictive, cautionary or forward looking in nature and (B) information included in, or incorporated by reference as, exhibits and schedules to any Company SEC Documents that have been filed with the SEC) (and provided that the representations and warranties set forth in [Sections 3.2](#) and 3.3 shall not be qualified by any information in any Company SEC Documents) and (ii) as set forth in the disclosure schedule delivered by the Company to Parent and the Purchaser prior to the execution of this Agreement (the “**Company Disclosure Schedule**”), which identifies items of disclosure by reference to a particular Section or Subsection of this [Article III](#) (provided, however, that any disclosure made in the Company Disclosure Schedule by reference to a particular Section or Subsection of this [Article III](#) shall be deemed to be disclosed with respect to any other Section or Subsection of this [Article III](#) to the extent the relevance of such disclosure to any representation or warranty made in such other Section or Subsection of [Article III](#) is reasonably apparent from the text of such disclosure), the Company hereby represents and warrants to Parent and the Purchaser as of the date of this Agreement and as of the Closing as follows:

3.1 Organization and Qualification; Subsidiaries.

(a) The Company and each of its Subsidiaries (each a “**Company Subsidiary**”) is a corporation or other legal entity duly organized, validly existing and in good standing under the applicable Law of the jurisdiction of its incorporation or organization and has all requisite corporate or organizational, as the case may be, power and authority to own, lease and operate its properties and assets and to conduct its business as currently conducted and as currently planned to be conducted. Each of the Company and each Company Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where any failure to be so qualified or in good standing, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Effect.

[Table of Contents](#)

(b) The Company has delivered or caused to be delivered to Parent and the Purchaser accurate and complete copies of the currently effective certificate of incorporation of the Company (the “**Company Charter**”) and bylaws of the Company (the “**Company Bylaws**”), and the certificate of incorporation and bylaws, or equivalent organizational or governing documents, of each Company Subsidiary. The Company is not in violation of the Company Charter or Company Bylaws, and the Company Subsidiaries are not in violation of their respective organizational or governing documents.

(c) Section 3.1(c) of the Company Disclosure Schedule sets forth an accurate and complete list of: (i) the Company Subsidiaries, together with the jurisdiction of organization or incorporation, as the case may be, of each Company Subsidiary, (ii) the jurisdictions in which the Company and each Company Subsidiary is qualified to do business as a foreign corporation or other legal entity and (iii) the directors and officers of the Company and each Company Subsidiary, as of the date of this Agreement.

3.2 Capitalization .

(a) The authorized capital stock of the Company consists of (i) 100,000,000 shares of common stock, par value \$0.001 per share, of the Company (the “**Company Common Stock**”), of which, as of the close of business on February 10, 2017, there were 67,421,437 shares issued and outstanding (excluding 1,781,142 shares of Company Common Stock held in treasury) and (ii) 1,000,000 shares of preferred stock, par value \$0.001 per share (the “**Company Preferred Stock**”), of which no shares are issued and outstanding, and of which 750,000 shares are designated as Series A Junior Preferred Stock in accordance with the Company Rights Agreement pursuant to the terms thereof none of which rights as of the date hereof have been or are exercisable. All of the outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(b) As of the close of business on February 10, 2017 (the “**Capitalization Date**”), the Company has no shares of Company Common Stock or Company Preferred Stock reserved for or otherwise subject to issuance, except for (i) 7,114,553 shares of Company Common Stock reserved for issuance pursuant to the exercise of outstanding Company Options, (ii) 5,470,038 shares of Company Common Stock underlying Company RSUs, (iii) 161,554 shares of Company Common Stock are subject to issuance pursuant to the exercise of outstanding Company Warrants (assuming no net exercise of any Company Warrants) and (iv) 750,000 shares of Series A Junior Preferred Stock reserved for issuance pursuant to the Company Rights Agreement. All shares of Company Common Stock subject to issuance under the Company Stock Plans, upon issuance prior to the Effective Time on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights.

(c) Section 3.2(c) of the Company Disclosure Schedule contains an accurate and complete list of all issued and outstanding Company Options and Company RSUs as of the close of business on the Capitalization Date including (A) the name of each holder of Company Options and Company RSUs, (B) the date on which the grant of each Company Option and Company RSU was by its terms to be effective (the “**Grant Date**”) and, in the case of Company Options, the expiration date of such Company Options, (C) the total number of shares of

[Table of Contents](#)

Company Common Stock subject to each such Company Option and Company RSU, (D) the exercise price of each Company Option, (E) the vesting schedule (including any vesting acceleration provisions) and vested status of each such Company Option and Company RSU and (F) whether such Company Option is intended to qualify as an “incentive stock option” within the meaning of Section 422 of the Code. All Company Options were granted under a Company Stock Plan and are evidenced by stock option agreements and all Company RSUs were granted under a Company Stock Plan and are evidenced by award agreements, in each case in the forms made available by the Company to Parent and the Purchaser, and no stock option agreement or award agreement contains terms that are inconsistent with or in addition to such forms. Each grant of a Company Option and Company RSU was duly authorized no later than the Grant Date of such Company Option or Company RSU by all necessary corporate action, including, as applicable, approval by the Company Board (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes. Each such grant was made in all material respects in accordance with the terms of the applicable Company Stock Plan, the Exchange Act and all other applicable Laws, including the rules of the NYSE MKT. The per share exercise price of each Company Option was equal to no less than the fair market value of a share of Company Common Stock on the applicable Grant Date (as determined in accordance with the terms of the applicable Company Stock Plan and Section 409A of the Code), and each grant of Company Options and Company RSUs was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company and disclosed in the Company SEC Documents in accordance with the Exchange Act and all other applicable Laws. The Company has not granted, and there is not, and has not been, any Company policy or practice to grant, Company Options or Company RSUs prior to, or otherwise coordinate the grant of Company Options or Company RSUs with, the release or other public announcement of material information regarding the Company or any of the Company Subsidiaries or any of their financial results or prospects.

(d) Section 3.2(d) of the Company Disclosure Schedule contains an accurate and complete list of all issued and outstanding Company Warrants as of the close of business on the Capitalization Date including (A) the name of each holder of Company Warrants, (B) the date on which the grant of each Company Warrant was by its terms to be effective, (C) the number of Shares issuable upon the exercise of such Company Warrant, (D) the exercise price of each Company Warrant and (E) the vesting schedule (including any vesting acceleration provisions) and vested status of each Company Warrant. True, correct and complete copies of the Company Warrants have been delivered to Parent, and except as indicated in the copies delivered to Parent, such agreements have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements.

(e) Except for the Company Options and Company RSUs set forth in Section 3.2(c) of the Company Disclosure Schedule and Company Warrants set forth in Section 3.2(d) of the Company Disclosure Schedule, there are no options, warrants or other rights, agreements, arrangements or commitments of any character (i) relating, convertible into or exchangeable for capital stock or any other Equity Interests of the Company or any Company Subsidiary or (ii) obligating the Company or any Company Subsidiary to issue, acquire or sell any Equity Interests of the Company or any Company Subsidiary. Since the close of business on the Capitalization Date, the Company has not issued any shares of its capital stock or other Equity Interests or securities convertible into or exchangeable for capital stock or other Equity Interest of the Company.

[Table of Contents](#)

(f) There are no outstanding obligations of the Company or any Company Subsidiary (i) restricting the transfer of, (ii) affecting the voting rights of, (iii) requiring the repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (iv) requiring the registration for sale of or (v) granting any preemptive or antidilutive rights with respect to, any shares of Company Common Stock or other Equity Interests in the Company or any Company Subsidiary.

(g) Section 3.2(g) of the Company Disclosure Schedule sets forth, for each Company Subsidiary, as applicable: (i) its authorized capital stock or other Equity Interests, (ii) the number of its outstanding shares of capital stock or other Equity Interests and type(s) of such outstanding shares of capital stock or other Equity Interests and (iii) the record owner(s) thereof. The Company or another Company Subsidiary owns, directly or indirectly, all of the issued and outstanding shares of capital stock or other Equity Interests of each of the Company Subsidiaries, free and clear of any Liens, and all of such shares of capital stock or other Equity Interests have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except for Equity Interests in the Company Subsidiaries, neither the Company nor any Company Subsidiary owns directly or indirectly any Equity Interest in any Person (including the Company) other than as set forth in Section 3.2(g) of the Company Disclosure Schedule, or has any obligation or has made any commitment to acquire any such Equity Interest, to provide funds to, or to make any investment (in the form of a loan, capital contribution or otherwise) in, any Company Subsidiary or any other Person. Since the close of business on February 10, 2017, no Company Subsidiary has issued any shares of capital stock or other Equity Interests.

3.3 Authority .

(a) The Company has all necessary corporate power and corporate authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, including the Offer and the Merger. The execution and delivery of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby, including the Offer and the Merger, the amendment of the Company Charter in accordance with Section 1.4(a) and the amendment of the Company Bylaws in accordance with Section 1.4(b) have each been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company and no stockholder votes or consents (whether under Article VII or Article XI of the Company Charter, the DGCL or otherwise) are necessary to authorize this Agreement, the Offer or the Merger, or to consummate the transactions contemplated hereby (other than, with respect to the Merger, the filing of the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the DGCL). The Company Board, by resolutions duly adopted by unanimous vote of those voting on such matters at a meeting duly called and held, has, and as of the date of this Agreement not subsequently rescinded or modified in any way, (x) determined that the transactions contemplated by this Agreement, including the Offer and the Merger, are fair to, and in the best interests of, the Company and its stockholders, (y) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger

[Table of Contents](#)

and (z) recommend that the Company's stockholders accept the Offer, tender their Shares to the Purchaser in the Offer and, to the extent applicable, adopt this Agreement. Section 3.3(a) of the Company Disclosure Schedule sets forth a list of the Continuing Directors of the Company as of the date of this Agreement and the date of the Continuing Director Recommendation. The Continuing Directors, voting separately and as a subclass of the Company Board, by resolutions duly adopted by unanimous vote of those voting on such matters at a meeting duly called and held, have, and as of the date of this Agreement not subsequently rescinded or modified in any way, (v) determined that the transactions contemplated by this Agreement, including the Offer and the Merger, are fair to, and in the best interests of, the Company and its stockholders, (w) approved the transactions contemplated by this Agreement, including the Offer and the Merger, as a "**Business Combination**" (as defined in the Company Charter) for purposes of Article XI.D of the Company's certification of incorporation, (x) approved the amendment of the Company Charter in accordance with Section 1.4(a) for purposes of Article VII.C of the Company Charter, (y) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger and (z) recommend that the Company's stockholders accept the Offer, tender their Shares to the Purchaser in the Offer and, to the extent applicable, adopt this Agreement. This Agreement has been duly authorized and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Parent and the Purchaser, constitutes a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws affecting creditors' rights generally and subject to the effect of general principles of equity, whether considered in a proceeding in equity or at law).

(b) The Company Board has taken prior to the date hereof, and will take all additional, action necessary on its part to render Section 203 of the DGCL inapplicable to the execution, delivery or performance of this Agreement, the Offer and/or the Merger, including the acquisition of Shares pursuant thereto, the Tender Agreements and/or any other transaction contemplated by this Agreement. Assuming the accuracy of the representations and warranties set forth in Section 4.9, no other "moratorium," "fair price," "business combination," "combinations with interested stockholders," "control share acquisition" or similar provision of any state anti-takeover Law or other Law that purports to limit or restrict business combinations or the ability to acquire or vote shares (collectively, "**Takeover Statutes**") is, or at the Effective Time will be, applicable to the execution, delivery or performance of this Agreement, the Offer and/or the Merger, including the acquisition of Shares pursuant thereto, the Tender Agreements and/or any other transaction contemplated by this Agreement.

(c) The Company is not a party to any stockholder rights plan or "poison pill" agreement other than the Amended and Restated Rights Agreement, dated as of December 16, 2014, between the Company and American Stock Transfer & Trust Company, LLC, as amended from time to time (the "**Company Rights Agreement**"). The Company and the Company Board has amended the Company Rights Agreement (the "**Amendment to the Company Rights Agreement**") to provide, and have taken any additional actions necessary to ensure, that: (i) neither Parent nor the Purchaser nor any of their respective Affiliates shall be deemed to be an Acquiring Person (as such term is defined in the Company Rights Agreement), (ii) neither a Distribution Date nor a Stock Acquisition Date (as each such term is defined in the Company Rights Agreement) shall be deemed to have occurred, and the Rights will not detached from the

[Table of Contents](#)

Shares or become non-redeemable, as a result of the execution, delivery or performance of this Agreement, the Offer and/or the Merger, including the acquisition of Shares pursuant thereto, the Tender Agreements or any other transaction contemplated by this Agreement and (iii) the Rights and the Company Rights Agreement shall expire and terminate immediately prior to the Acceptance Time. The Company has made available to Parent a complete and correct copy of the Company Rights Agreement and the Amendment to the Company Rights Agreement. No Person other than Parent and the Purchaser has been excluded from the definition of “Acquiring Person” under the Company Rights Agreement or otherwise excepted from the application of the Company Rights Agreement.

3.4 No Conflict. None of the execution, delivery or performance of this Agreement by the Company, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by the Company of the Merger or any other transaction contemplated by this Agreement, or the Company’s compliance with any of the provisions of this Agreement will (with or without notice or lapse of time, or both): (a) conflict with or violate any provision of the Company Charter or Company Bylaws or any equivalent organizational or governing documents of any Company Subsidiary, (b) assuming that all consents, approvals, authorizations and permits described in Section 3.5 have been obtained and all filings and notifications described in Section 3.5 have been made and any waiting periods thereunder have terminated or expired, violate any Law applicable to the Company or any Company Subsidiary or any of their respective properties or assets or (c) require any consent or approval under, violate, result in any breach of or any loss of any benefit under, or constitute a default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a Lien upon any of the respective properties or assets of the Company or any Company Subsidiary pursuant to, any Contract, Company Permit or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which they or any of their respective properties or assets may be bound or affected, except, with respect to clauses (b) and (c), for any such conflicts, violations, consents, breaches, losses, defaults, other occurrences or Liens which would not be material to the Company or the Company Subsidiaries, taken as a whole.

3.5 Required Filings and Consents. Assuming the accuracy of the representations and warranties of Parent and the Purchaser in Section 4.4, none of the execution, delivery or performance of this Agreement by the Company, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by the Company of the Merger or any other transaction contemplated by this Agreement, or the Company’s compliance with any of the provisions of this Agreement will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Authority or any other Person, other than (a) the filing of the Certificate of Merger as required by the DGCL, (b) compliance with the applicable requirements of the Exchange Act and the Securities Act, (c) filings by the Company with the SEC as may be required in connection with this Agreement and the transactions contemplated hereby, (d) such filings as may be required under the rules and regulations of the NYSE MKT, (e) compliance with the applicable requirements of the HSR Act, (f) as set forth in Section 3.5 of the Company Disclosure Schedule, and (g) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to any Governmental Authority or any other Person, individually or in the aggregate, has not had a Company Material Adverse Effect.

3.6 Permits; Compliance With Law .

(a) The Company and each Company Subsidiary holds all material authorizations, licenses, permits, certificates, variances, exemptions, approvals, orders, registrations and clearances of any Governmental Authority necessary for the Company and each Company Subsidiary to own, lease and operate its properties and assets, and to conduct its business as currently conducted and as currently planned to be conducted (the “**Company Permits**”). The Company and each Company Subsidiary is and since January 1, 2012 (or as for those Company Subsidiaries that were not Company Subsidiaries on January 1, 2012, since such time as they have been Company Subsidiaries) has been in compliance with the terms of the Company Permits, and all of the Company Permits are valid and in full force and effect. To the Knowledge of the Company, no suspension, modification, revocation or cancellation of any of the Company Permits is pending or threatened.

(b) Neither the Company nor any Company Subsidiary, nor any officer, director, employee, or, to the Knowledge of the Company, any entity listed on Section 3.6(b) of the Company Disclosure Schedule or any Person acting on behalf of the Company, any Company Subsidiary or any entity listed on Section 3.6(b) of the Company Disclosure Schedule, has: (i) violated the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations promulgated thereunder, any other comparable anti-corruption and/or anti-bribery Laws of any other jurisdiction (collectively, “**Anti-corruption Laws**”); or (ii) offered, given, promised, or authorized the giving of anything of value, directly or indirectly, to or from any Person, including any Public Official for the purpose of: (A) improperly influencing any act or decision of such Person or Public Official in his or her official capacity, (B) inducing such Person or Public Official to do or omit to do any act in violation of a lawful duty, (C) securing any improper advantage, or (D) inducing such Person or Public Official to use his or her influence with a Governmental Authority to affect or influence any act or decision of such Governmental Authority, in each case in order to assist the Company or the Company Subsidiary in obtaining or retaining business for or with, or directing business to, any Person. The Company and its Subsidiaries have instituted an anti-corruption compliance program reasonably designed to ensure compliance with Anti-corruption Laws.

(c) The books, records and accounts of the Company and to the Knowledge of the Company, the Company Subsidiaries since such time as they have been Company Subsidiaries have at all times accurately and fairly reflected, in reasonable detail, the transactions and disposition of their respective funds and assets. To the Knowledge of the Company, there have never been any false or fictitious entries made in the books, records, or accounts of the Company or any Company Subsidiary relating to any illegal payment or secret or unrecorded fund, and neither the Company nor any Company Subsidiary has established or maintained a secret or unrecorded fund.

[Table of Contents](#)

(d) Neither the Company nor any Company Subsidiary, nor any officer, director, employee, or, to the Knowledge of the Company, any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule or any Person acting on behalf of the Company, any Company Subsidiary or any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule, is a Sanctioned Person. The Company and the Company Subsidiaries are, and to the Knowledge of the Company, any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule is, and, in each case, have been since January 1, 2012, in compliance with applicable Sanctions, Export Control Laws, and AML Laws and are not knowingly engaged in any activity that would reasonably be expected to result in the Company, any Company Subsidiary or any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule being designated as a Sanctioned Person. Neither the Company nor any Company Subsidiary, nor to the Knowledge of the Company, any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule, nor any of their respective Representatives, when acting on behalf of the Company, any Company Subsidiary, or to the Knowledge of the Company, any entity listed on [Section 3.6\(b\)](#) of the Company Disclosure Schedule, (i) has engaged in any transactions or dealings, directly or indirectly, with any Sanctioned Person or in any Sanctioned Country, (ii) has conducted or initiated any internal investigation or made a voluntary, directed, or involuntary disclosure to any governmental entity or similar agency regarding any alleged act or omission arising under or relating to any non-compliance with any Sanctions, Export Control Laws, or AML Laws, or (iii) is, or has been, the subject of any current, pending or threatened investigation, inquiry or enforcement proceedings for any potential violation of Sanctions, Export Control Laws, or AML Laws, or (iv) has received any notice, request, citation or other communication (in writing or otherwise) regarding any actual, alleged, or potential violation of, or failure to comply with Sanctions, Export Control Laws, or AML Laws.

3.7 [SEC Filings: Financial Statements](#).

(a) Since January 1, 2014, the Company has timely filed or otherwise furnished (as applicable) all registration statements, prospectuses, forms, reports, definitive proxy statements, schedules, statements and documents required to be filed or furnished by it under the Securities Act or the Exchange Act, as the case may be, together with all certifications required pursuant to the Sarbanes-Oxley Act (such documents and any other documents filed by the Company or any Company Subsidiary with the SEC, as have been supplemented, modified or amended since the time of filing, collectively, the “*Company SEC Documents*”). As of their respective filing dates the Company SEC Documents (i) did not (or with respect to Company SEC Documents filed after the date hereof, will not) contain any untrue statement of any material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with the applicable requirements of the Exchange Act or the Securities Act, as the case may be, the Sarbanes-Oxley Act and the applicable rules and regulations of the SEC thereunder. None of the Company Subsidiaries is currently required to file any forms, reports or other documents with the SEC.

(b) All of the audited consolidated financial statements and unaudited consolidated interim financial statements of the Company and the Company Subsidiaries included in the Company SEC Documents (A) have been or will be, as the case may be, prepared from, are in accordance with, and accurately reflect the books and records of the Company and the Company Subsidiaries in all material respects, (B) have been or will be, as the case may be, prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of interim financial statements, for

[Table of Contents](#)

normal and recurring year-end adjustments that are not material in amount or nature and as may be permitted by the SEC on Form 10-Q, Form 8-K or any successor or like form under the Exchange Act) and (C) fairly present in all material respects the consolidated financial position and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and the Company Subsidiaries as of the dates and for the periods referred to therein. Without limiting the generality of this [Section 3.7\(b\)](#), since January 1, 2014, (i) no independent public accountant of the Company has resigned or been dismissed as independent public accountant of the Company as a result of or in connection with any disagreement with the Company on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, (ii) no executive officer of the Company has failed in any respect to make, without qualification, the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any form, report or schedule filed by the Company with the SEC since the enactment of the Sarbanes-Oxley Act, and (iii) no enforcement action has been initiated or, to the Knowledge of the Company, threatened against the Company by the SEC relating to disclosures contained in any Company SEC Document.

(c) As of the date of this Agreement, the Company's total current assets, cash and cash equivalents and working capital are equal to or greater than the amounts set forth in [Section 3.7\(c\)](#) of the Company Disclosure Schedule.

3.8 [Internal Controls: Sarbanes-Oxley Act](#).

(a) The Company has designed and maintains a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting for the Company and the Company Subsidiaries. The Company (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and (ii) since January 1, 2014, has disclosed to the Company's auditors and the audit committee of the Company Board (and made summaries of such disclosures available to Parent, if any) (A) any known significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(b) Neither the Company nor any Company Subsidiary nor, to the Knowledge of the Company, any director, officer, auditor, accountant or representative of the Company or any Company Subsidiary has received or otherwise had or obtained knowledge of any substantive complaint, allegation, assertion or claim, whether written or oral, that the Company or any Company Subsidiary since such time as a Company Subsidiary has been a Company Subsidiary has engaged in questionable accounting or auditing practices. No current or former attorney representing the Company or any Company Subsidiary has reported evidence of a

[Table of Contents](#)

material violation of securities Laws, breach of fiduciary duty or similar violation by the Company or any Company Subsidiary, or any of their respective officers, directors, employees or agents, to the current Company Board or any committee thereof or to any current director or executive officer of the Company.

(c) To the Knowledge of the Company, no employee of the Company or any Company Subsidiary has provided or is providing information to any Law enforcement agency regarding the commission or possible commission of any crime or the violation or possible violation of any applicable legal requirements of the type described in Section 806 of the Sarbanes-Oxley Act by the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary nor, to the Knowledge of the Company, any director, officer, employee, contractor, subcontractor or agent of the Company or any Company Subsidiary, has discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against an employee of the Company or any Company Subsidiary in the terms and conditions of employment because of any lawful act of such employee described in Section 806 of the Sarbanes-Oxley Act.

(d) As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Documents. To the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any Governmental Authority or any internal investigations pending or threatened, in each case regarding any accounting practices of the Company or any Company Subsidiary.

(e) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the NYSE MKT.

3.9 Books and Records. The books and records of the Company and each Company Subsidiary since such time as they have been Company Subsidiaries have been, and are being fully, properly and accurately maintained in accordance with GAAP (to the extent applicable) and any other applicable legal and accounting requirements and reflect only actual transactions. The minute books of the Company and each Company Subsidiary, copies of which have been made available by the Company to Parent, contain in all material respects complete and correct records of all meetings and other corporate actions held or taken since January 1, 2014 by their respective stockholders (or equivalent) and boards of directors (or equivalent), including committees of their respective boards of directors (or equivalent); provided, that, the Company may have redacted information in such records regarding the identity of any Person who has submitted a proposal with respect to, or otherwise expressed interest in pursuing, any acquisition of the Company and any valuation or other material terms with respect to such proposal or expression of interest, information in such records regarding any Person who the Company may have considered acquiring, or otherwise entering into a strategic transaction with, information in such records that may be subject to the attorney-client privilege, or information in such materials which discloses the name and any details regarding compensation provided to any employee of the Company or any Company Subsidiary.

[Table of Contents](#)

3.10 No Undisclosed Liabilities. Except for those liabilities and obligations (a) specifically reserved against or provided for in the unaudited condensed consolidated balance sheet of the Company as of September 25, 2016 or in the notes thereto, (b) incurred in the ordinary course of business consistent with past practice since September 25, 2016, which have not had a Company Material Adverse Effect, or (c) incurred under this Agreement or in connection with the transactions contemplated hereby, including the Offer and the Merger, neither the Company nor any Company Subsidiary has incurred any liabilities or obligations of the type required to be disclosed in the liabilities column of a balance sheet prepared in accordance with GAAP. The Company has no outstanding Indebtedness other than the Company Debt.

3.11 Absence of Certain Changes or Events.

(a) Since September 25, 2016, (i) except for the execution and performance of this Agreement and the discussions and negotiations related thereto, the Company and the Company Subsidiaries have conducted their respective businesses in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any Company Material Adverse Effect.

(b) Except as set forth in Section 3.11 of the Company Disclosure Schedule, there has not been any action taken by the Company or any Company Subsidiary from September 25, 2016 through the date of this Agreement that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1.

3.12 Employee Benefit Plans.

(a) Section 3.12(a) of the Company Disclosure Schedule sets forth a complete and accurate list of each material Company Employee Plan. With respect to each such Company Employee Plan, the Company has provided to the Purchaser complete and accurate copies of (A) such Company Employee Plan, including any material amendments thereto, and descriptions of all material terms of any such plan that is not in writing, (B) each trust, insurance, annuity or other funding Contract related thereto, (C) the latest summary plan descriptions, including any summary of material modifications, and any other material notice or description provided to employees, (D) the three most recent financial statements and actuarial or other valuation reports prepared with respect thereto, (E) the most recently received IRS determination letter or opinion letter, if any, issued by the IRS with respect to any Company Employee Plan that is intended to qualify under Section 401(a) of the Code, (F) the three most recent annual reports on Form 5500 (and all schedules thereto) required to be filed with the IRS with respect thereto and (G) all other material filings and material correspondence with any Governmental Authority (including any correspondence regarding actual or, to the Knowledge of the Company, threatened audits or investigations) with respect to such Company Employee Plan.

(b) Each material Company Employee Plan (and any related trust or other funding vehicle) has been maintained and administered in all material respects in accordance with its terms and is in compliance in all material respects with ERISA, the Code and all other applicable Laws. Each of the Company and the Company Subsidiaries has performed all material obligations required to be performed by it under all Company Employee Plans.

[Table of Contents](#)

(c) No Company Employee Plan is, and none of the Company, any of the Company Subsidiaries or any ERISA Affiliate thereof sponsors, maintains, contributes to, or has ever sponsored, maintained, contributed to, or has any actual or contingent liability with respect to any (i) single employer plan or other pension plan that is subject to Section 302 or Title IV of ERISA or Section 412 of the Code, (ii) “multiple employer plan” within the meaning of Section 413(c) of the Code, (iii) any “multiemployer plan” (within the meaning of Section 3(37) of ERISA) or (iv) multiple employer welfare arrangement (within the meaning of Section 3(4) of ERISA).

(d) Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has timely received or applied for a favorable determination letter or is entitled to rely on a favorable opinion letter from the IRS, in either case, that has not been revoked and, to the Knowledge of the Company, no event or circumstance exists that has adversely affected or would reasonably be expected to materially and adversely affect such qualification or exemption. Each trust established in connection with any Company Employee Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and, to the Knowledge of the Company, no fact or event has occurred that would reasonably be expected to materially and adversely affect the exempt status of any such trust. Neither the Company nor any Company Subsidiary, with respect to any Company Employee Plan, has engaged in any non-exempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) which could result in the imposition of a material penalty assessed pursuant to Section 502(i) of ERISA or a material tax imposed by Section 4975 of the Code on the Company or any Company Subsidiary.

(e) Except as set forth on [Section 3.12\(e\)](#) of the Company Disclosure Schedule, none of the execution, delivery or performance of this Agreement by the Company, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by the Company of the Merger or any other transaction contemplated by this Agreement, or the Company’s compliance with any of the provisions of this Agreement will (either alone or in conjunction with any other event, including any termination of employment on or following the Effective Time) (i) entitle any Participant to any compensation or benefit, (ii) accelerate the time of payment or vesting, increase the amount of payment, or trigger any payment or funding, of any compensation or benefit or trigger any other material obligation under any Company Employee Plan, or (iii) trigger any funding (through a grantor trust or otherwise) of compensation, equity award or other benefits.

(f) With respect to each “disqualified individual” (as defined in Section 280G(c) of the Code) who could receive any “excess parachute payment” (as defined in Section 280G(b)(1) of the Code), the Company has made available or will make available as soon as reasonably practicable following the date hereof to Parent and the Purchaser (i) a list of such Person’s name and title (ii) Form W-2s for the five (5) years ending 2016 (or for such shorter period during which a disqualified individual provided service to the Company) and (iii) a list of Company Employee Plans providing for “parachute payments” (as defined in Section 280G(b)(2) of the Code) such Person could receive. Except as set forth in [Section 3.12\(f\)](#) of the Company Disclosure Schedule, none of the execution, delivery or performance of this Agreement by the Company, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by the Company of the Merger or any other transaction contemplated

[Table of Contents](#)

by this Agreement, nor the Company's compliance with any of the provisions of this Agreement (alone or in conjunction with any other event, including any termination of employment on or following the Effective Time), will result in any "parachute payment" under Section 280G of the Code.

(g) Except as set forth in [Section 3.12\(g\)](#) of the Company Disclosure Schedule, no Company Employee Plan provides for any gross-up, reimbursement or additional payment by reason of any Tax imposed under Section 409A or Section 4999 of the Code.

(h) Each Company Employee Plan that constitutes a nonqualified deferred compensation plan (within the meaning of Section 409A of the Code) is set forth in [Section 3.12\(h\)](#) of the Company Disclosure Schedule and has been maintained and operated in material documentary and operational compliance with Section 409A or the Code or an available exemption therefrom.

(i) Each Company Employee Plan maintained or contributed to by the Company or any Company Subsidiary under the Law or applicable custom or rule of the relevant jurisdiction outside of the United States (each such Company Employee Plan, a "**Foreign Plan**") is listed in [Section 3.12\(i\)](#) of the Company Disclosure Schedule. As regards each Foreign Plan, (i) such Foreign Plan is in material compliance with the provisions of applicable Law of each jurisdiction in which such Foreign Plan is maintained, (ii) such Foreign Plan has been administered in all material respects at all times in accordance with its terms and applicable Laws, and (iii) such Foreign Plan has obtained from the Governmental Authority having jurisdiction with respect to such Foreign Plan any required determinations, if any, that such Foreign Plan is in compliance in all material respects with the Laws of the relevant jurisdiction if such determinations are required in order to give effect to such Foreign Plan. No Foreign Plan has unfunded liabilities that will not be offset by insurance or that are not fully accrued on the financial statements of the Company.

(j) Neither the Company nor any Company Subsidiary is a party to any Contract or plan that would reasonably be likely to result, separately or in the aggregate, in the payment of any material amount that will not be fully deductible as a result of Section 162(m) of the Code (or any corresponding provision of any other applicable Tax Laws).

(k) Neither the Company nor any Company Subsidiary has any liability in respect of, or obligation to provide, post-retirement health, medical, disability or life insurance benefits for retired, former or current employees, consultants or directors of the Company or Company Subsidiaries (or the spouses, dependent or beneficiaries of any of the foregoing), whether under a Company Employee Plan or otherwise, except as required to comply with Section 4980B of the Code or any similar Law.

(l) Neither the Company nor any Company Subsidiary has an Employee Stock Purchase Plan.

3.13 Labor and Other Employment Matters.

(a) Each of the Company and the Company Subsidiaries is in compliance in all material respects with all applicable Laws respecting labor, employment, immigration, fair employment practices, terms and conditions of employment, worker classification, workers' compensation (including the proper classification of workers as independent contractors and consultants and of employees as exempt or non-exempt, in each case, under the Fair Labor Standards Act of 1938, as amended, and any similar applicable Law), occupational health and safety, plant closings, compensation and benefits, wages and hours, meal and rest periods, human rights, pay equity, and industrial awards or agreements. The Company has made available to Parent and the Purchaser in Section 3.13(a) of the Company Disclosure Schedule a true and complete list of the names and current annual salary rates or current hourly wages, bonus opportunity, hire date, credited service, accrued vacation or paid-time-off, principal work location and leave status of all present employees of the Company and each Company Subsidiary and each such employee's status as being exempt or nonexempt from the application of state and federal wage and hour Laws applicable to employees who do not occupy a managerial, administrative, or professional position.

(b) As of the Closing Date, the Company and each Company Subsidiary has paid in full all liabilities in respect of employees, including premium contributions, remittance and assessments for unemployment insurance, employer health tax, income tax, workers' compensation and any liabilities under any other employment-related legislation, accrued wages, taxes, salaries, commissions, bonuses, benefits, compensation and employee benefit plan payments. Neither the Company nor any Company Subsidiary has an obligation to re-instate any former employees or independent contractors.

(c) Neither the Company nor any of the Company Subsidiaries is or has been a party to any collective bargaining, employee association or works council or similar Contract, and there are not, to the Knowledge of the Company, any union, employee association or works council organizing activities concerning any employees of the Company or any of the Company Subsidiaries. There are no unfair labor practice charges pending before the National Labor Relations Board or any other Governmental Authority, or any Actions which are pending or, to the Knowledge of the Company, threatened by or on behalf of any employees. Neither the Company nor any of the Company Subsidiaries has recognized any trade union, whether voluntarily or in terms of any statutory procedure as set out in any applicable Law. There have been no labor strikes, slowdowns, work stoppages, picketings, negotiated industrial actions or lockouts pending or, to the Knowledge of the Company, threatened, against the Company or any of the Company Subsidiaries.

(d) Except as set forth in Section 3.13(d) of the Company Disclosure Schedule, in the three (3) years prior to the date of this Agreement, neither the Company nor any Company Subsidiary has effectuated (i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act (the "**WARN Act**")) or any similar Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or any Company Subsidiary or (ii) a "mass layoff" (as defined in the WARN Act, or any similar Law) affecting any site of employment or facility of the Company or any Company Subsidiary.

(e) The Company has made available to Parent and the Purchaser in Section 3.13(e) of the Company Disclosure Schedule a list of all independent contractors, consultants, agents or agency employees currently engaged by the Company and each Company Subsidiary, along with the position, date of retention and rate of remuneration for each such individual. Except as set forth on such list, neither the Company nor any Company Subsidiary engages or retains any independent contractors, consultants, agents or agency employees.

[Table of Contents](#)

(f) The compensation committee of the Company Board is (and at all times during the past eighteen (18) months was, and at all times from the date of this Agreement to the first date on which Parent’s designees constitute a majority of the Company Board pursuant to [Section 1.3](#) will be) composed solely of “independent directors” within the meaning of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto. The Company Board, at a meeting duly called and held, has determined that each of the members of the Compensation Committee of the Company Board is such an “independent director.” On or prior to the date hereof, the compensation committee of the Company Board, at a meeting duly called and held, approved each Company Compensation Arrangement as an “employment compensation, severance or other employee benefit arrangement” within the meaning of Rule 14d-10(d)(1) under the Exchange Act (an “**Employment Compensation Arrangement**”), and has taken all other action necessary to satisfy the requirements of the non-exclusive safe-harbor with respect to such Company Compensation Arrangements in accordance to Rule 14d-10(d)(2) under the Exchange Act. For purposes of this Agreement, “**Company Compensation Arrangement**” means (i) any employment agreement, severance agreement or change of control agreement between the Company or any Company Subsidiary, on the one hand, and any holder of Shares who is or was a director, officer or employee of the Company or any Company Subsidiary, on the other hand, (ii) any Company Options or Company RSUs awarded to, or any acceleration of vesting of any Company Options or Company RSUs held by, any holder of Shares who is or was a director, officer or employee of the Company or any Company Subsidiary and (iii) each of the agreements, plans and arrangements entered into or adopted and set forth on [Section 3.13\(f\)](#) of the Company Disclosure Schedule.

3.14 [Contracts; Indebtedness](#).

(a) [Section 3.14\(a\)](#) of the Company Disclosure Schedule sets forth an accurate and complete list of each Contract to which the Company or any Company Subsidiary is a party or which binds or affects their respective properties or assets, and which falls within any of the following categories:

(i) Contracts between the Company or any Company Subsidiary and any of the 10 largest customers of such Persons (determined on the basis of aggregate revenues recognized by the Company and the Company Subsidiaries during the four fiscal quarters ended September 25, 2016);

(ii) Contracts between the Company or any Company Subsidiary and any (A) of the 10 largest suppliers (other than a licensor) that are material, including any supplier of manufacturing, outsourcing, foundry, assembly (packaging), design or development services (determined on the basis of aggregate payments recognized by the Company and the Company Subsidiaries during the four fiscal quarters ended September 25, 2016) and (B) sales representative, distributor, original equipment manufacturer, manufacturing, value added, remarketer, reseller, or independent software vendor agreement that is material for the use or distribution of Company Products or Company IP;

[Table of Contents](#)

(iii) except for the Contracts disclosed in clauses (i) or (ii) above, each Contract that involves performance of services or delivery of goods, materials, supplies or equipment or developmental, consulting or other services commitments by the Company or any Company Subsidiary, or the payment therefor by the Company or any Company Subsidiary, providing for either (A) recurring annual payments after the date hereof of \$100,000 or more or (B) aggregate payments or potential aggregate payments after the date hereof of \$200,000 or more;

(iv) Contracts providing for any contingent payments by the Company or any Company Subsidiary exceeding \$100,000 in any one case;

(v) Contracts that (A) restrict the Company or its Subsidiaries or Affiliates, or, after the Effective Time, Parent or the Surviving Corporation or any of their respective Affiliates, from competing or engaging in any material respect in any line of business or with any Person or in any geographic area or (B) require any material benefit be granted to a Third Party, or material right be lost by the Company, its Subsidiaries or Affiliates, or, after the Effective Time, Parent or the Surviving Corporation or any of their respective Affiliates, or the successors to any of the foregoing, as a result of competing in or engaging in any line of business or with any Person or in any geographic area;

(vi) Contracts that grant any exclusive license or exclusive supply or exclusive distribution agreement to any Company Products or Company IP;

(vii) Contracts that grant any right of first refusal, or similar right to acquire exclusive rights or ownership with respect to any Company Product, or Company IP;

(viii) Contracts that (A) contain any provision that requires the purchase of all or a given portion of the Company's or any Company Subsidiary's requirements for products or services from a given Third Party, or any other similar provision, (B) grant "most favored nation" rights, (C) grant material guaranteed availability of supply of Company Products for a period greater than twenty-four (24) months, (D) guarantee as to foundry capacity or priority or (E) guarantee prices for a period of greater than twenty-four (24) months;

(ix) Contracts pursuant to which the Company or any Company Subsidiary has agreed to provide source code of Company Proprietary Software to be put in escrow or to be provided to any Third Party (other than source code for software drivers, API's and similar tools, or immaterial portions of source code of Company Proprietary Software provided pursuant to a software development kit license or disclosed in connection with trials, demonstrations or similar arrangements, in each case on a non-exclusive basis and subject to written non-disclosure and non-use restrictions imposed on the recipient);

(x) Company IP Contracts, except for Contracts for Standard Software or where Company or its Subsidiaries grant non-exclusive licenses relating to Company Products in the ordinary course of business of the Company and its Subsidiaries;

[Table of Contents](#)

(xi) Leases, subleases, occupancy agreements and other agreements (whether of real or personal property) to which the Company or any Company Subsidiary is party as either lessor or lessee, providing for either (A) annual payments after the date hereof of \$100,000 or more or (B) aggregate payments after the date hereof of \$100,000 or more;

(xii) Contracts relating to Indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement with an aggregate outstanding principal amount not exceeding \$100,000 and which may be prepaid on not more than thirty (30) days' notice without the payment of any penalty;

(xiii) Contracts pursuant to which the Company or any Company Subsidiary is a party that creates or grants a material Lien (including Liens upon properties acquired under conditional sales, capital leases or other title retention or security devices), other than Permitted Liens and other than Contracts with customers entered into in the ordinary course of business consistent with past practice;

(xiv) Contracts under which the Company or any Company Subsidiary has, directly or indirectly, made any loan, capital contribution to, or other investment in, any Person (other than the Company or any Company Subsidiary and other than (i) extensions of credit in the ordinary course of business consistent with past practice and (ii) investments in marketable securities in the ordinary course of business);

(xv) Contracts under which the Company or any Company Subsidiary have any obligations which have not been satisfied or performed (other than confidentiality obligations) relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise) with a purchase price in excess of \$100,000;

(xvi) any Contracts (A) (1) between the Company or any Company Subsidiary and any Governmental Authority or (2) between the Company or any Company Subsidiary, as a subcontractor and any prime contractor to any Governmental Authority or (B) to the Knowledge of the Company, financed by any Governmental Authority and subject to the rules and regulations of any Governmental Authority concerning procurement;

(xvii) partnership, joint venture or other similar Contract or arrangement material to the Company and the Company Subsidiaries, taken as a whole;

(xviii) Contracts providing for the development of any material Technology or any material Intellectual Property Right, independently or jointly, by or for the Company or any Company Subsidiary;

(xix) collective bargaining agreement or other Contract with any labor union;

(xx) severance agreements, programs, policies, arrangements or Contracts providing any individual with severance payments and/or benefits in excess of \$75,000 in the aggregate;

[Table of Contents](#)

(xxi) all employment agreements or Contracts for the employment or engagement of any officer, individual employee, consultant or other Person on a full time, part time, consulting or other basis (A) providing annual compensation (whether cash and/or otherwise) in excess of \$150,000, (B) providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated by this Agreement or (C) otherwise restricting the Company's (or any Company Subsidiary's) ability to terminate the employment or engagement of any employee or consultant at any time for any lawful reason or for no reason without penalty or liability;

(xxii) Contract providing for any current or ongoing obligations to, or rights in favor of, any current or former director, officer or Affiliate of the Company or any of its Subsidiaries, including any Contract that obligates the Company or any of its Subsidiaries to indemnify or hold harmless any past or present director, officer, trustee or employee of the Company or any of its Subsidiaries (other than the certificate of incorporation or bylaws (or similar governing documents) of the Company or any of its Subsidiaries) other than any Contract for employment;

(xxiii) Contract entered into since January 1, 2014 in connection with the settlement or other resolution of any Action or Order that has any continuing material obligations, liabilities or restrictions or involved payment of more than \$100,000;

(xxiv) Contract providing for indemnification of any Person with respect to material liabilities relating to any current or former business of the Company, any Company Subsidiary or any predecessor Person other than indemnification obligations of the Company or any Company Subsidiary pursuant to the provisions of a Contract entered into by the Company or any Company Subsidiary in the ordinary course of business consistent with past practice; and

(xxv) any other "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC).

(b) Each Contract of the type described in [Section 3.14\(a\)](#) is referred to herein as a "**Company Material Contract**". Accurate and complete copies of each Company Material Contract have been provided by the Company to Parent, or publicly filed with the SEC.

(c) (i) Each Company Material Contract is a legally valid, binding and enforceable obligation of the Company or the Company Subsidiaries, as applicable, and, to the Knowledge of the Company, of the other party or parties thereto, in accordance with its terms, subject to applicable bankruptcy, insolvency and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity, (ii) each of the Company and each Company Subsidiary has in all material respects performed the obligations required by it under each Company Material Contract, (iii) none of the Company or any Company Subsidiary knows of, or has received written notice of, any violation or default under (nor does there exist any condition which upon the passage of time or the giving of notice or both would cause such a violation of or default under) any Company Material Contract and (iv) neither the Company nor any Company Subsidiary has received any written notice from any other party to terminate any such Company Material Contract, and otherwise has no Knowledge, that such party intends to terminate, or not renew, any such Company Material Contract.

[Table of Contents](#)

(d) No director, officer, employee, Affiliate (which for purposes of this Section 3.14(d) shall include any stockholder of the Company that owns more than 5% of the Company Common Stock) or “associate” or members of any of their “immediate family” (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Exchange Act) of the Company or any Company Subsidiary, other than in its capacity as a director, officer or employee of such Person (i) is involved, directly or indirectly, in any material business arrangement or other material relationship with the Company or any Company Subsidiary (whether written or oral), (ii) directly or indirectly owns, or otherwise has any right, title, interest in, to or under, any material property or right, tangible or intangible, that is used by the Company or any Company Subsidiary or (iii) is engaged, directly or indirectly, in the conduct of the business of the Company and the Company Subsidiaries.

3.15 Litigation. (a) There is no Order or Action pending or, to the Knowledge of Company, threatened in writing against the Company or any Company Subsidiary or their respective assets or properties, or for which the Company or any Company Subsidiary has potential liability (including by virtue of indemnification or otherwise), that, if adversely determined, would reasonably be expected to be material to the Company and the Company Subsidiaries taken as a whole and (b) to the Knowledge of the Company, there is no Action pending against any executive officer or director of the Company or any Company Subsidiary in their capacity as such that. As of the date of this Agreement, Section 3.15 of the Company Disclosure Schedule sets forth a description of each current Action or Order pending, instituted or, to the Knowledge of the Company, threatened in writing against the Company or any Company Subsidiary or their respective assets or properties, or for which the Company or any Company Subsidiary has potential liability (including by virtue of indemnification or otherwise).

3.16 Environmental Matters. Except in each case as would not be reasonably expected to be material and adverse to the business of the Company and the Company Subsidiaries, taken as a whole:

(a) no notice, demand, request for information, citation, summons or Order has been received, no complaint has been filed, no penalty has been assessed, and no Action is pending and, to the Knowledge of the Company, is threatened by any Governmental Authority or other Person relating to or arising out of any failure of the Company or any Company Subsidiary to comply with any Environmental Law;

(b) the Company and each Company Subsidiary is and has been (in the case of each Company Subsidiary, since such time as a Company Subsidiary has been a Company Subsidiary and, to the Knowledge of the Company prior to such time) in compliance with all Environmental Laws and all Environmental Permits of the Company;

(c) there has been no release by the Company or any Company Subsidiary or for which the Company or any Company Subsidiary would reasonably be expected to be liable by Contract or by operation of Law, of any Hazardous Substance at, under, from or to any facility or real property currently or formerly owned, leased or operated by any the Company or any Company Subsidiary;

[Table of Contents](#)

(d) there are no liabilities of the Company or any Company Subsidiary of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law or any Hazardous Substance and, to the Knowledge of the Company, there is no condition, situation or set of circumstances that could reasonably be expected to result in or be the basis for any such liability;

(e) neither the Company nor any Company Subsidiary has disposed or arranged for the disposal of any Hazardous Substance at any off-site location;

(f) the Company has provided to the Purchaser all material documents related to the Company's (and the Company Subsidiaries') compliance with all Environmental Laws, including all Phase I and Phase II environmental reports, environmental assessments, studies, correspondence with Governmental Authorities and permits; and

(g) neither the Company nor any Company Subsidiary owns, leases or operates or has owned, leased or operated any real property, or conducts or has conducted any operations, in New Jersey or Connecticut.

(h) For purposes of this [Section 3.16](#), the terms "Company" and "Company Subsidiary" shall include any entity that is, in whole or in part, a predecessor of the Company or any Company Subsidiary.

3.17 [Intellectual Property](#).

(a) [Products and Services](#). [Section 3.17\(a\)\(i\)](#) of the Company Disclosure Schedule identifies as of the date of this Agreement each Company Product currently made available to Third Parties for sale, license or lease, together with any Company Product currently under development by the Company or any Company Subsidiary, as reflected by the Company's and the Company Subsidiaries' product road maps as of the date of this Agreement. [Section 3.17\(a\)\(ii\)](#) of the Company Disclosure Schedule contains a list of all Contracts pursuant to which the Company or of its Subsidiaries is obligated to pay royalties, fees, commissions, and other amounts to Third Parties for the manufacture, sale, or distribution of any Company Product or the use of any Company IP or Third Party Intellectual Property.

(b) [Registered IP](#). [Section 3.17\(b\)](#) of the Company Disclosure Schedule accurately identifies as of the date of this Agreement (i) each item of Registered IP in which the Company or any Company Subsidiary has or purports to have an ownership interest (whether exclusively, jointly with another Person, or otherwise), (ii) for Patents, Trademarks, mask works and Copyrights that constitute Registered IP, the jurisdiction in which such item of Registered IP has been registered or filed and the applicable application, registration, or serial or other similar identification number, (iii) any other Person who has an ownership interest in such item of Registered IP and the nature of such ownership interest, and (iv) all material unregistered trademarks used in connection with the Company Products or the business of the Company or any Company Subsidiaries. The Company has made available to Parent complete and accurate copies of all applications and other material correspondence with Governmental Authorities related to the prosecution and maintenance of each such item of Registered IP.

[Table of Contents](#)

(c) Licenses Granted. Section 3.17(c) of the Company Disclosure Schedule accurately identifies as of the date of this Agreement each Contract pursuant to which any Person has been granted any license under, or otherwise has received or acquired any right (whether or not currently exercisable) or interest in, any Company IP, other than non-exclusive licenses granted in the ordinary course of business consistent with past practice. Except as set forth in Section 3.17(c) of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary is bound by, and no Company IP is subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of the Company or any Company Subsidiary to use, exploit, assert, or enforce any Company IP anywhere in the world.

(d) Ownership. The Company and/or the Company Subsidiaries exclusively own all right, title, and interest in and to the Company IP free and clear of any Liens (other than Permitted Liens and nonexclusive licenses granted in the ordinary course of business). Neither the Company nor any Company Subsidiary has transferred ownership of (whether a whole or partial interest), or granted any exclusive right to use, any Company IP to any Person. Since January 1, 2012, neither the Company nor any Company Subsidiary has received any written claims challenging the Company's or the Company Subsidiary's exclusive ownership of any Company IP or the validity or enforceability of any Company IP. Each Person who is or was an employee, officer, director or contractor of the Company or any Company Subsidiary and who contributed to the conception or development of any Company IP has signed a (1) valid, enforceable agreement containing an assignment to the Company and the Company Subsidiaries, as applicable, of all Intellectual Property Rights in such Person's contribution to the Company IP except to the extent such Intellectual Property Rights are not legally assignable as expressly identified to the Company, and (2) waiver of any applicable moral rights. No Person has notified the Company or any Company Subsidiary in writing that it is claiming any ownership of or right to use any Company IP (other than the right to use Company IP expressly granted to such Person under a Contract with the Company). To the Knowledge of the Company, no employee of the Company or any Company Subsidiary is (i) bound by or otherwise subject to any Contract restricting him from performing his duties for the Company or the relevant Company Subsidiary, or (ii) in breach of any Contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to his activities as an employee of the Company or any Company Subsidiary.

(e) Registration; Validity. The Company IP is, to the Knowledge of the Company, valid, subsisting, and enforceable. The Company and each Company Subsidiary has made all filings and payments and taken all other actions required by law to be made or taken to maintain each item of Company IP that is Registered IP in full force and effect by the applicable deadline, except where Company has decided to allow any such registration to lapse. To the Knowledge of the Company, no interference, opposition, reissue, reexamination, or other Action is or since January 1, 2012, has been pending or threatened, in which the scope, validity, or enforceability of any Company IP is being or has been contested or challenged. No application for a Patent or a material copyright, mask work, or Trademark registration or any other type of material Registered IP filed by or on behalf of the Company or any Company Subsidiary at any time since January 1, 2012 has been abandoned, allowed to lapse, or rejected. Neither the Company nor any Company Subsidiary has engaged in patent or copyright misuse or any fraud or inequitable conduct in connection with any Registered IP. The Company and each Company Subsidiary and their patent counsel have complied with their duty of candor and disclosure and

[Table of Contents](#)

have made no material misrepresentations in the filings submitted to the applicable Governmental Authorities with respect to all Patents included in the Company IP. No Trademark owned, used, or applied for by the Company or any Company Subsidiary conflicts or interferes with any Trademark owned, used, and applied for by any other Person. To the Knowledge of the Company, no event or circumstance (including a failure to exercise adequate quality controls and an assignment in gross without the accompanying goodwill) has occurred or exists that has resulted in, or could reasonably be expected to result in, the abandonment of any material Trademark (whether registered or unregistered) owned, used, or applied for by the Company or any Company Subsidiary. Section 3.17(e) of the Company Disclosure Schedule sets forth a summary listing with respect to each item of Registered IP and all legally required actions, filings and payment obligations known to Company as of the Closing Date hereof and due to be made to any Governmental Authority within one hundred and eighty (180) days following the Closing Date.

(f) Non-infringement. Except as set forth in Section 3.17(f) of the Company Disclosure Schedule, to the Knowledge of Company, neither the Company Products nor the operation of the business of the Company and the Company Subsidiaries has infringed, misappropriated or violated, or infringes, misappropriates, or violates, any Intellectual Property Right of any Third Party. To the Knowledge of the Company, no infringement, misappropriation, or similar claim or Action is pending or has been threatened in writing against any Person who may be entitled to be indemnified by the Company or any Company Subsidiary under a Contract with the Company or a Company Subsidiary with respect to such claim. Except as set forth in Section 3.17(f) of the Company Disclosure Schedule, since January 1, 2012, neither the Company nor any Company Subsidiary has received any written claim alleging (i) the invalidity of any of the Company IP, (ii) that any Person has any claim of legal or beneficial ownership or exclusive rights with respect to any Company IP, or (iii) any infringement, misappropriation, or violation of any Intellectual Property Right of another Person by the Company or any Company Subsidiary; and to the Company's Knowledge, there is no reasonable basis for any such claim.

(g) Infringement of Company IP. To the Knowledge of the Company, no Person has infringed, misappropriated, or otherwise violated, and no Person is currently infringing, misappropriating, or otherwise violating, the Intellectual Property Rights in any Company IP.

(h) Sufficiency. The Company and the Company Subsidiaries own or otherwise have the right to use all Intellectual Property Rights and Technology used in, held for use in, or necessary for the conduct of the business of the Company and the Company Subsidiaries as currently conducted. The Company IP together with all Company-owned Technology and the Third Party Intellectual Property constitutes all of the Technology and Intellectual Property Rights necessary to operate the business of the Company and the Company Subsidiaries as currently conducted; provided that the foregoing shall not be deemed a representation or warranty of non-infringement.

[Table of Contents](#)

(i) Effect of Transaction. Except with respect to any Contract to which Purchaser or any of its Subsidiaries is a party prior to the Closing and which are unrelated to this transaction, the execution, delivery and performance of this Agreement, and the Closing, will not, with or without notice or the lapse of time, result in or give any other Person the right or option to cause: (i) a loss of, or Lien on, any Company IP or Parent IP; (ii) a material breach of, termination of, or acceleration or modification of any right under any Contract listed or required to be listed in Sections 3.14(a)(ii), 3.14(a)(x) and 3.17(c) of the Company Disclosure Schedule; (iii) the release, disclosure, or delivery of any Company IP by or to any escrow agent or other Person; or (iv) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Company IP or Parent IP.

(j) Source Code. Except as set forth in Section 3.17(j) of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary has disclosed, licensed, made available or delivered to any escrow agent or any Third Party any of the source code for any Company Proprietary Software (other than source code for software drivers, API's and similar tools, or immaterial portions of source code of Company Proprietary Software provided pursuant to a software development kit license or disclosed in connection with trials, demonstrations or similar arrangements, in each case on a non-exclusive basis and subject to written non-disclosure and non-use restrictions imposed on the recipient). Neither the Company nor any Company Subsidiary has any duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available the source code for any Company Proprietary Software to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of an Acquired Company. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) legally entitles a Person to delivery, license, or disclosure of any source code for any Company Proprietary Software where such Person is not, as of the date of this Agreement, an employee of the Company or any Company Subsidiary.

(k) Open Source. No Company Proprietary Software is subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license such as the GNU Public License, Lesser GNU Public License, or Mozilla Public License) that (i) requires, or conditions the use or distribution of such Company Proprietary Software on, (A) the disclosure, licensing, or distribution of the source code for such Company Proprietary Software or portion thereof or (B) the granting to licensees of the right to make derivative works or other modifications to such Company Proprietary Software or portion thereof; (ii) imposes any restriction on the consideration to be charged for the distribution thereof; (iii) creates, or purports to create, obligations for Company or any Company Subsidiary with respect to any Company Proprietary Software or grants, or purports to grant, to any third party, any rights or immunities under any Company Proprietary Software; or (iv) imposes any other material limitation, restriction, or condition on the right of Company or any Company Subsidiary with respect to its use or distribution.

(l) Confidentiality; Trade Secrets. The Company and each Company Subsidiary, as applicable, has taken commercially reasonable measures to protect and maintain (i) the confidentiality of all material proprietary information that the Company and the Company Subsidiaries hold, as a trade secret, and (ii) its ownership of, and rights in, all Company IP owned by the Company or any Company Subsidiary. Without limiting the foregoing, neither the Company nor any Company Subsidiary has made any of its material trade secrets or other material confidential or proprietary information that it intended to maintain as confidential information (including source code with respect to Company IP) available to any other Person except pursuant to written agreements requiring such Person to maintain the confidentiality of such confidential information, and to the Knowledge of the Company, no Person has materially breached any such agreement. To the Knowledge of the Company, there has been no misappropriation of any trade secret of the Company.

[Table of Contents](#)

(m) Malicious Code. No Company Product or Company Proprietary Software contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” “worm,” “spyware” or “adware” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or facilitating, any of the following functions: disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed (collectively, “*Malicious Code*”). The Company and the Company Subsidiaries implement reasonable measures designed to prevent the introduction of Malicious Code into Company Proprietary Software, including firewall protections and regular virus scans.

(n) Funding Sources. No funding, facilities (if provided by specific grant or authorization), or personnel of any public or private university, college or other educational or research institution or Governmental Authority were used, to develop or create, any Company IP.

(o) Standards Bodies. Except as set forth in Section 3.17(o) of the Company Disclosure Schedule, neither the Company nor any of the Company Subsidiaries is or has ever been a member of, or a contributor to, any industry standards body or similar organization that could compel the Company or any Company Subsidiary to grant or offer to any Third Party any license or right to any Company IP or otherwise impair Company’s or any Company Subsidiary’s control of any Company IP.

(p) Data Protection. Each of the Internet websites owned or operated by the Company or any of the Company Subsidiaries and any other mechanism through which the Company or any of the Company Subsidiaries collect Data maintains a publicly posted privacy statement or policy that accurately describes the Company’s or the Company Subsidiary’s practices with respect to the collection, use and disclosure of Data (including Personal Information) and that complies in all material respects with all applicable legal requirements, including, without limitation, Data Protection Laws. The Company’s and each of the Company Subsidiaries’ privacy practices conform and at all times have conformed to its own published and internal privacy policies, terms of use and guidelines related to information privacy and security, including with respect to the collection, use, disposal, disclosure, maintenance and transmission of Personal Information at the time such policies, terms of use or guidelines were in effect, in each case, except where any such nonconformance has not had a Company Material Adverse Effect. The Company has provided Parent with true and accurate copies of all such privacy policies, terms of use and guidelines related to information privacy and security. The execution, delivery and performance of this Agreement complies and will comply with all Data Protection Laws and the Company’s and each of the Company Subsidiaries’ applicable published privacy policies in each case in all material respects. Neither the Company nor any of the Company Subsidiaries have received any inquiry or complaint from a regulatory authority in any jurisdiction from which it has processed Personal Information, or inquiry or complaint giving rise to legal proceedings, regarding its collection, use, storage, or sharing of Personal Information.

[Table of Contents](#)

(q) IT Systems. The information technology systems used by the Company and any Company Subsidiaries (“*IT Systems*”) are designed, implemented, operated and maintained in accordance with customary industry standards and practices for entities operating businesses similar to the business of the Company and the Company Subsidiaries, including with the respect to redundancy, reliability, scalability and security. Without limiting the foregoing, (i) the Company and the Company Subsidiaries have taken reasonable steps and implemented reasonable procedures to ensure that their IT Systems are free from Malicious Code, and (ii) the Company and the Company Subsidiaries have in effect industry standard disaster recovery plans, procedures and facilities for their business and have taken all reasonable steps to safeguard the security and the integrity of their IT Systems. There have been no unauthorized intrusions or breaches of the security with respect to the IT Systems. The Company and the Company Subsidiaries have used commercially reasonable efforts to implement security patches or upgrades available and necessary to protect the IT Systems.

3.18 Product Warranty.

(a) The Company has made available to Parent the Standard Forms of product warranties used by the Company and the Company Subsidiaries. Except as set forth on Section 3.18(a) of the Company Disclosure Schedule, to the Knowledge of the Company, none of the Company Products (i) contains any bug, defect, or error that is likely to materially and adversely affect the use, functionality, or performance of such Company Product or any product or systems reasonably anticipated by the Company or its Subsidiaries to be contained in or used in conjunction with such Company Product or (ii) fails to comply with any applicable warranty or other contractual commitment relating to the use, functionality, or performance of such Company Product (such warranties and contractual commitments, each a “*Product Warranty*”), except where such failure to comply has not been material to the business of the Company and the Company Subsidiaries, taken as a whole.

(b) Each of the Company Products, other than Company Products currently in development, is, and at all times up to and including the sale thereof has been, in compliance in all material respects with applicable Law.

(c) Section 3.18(c) of the Company Disclosure Schedule sets forth, a complete and accurate listing of all Product Warranty claims resulting in a likely potential liability to the Company or a Company Subsidiary of at least \$10,000 received and logged by the Company or any Company Subsidiary regarding any Company Product since January 1, 2014 (or as for those Company Subsidiaries that were not Company Subsidiaries on January 1, 2014, since such time as they have been Company Subsidiaries), including a listing of the resolution of all such Product Warranty claims.

3.19 Tax Matters.

(a) (i) All federal and state income and other material Tax Returns required by applicable Law to be filed with any Taxing Authority by, or on behalf of, the Company or any Company Subsidiary have been filed when due (taking into account extensions) in accordance with all applicable Laws, (ii) all such Tax Returns are true, correct and complete in all material respects, (iii) the Company and each Company Subsidiary has timely paid (or has had paid on

[Table of Contents](#)

their behalf) all material Taxes due and owing (whether or not shown on any Tax Return), (iv) all Taxes that the Company or any Company Subsidiary is or was required to withhold or collect in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Person have been duly withheld or collected and have been timely paid, to the extent required, to the proper Taxing Authority and (v) since the date of the most recent financial statements included in the Company SEC Documents, neither the Company nor any Company Subsidiary has incurred any material liability for Taxes outside the ordinary course of business.

(b) Neither the Company nor any Company Subsidiary has granted any currently effective extension or waiver of the statute of limitations period applicable to any U.S. federal income or other material Tax Return, which period (after giving effect to such extension or waiver) has not yet expired (other than pursuant to extensions of time to file Tax Returns obtained in the ordinary course).

(c) (i) Subject to exceptions as would not be material, no deficiencies for Taxes with respect to the Company or any Company Subsidiary have been claimed, proposed or assessed in writing by any Taxing Authority, except for deficiencies that have been paid or otherwise resolved; (ii) there is no Action pending or, to the Knowledge of the Company, threatened in writing against or with respect to the Company or any Company Subsidiary in respect of material Taxes; and (iii) subject to exceptions as would not be material, no claim has ever been made in writing by a Governmental Authority in a jurisdiction where the Company or any Company Subsidiary does not file a Tax Return that such Person is or may be subject to taxation by that jurisdiction in respect of Taxes that would be covered by or the subject of such Tax Return.

(d) There are no Liens for Taxes on any assets of the Company or any Company Subsidiary, other than statutory liens for current Taxes not yet due and payable.

(e) During the two-year period ending on the Closing Date, neither the Company nor any Company Subsidiary was a “distributing corporation” or a “controlled corporation” in a transaction intended to be governed by Section 355 of the Code.

(f) Neither the Company nor any Company Subsidiary has been a party to a transaction that is a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(g) (i) Neither the Company nor any Company Subsidiary is or has been a member of an affiliated group of corporations for Tax purposes (including within the meaning of Section 1504 of the Code) or any group that has filed a combined, consolidated or unitary Tax Return (other than the group of which the Company is or was the common parent) and (ii) neither the Company nor any Company Subsidiary has any liability for the Taxes of any Person (other than the Company or any Company Subsidiary) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by Contract or otherwise (other, in each case, than customary tax indemnification provisions pursuant to a Contract entered into in the ordinary course of business and the primary subject of which is not Taxes).

[Table of Contents](#)

(h) There are no Tax sharing agreements or similar arrangements (including Tax indemnity arrangements) with respect to or involving the Company or any Company Subsidiary (other than any such agreement solely among the Company and/or any Company Subsidiaries).

(i) Neither the Company nor any Company Subsidiary will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time as a result of (i) any installment sale or other transaction made or entered into on or prior to the Closing Date, (ii) a change in the method of accounting for a taxable period ending on or prior to the Closing Date; (iii) any prepaid amount received by the Company or any Company Subsidiary on or prior to the Closing Date, (iv) an election pursuant to Section 108(i) of the Code made on or prior to the Closing Date or (v) any “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law) executed on or prior to the Closing Date.

(j) Subject to such exceptions as would not be material, the prices and terms for the provision of any property or services by or to the Company or any of its Subsidiaries have been arm’s length for purposes of the relevant transfer pricing laws, and all related documentation required by such laws has been timely prepared or obtained and, if necessary, retained.

(k) To the Knowledge of the Company, there is no material risk that any material Tax ruling, Tax holiday or other agreement with any Governmental Authority with respect to Taxes will expire, be revoked or otherwise terminate solely as a result of the Merger (and not, for the avoidance of doubt, as a result of any action taken by Parent or its Affiliates after the Closing). Neither the Company nor any Company Subsidiary currently has outstanding any written requests for Tax rulings, Tax holidays or other agreements with any Governmental Authority with respect to material Taxes.

3.20 Insurance. The Company has made available to Parent accurate and complete copies of all material insurance policies relating to the business, assets and operations of the Company and the Company Subsidiaries (the “**Insurance Policies**”). Section 3.20 of the Company Disclosure Schedule contains an accurate and complete list of the Insurance Policies. Each of the Insurance Policies is in full force and effect, all premiums currently due thereon have been paid in full and the Company and the Company Subsidiaries are in compliance in all material respects with the terms and conditions of such Insurance Policies. Since January 1, 2014, none of the Company or any Company Subsidiary has received any notice or other communication regarding any actual or possible (a) cancellation of any Insurance Policy that has not been renewed in the ordinary course without any lapse in coverage, (b) invalidation of any Insurance Policy, (c) refusal of any coverage, limitation in coverage or rejection of any material claim under any Insurance Policy or (d) material adjustment in the amount of the premiums payable with respect to any Insurance Policy, except as would not be material and adverse to the business of the Company and the Company Subsidiaries taken as a whole. There is no material claim by the Company or any Company Subsidiary pending under any of the Insurance Policies and no material claim made since January 1, 2014, in the case of any pending claim, has been questioned or disputed by the underwriters of such Insurance Policies. None of the Insurance Policies will terminate or lapse (or be affected in any other materially adverse manner) by reason of the transactions contemplated by this Agreement.

[Table of Contents](#)

3.21 Properties and Assets. The Company and the Company Subsidiaries have, and immediately following the Effective Time will continue to have, good and valid title to their owned assets and properties, or in the case of assets and properties they lease, license, or have other rights in, good and valid rights by lease, license or other agreement to use, all assets and properties (in each case, tangible and intangible) (i) necessary and desirable to permit the Company and the Company Subsidiaries to conduct their businesses in all material respects as currently conducted and (ii) free and clear of all Liens other than Permitted Liens. Notwithstanding the foregoing, it is understood and agreed that matters regarding Company Intellectual Property are addressed solely in [Section 3.17](#) and not in this [Section 3.21](#).

3.22 Real Property.

(a) (i) The Company and each Company Subsidiary has valid leasehold interests in all of its Leased Real Property (as defined below) in each case free and clear of all Liens, except for Permitted Liens.

(b) The Company and the Company Subsidiaries own no real property or interests in real property. [Section 3.22\(b\)](#) of the Company Disclosure Schedule sets forth (i) a true and complete list of all real property that is leased, subleased or otherwise occupied by the Company or any Company Subsidiary (each, a “**Leased Real Property**”), (ii) the address for each Leased Real Property, (iii) current monthly rent amounts payable by the Company or any Company Subsidiary related to such Leased Real Property and (iv) a description of the agreement evidencing the applicable lease or sublease, and any and all amendments, modifications, and side letters relating thereto, if any (each a “**Lease Agreement**”). All Lease Agreements are the valid, binding obligations of the Company and the Company Subsidiaries, as applicable, and, to the Knowledge of the Company, of the other party or parties thereto, and are in full force and effect, without penalty, acceleration, termination, default, breach, repurchase right or other adverse consequence on account of the execution, delivery or performance of this Agreement by the Company and the Company Subsidiaries, as applicable and the consummation of the transactions contemplated hereby. The Company has provided Parent with true, correct, accurate and complete copies of each Lease Agreement, and each Lease Agreement represents the entire agreement between the Company or any Company Subsidiary and the counterparty thereto. Except for Permitted Liens, no Leased Real Property is subject to any Lien or agreement granting to any Third Party any interest in such Leased Real Property or any right to the use or occupancy of any Leased Real Property. The Company and each Company Subsidiary has performed all material obligations required to be performed by it to date under each Lease Agreement, and there are no outstanding defaults or circumstances which, upon the giving of notice or passage of time or both, would constitute a default or breach by any party under any Lease Agreement.

(c) The Leased Real Property constitutes all real property currently used in connection with the business of the Company and the Company Subsidiaries and which are necessary for the continued operation of the business as the business is currently conducted. Except as would not materially affect the ability of the Company and the Company Subsidiaries,

[Table of Contents](#)

taken as a whole, to operate their business as currently conducted, there are no structural, electrical, mechanical or other defects in any improvements located on any of the Leased Real Property. Neither the Company nor any Company Subsidiary has received written notice of any pending, and to the Knowledge of the Company there is no threatened, condemnation proceeding with respect to any of the Leased Real Property. Neither the Company nor any Company Subsidiary has received written notice of, or, to the Knowledge of the Company, oral notice of, any zoning, ordinance, building, land use, fire or health code or other legal violation affecting such Leased Real Property.

(d) Each Leased Real Property and the improvements located thereon are supplied with utilities and other services necessary for the operation of the business of the Company and the Company Subsidiaries, as applicable, at such Leased Real Property and improvements, including gas, electricity, water, telephone, sanitary sewer and storm sewer, all of which services are adequate in accordance with all applicable laws and are provided via public roads or via permanent, irrevocable, appurtenant easements benefitting such Leased Real Property.

(e) The Company has delivered to Parent correct and complete copies of all surveys of, and title insurance policies with respect to, each Leased Real Property in such Party's possession or reasonably available to such Party, and, to the Knowledge of the Company, there are no material changes in the facts depicted in such surveys or reflected on such title insurance policies.

3.23 Opinion of Financial Advisor. The Company Board has received the written opinions (the "**Fairness Opinions**") of Cowen and Company, LLC and Needham & Company, LLC (the "**Company Financial Advisors**"), dated as of the date of this Agreement, to the effect that, as of the date of this Agreement, the consideration to be received by the stockholders of the Company pursuant to the Offer and Merger is fair to such stockholders (other than Parent and its Affiliates) from a financial point of view. The Company shall provide an accurate and complete signed copy of such Fairness Opinions to Parent solely for information purposes within one (1) Business Day after the date of this Agreement.

3.24 Information in the Offer Documents and Schedule 14D-9. The information supplied, or to be supplied, by or on behalf of the Company or any of its Representatives expressly for inclusion or incorporation by reference in the Offer Documents (and any amendment thereof or supplement thereto) will not, when filed with the SEC, when distributed or disseminated to the Company's stockholders, at the time of the commencement of the Offer and at the Expiration Date, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Schedule 14D-9 (and any amendment thereof or supplement thereto) will comply as to form in all material respects with the provisions of Rule 14d-9 of the Exchange Act, Regulation M-A and any other applicable federal securities Laws and will not, when filed with the SEC, when distributed or disseminated to the Company's stockholders, at the time of the commencement of the Offer and at the Expiration Date, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, except that the Company makes no representation or warranty with respect to statements made in the Schedule 14D-9 based on information furnished by or on behalf of the Purchaser or its Representatives in writing expressly for inclusion therein.

[Table of Contents](#)

3.25 Brokers. Except for the Company's obligations to the Company Financial Advisors, neither the Company nor any stockholder, director, officer, employee or Affiliate of the Company, has incurred or will incur on behalf of the Company or any Company Subsidiary, any brokerage, finders', advisory or similar fee in connection with the transactions contemplated by this Agreement, including the Offer and the Merger. The Company has heretofore made available to Parent accurate and complete copies of all Contracts between the Company and the Company Financial Advisors pursuant to which such firm may be entitled to any payment or commission relating to the Offer or the Merger or any other transactions contemplated by this Agreement.

3.26 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither the Company nor any other Person on behalf of the Company makes any express or implied representation or warranty with respect to the Company or with respect to any other information provided to Parent or the Purchaser in connection with the transactions contemplated hereby.

3.27 Disclaimer of Other Representations and Warranties. The Company acknowledges and agrees that, except for the representations and warranties expressly set forth in this Agreement (a) none of Parent, the Purchaser, their respective Subsidiaries or any other Person on behalf of Parent, the Purchaser or their respective Subsidiaries, makes, or has made, any representations or warranties relating to itself or its business or otherwise in connection with the Merger and the Company is not relying on any representation or warranty except for those expressly set forth in Article IV of this Agreement and (b) no Person has been authorized by Parent, the Purchaser or any of their respective Subsidiaries to make any representation or warranty relating to itself or its business or otherwise in connection with the Merger, and if made, such representation or warranty must not be relied upon by the Company as having been authorized by such party.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT AND
THE PURCHASER**

Except as expressly disclosed in the registration statements, prospectuses, forms, reports, definitive proxy statements, schedules, statements and documents required to be filed or furnished by it under the Securities Act or Exchange Act, as the case may be, together with all certifications required pursuant to the Sarbanes Oxley Act (such documents and any other documents filed by Parent or any Subsidiary of Parent with the SEC, as have been supplemented, modified or amended since the time of filing, the "**Parent SEC Documents**"), in each case filed on or after January 1, 2016 and prior to the date hereof, and only to the extent reasonably apparent from the disclosure therein (but excluding (A) any forward-looking disclosures contained in "Forward Looking Statements" and "Risk Factors" sections of the Parent SEC Documents and any other disclosures included therein to the extent they are primarily predictive, cautionary or forward looking in nature and (B) information included in, or incorporated by

[Table of Contents](#)

reference as, exhibits and schedules to any Parent SEC Documents that have been filed with the SEC), Parent and the Purchaser hereby represent and warrant to the Company as of the date of this Agreement and as of the Closing follows:

4.1 Organization and Qualification. Each of Parent and the Purchaser is an entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation and has all requisite organizational power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted. Each of Parent and the Purchaser is duly qualified to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not materially impair the ability of Parent and the Purchaser to consummate, or prevent or materially delay, the Offer, Merger or any of the other transactions contemplated by this Agreement.

4.2 Authority.

(a) Each of Parent and the Purchaser has all necessary organizational power and corporate authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, including the Offer and the Merger. The execution and delivery of this Agreement by each of Parent and the Purchaser, as applicable, and the consummation by Parent and the Purchaser of the transactions contemplated hereby, including the Offer and the Merger, have been duly and validly authorized by all necessary organizational action, and no other organizational proceedings on the part of Parent or the Purchaser and no stockholder votes are necessary to authorize this Agreement or to consummate the transactions contemplated hereby other than, with respect to the Merger, the filing of the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the DGCL. This Agreement has been duly authorized and validly executed and delivered by Parent and the Purchaser, and, assuming due authorization, execution and delivery by the Company, constitutes a legally valid and binding obligation of Parent and the Purchaser, enforceable against Parent and the Purchaser in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws affecting creditors' rights generally and subject to the effect of general principles of equity, whether considered in a proceeding in equity or at law).

(b) Further to Section 4.2(a), no vote or consent of the holders of any class or series of capital stock of Parent is necessary or required (including under the NASDAQ rules, the amended and restated certificate of incorporation or bylaws of Parent or applicable Law) to approve this Agreement or the other transactions contemplated hereby, including the Offer and the Merger. The vote or consent of Parent as the sole stockholder of the Purchaser (which shall have occurred prior to the Effective Time) is the only vote or consent of the holders of any class or series of capital stock of the Purchaser necessary to approve this Agreement or the other transactions contemplated hereby, including the Offer and the Merger.

[Table of Contents](#)

4.3 No Conflict. None of the execution, delivery or performance of this Agreement by Parent and the Purchaser, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by Parent and the Purchaser of the Merger or any other transaction contemplated by this Agreement, or compliance by Parent and the Purchaser with any of the provisions of this Agreement will (with or without notice or lapse of time, or both): (a) conflict with or violate any provision of the certificate of incorporation or bylaws of Parent and the Purchaser; (b) assuming that all consents, approvals, authorizations and permits described in Section 4.4 have been obtained and all filings and notifications described in Section 4.4 have been made and any waiting periods thereunder have terminated or expired, violate any Law applicable to Parent and the Purchaser or any other Subsidiary of Parent (each a “**Parent Subsidiary**”) or any of their respective properties or assets or (c) require any consent or approval under, violate, result in any breach of or any loss of any benefit under, or constitute a default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a Lien upon any of the respective properties or assets of Parent or the Purchaser or any Parent Subsidiary pursuant to any Contract or permit to which Parent or the Purchaser or any Parent Subsidiary is a party or by which they or any of their respective properties or assets may be bound or affected, except, with respect to clauses (b) and (c), for any such conflicts, violations, consents, breaches, losses, defaults, other occurrences or Liens which, individually or in the aggregate, would not materially impair the ability of Parent and the Purchaser to consummate, or prevent or materially delay, the Offer, the Merger or any of the other transactions contemplated by this Agreement.

4.4 Required Filings and Consents. Assuming the accuracy of the representations and warranties of the Company in Section 3.5, none of the execution, delivery or performance of this Agreement by Parent and the Purchaser, the acceptance for payment or acquisition of Shares pursuant to the Offer, the consummation by Parent and the Purchaser of the Merger or any other transaction contemplated by this Agreement, or compliance by Parent or the Purchaser with any of the provisions of this Agreement will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Authority or any other Person, other than (a) the filing of the Certificate of Merger as required by the DGCL, (b) compliance with the applicable requirements of the Exchange Act and the Securities Act, (c) filings by the Parent with the SEC as may be required in connection with this Agreement and the transactions contemplated hereby, (d) such filings as may be required under the rules and regulations of NASDAQ, (e) compliance with the applicable requirements of the HSR Act, and (f) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to any Governmental Authority or any other Person, individually or in the aggregate, would not materially impair the ability of Parent and the Purchaser to consummate, or prevent or materially delay, the Offer, the Merger or any of the other transactions contemplated by this Agreement.

4.5 Litigation. As of the date hereof, there is no Order or Action pending, or to the knowledge of Parent, threatened in writing against Parent or the Purchaser or their respective assets or properties, except as would not, individually or in the aggregate, materially impair the ability of Parent or the Purchaser to consummate, or prevent or materially delay, the Offer, the Merger or any of the other transactions contemplated by this Agreement.

[Table of Contents](#)

4.6 Information in the Offer Documents and Schedule 14D-9. The information supplied, or to be supplied, by or on behalf of Parent and the Purchaser or their Representatives in writing expressly for inclusion or incorporation by reference in the Schedule 14D-9 (and any amendment thereof or supplement thereto) will not, at the date mailed to the Company's stockholders, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading. The Offer Documents (and any amendment thereof or supplement thereto) will comply as to form in all material respects with the provisions of the Exchange Act and any other applicable federal securities Laws and will not, when filed with the SEC, at the time of distribution or dissemination thereof to the stockholders of the Company, at the time of the commencement of the Offer and at the Expiration Date, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Purchaser with respect to statements made in the Offer Documents based on information supplied by or on behalf of the Company or its Representatives in writing expressly for inclusion therein.

4.7 Sufficiency of Funds. As of the Acceptance Time and the Effective Time, Parent will have sufficient funds to consummate the transactions contemplated by this Agreement and to satisfy all of Parent's and the Purchaser's monetary and other obligations under this Agreement, and will make available to the Purchaser such funds, including the payment of the Offer Price in respect of each Share validly tendered and accepted in the Offer, the payment of the Merger Consideration in respect of the Merger and the payment of all associated Expenses of the Offer and the Merger to be paid by Parent.

4.8 Ownership of the Purchaser; No Prior Activities. All of the issued and outstanding shares of capital stock of the Purchaser are, and as of the Effective Time shall be, owned of record and beneficially by Parent either directly or indirectly through one or more of its Subsidiaries. The Purchaser was formed solely for the purpose of engaging in the transactions contemplated by this Agreement. Except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement, the Purchaser has not and will not prior to the Closing Date have incurred, directly or indirectly, through any Subsidiary or otherwise, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any Contracts with any Person.

4.9 DGCL Section 203. None of Parent, the Purchaser and their respective Subsidiaries is, or has been at any time during the period commencing three (3) years prior to the date hereof through the date hereof, an "interested stockholder" of the Company, as such term is defined in Section 203 of the DGCL. None of Parent, the Purchaser nor any of their Subsidiaries directly or indirectly owns any Shares as of the date hereof, other than shares beneficially owned through benefit or pension plans.

4.10 Brokers. Neither Parent nor the Purchaser nor any of their respective Representatives has incurred or will incur on behalf of Parent or the Purchaser or any Parent Subsidiary any brokerage, finders', advisory or similar fee in connection with the transactions contemplated by this Agreement for which the Company would have any liability prior to the Effective Time.

[Table of Contents](#)

4.11 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, none of Parent, the Purchaser nor any other Person on behalf of Parent or the Purchaser makes any express or implied representation or warranty with respect to Parent or the Purchaser or with respect to any other information provided to the Company in connection with the transactions contemplated hereby.

4.12 Disclaimer of Other Representations and Warranties. Parent and the Purchaser each acknowledges and agrees that, except for the representations and warranties expressly set forth in this Agreement (a) none of the Company, its Subsidiaries, or any Person on behalf of the Company or its Subsidiaries, makes, or has made, any representations or warranties relating to itself or its business or otherwise in connection with the Merger and Parent and the Purchaser are not relying on any representation or warranty except for those expressly set forth in Article III of this Agreement and (b) no Person has been authorized by the Company or any of its Subsidiaries to make any representation or warranty relating to itself or its business or otherwise in connection with the Merger, and if made, such representation or warranty must not be relied upon by Parent or the Purchaser as having been authorized by such party.

ARTICLE V COVENANTS

5.1 Conduct of Business.

(a) The Company agrees that, between the date of this Agreement and the Effective Time, except as set forth in Section 5.1(a) of the Company Disclosure Schedule, as expressly required by applicable Law or this Agreement or otherwise with the prior written consent of Parent (which consent shall not be unreasonably withheld), the Company will, and will cause each Company Subsidiary to, (i) conduct its business only in the ordinary course of business consistent with past practice, (ii) use its commercially reasonable efforts to keep available the services of the current officers, employees and consultants of the Company and each Company Subsidiary and preserve the goodwill and current relationships of the Company and each Company Subsidiary with customers, suppliers and other Persons with which the Company or any Company Subsidiary has significant business relations, (iii) use its commercially reasonable efforts to preserve intact its business organization, the value of its assets, present relationships and goodwill with Governmental Authorities and (iv) maintain in effect all Company Permits pursuant to which the Company and any of its Subsidiaries currently operates and maintain and enforce in all material respects the Company IP.

(b) Without limiting the foregoing, and as an extension thereof, except as set forth in Section 5.1 of the Company Disclosure Schedule, as expressly required by applicable Law or this Agreement, or otherwise with the prior written consent of Parent, the Company shall not, and shall not permit any Company Subsidiary to, between the date of this Agreement and the Effective Time, directly or indirectly, do any of the following:

(i) amend the certificate of incorporation, bylaws or other comparable charter or organizational documents (whether by merger, consolidation or otherwise) of the Company or any Company Subsidiary;

[Table of Contents](#)

(ii) (A) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock, property or otherwise) in respect of, or enter into any agreement with respect to the voting of, any capital stock of the Company or any Company Subsidiary (other than dividends and distributions by a direct or indirect wholly-owned Subsidiary of the Company to its parent and distributions resulting from the vesting or exercise of Company Options, the vesting and settlement of Company RSUs or the exercise of Company Warrants outstanding on the date of this Agreement), (B) split, combine or reclassify any capital stock of the Company or any Company Subsidiary, (C) issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for, shares of capital stock of the Company or any Company Subsidiary, (D) purchase, redeem or otherwise acquire any Equity Interest in the Company or any Company Subsidiary except for acquisitions of Company Common Stock by the Company by holders of Company Options, Company RSUs or Company Warrants outstanding on the date of this Agreement, in satisfaction of the applicable exercise price and/or withholding taxes or (E) take any action that would result in any amendment, modification or change of any term of any Indebtedness of the Company or any Company Subsidiary;

(iii) (A) issue, deliver, sell, grant, pledge, transfer, subject to any Lien (other than Permitted Liens) or otherwise encumber or dispose of any Equity Interest in the Company or any Company Subsidiary, other than the issuance of shares of Company Common Stock upon the exercise of Company Options or Company Warrants or the settlement of Company RSUs that are outstanding on the date of this Agreement, in each case in accordance with the applicable equity award's terms as in effect on the date of this Agreement or (B) amend any term of any Equity Interest of the Company or any Company Security (in each case, whether by merger, consolidation or otherwise);

(iv) adopt a plan or agreement of, or resolutions providing for or authorizing, complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, each with respect to the Company or any Company Subsidiary;

(v) incur any capital expenditures or any obligations or liabilities in respect thereof in excess of \$1,000,000, individually or in the aggregate;

(vi) acquire (A) any business, capital stock or material assets of any Person or division thereof, whether in whole or in part (and whether by purchase of stock, purchase of assets, merger, consolidation, or otherwise), (B) any other assets other than assets acquired in the ordinary course of business consistent with past practice or (C) acquire or license from any Person any Intellectual Property Rights or Technology other than in the ordinary course of business consistent with past practice;

(vii) form or commence the operations of any business or any corporation, partnership, limited liability company, joint venture, business association or other business organization or enter into any new line of business;

[Table of Contents](#)

(viii) (A) sell, lease, license, pledge, transfer, subject to any Lien, abandon, permit to lapse, fail to defend any challenge to or otherwise dispose of any of the Company IP or other material assets or material properties (including Company Products) except (1) pursuant to existing Contracts or commitments in effect prior to the execution of this Agreement, (2) sales of Inventory or used equipment in the ordinary course of business consistent with past practice or (3) Permitted Liens incurred in the ordinary course of business consistent with past practice; (B) sell, dispose of, disclose, or license the source code for Company Proprietary Software to any Person (other than immaterial portions of source code of Company Proprietary Software provided pursuant to a software development kit license or disclosed in connection with trials, demonstrations or similar arrangements, in each case on a non-exclusive basis and subject to written non-disclosure and non-use restrictions imposed on and agreed to by the recipient), (C) disclose any material trade secrets or other proprietary and confidential information to any Person that is not subject to any confidentiality or non-disclosure agreement or (D) enter into any arrangement, the result of which is the loss, expiration or termination of any license or right under or to any Third Party Intellectual Property;

(ix) (A) hire any new employee to whom a written offer of employment has not previously been offered and accepted prior to the date of this Agreement or, after the date of this Agreement, extend any new offers of employment with the Company or any Company Subsidiary to any individual, (B) grant to any current or former director, officer, employee or consultant of the Company or any Company Subsidiary any (1) increase in compensation, (2) bonus or (3) other benefits, except as agreed to prior to the date of this Agreement, (C) grant to any current or former director, officer, employee or consultant of the Company or any Company Subsidiary any severance or termination pay or benefits or any increase in severance, change of control or termination pay or benefits, (D) except as otherwise contemplated pursuant to [Section 5.10](#) hereof, establish, adopt, enter into or amend any Company Employee Plan (other than offer letters that contemplate “at will” employment without severance benefits) or collective bargaining agreement, in each case except as required by applicable Law, (E) take any action to amend or waive any performance or vesting criteria or accelerate any rights or benefits or take any action to fund or in any other way secure the payment of compensation or benefits under any Company Employee Plan except to the extent required pursuant to the terms thereof or applicable Law or (F) make any Person a beneficiary of any retention plan under which such Person is not as of the date of this Agreement a beneficiary which would entitle such Person to vesting, acceleration or any other right as a consequence of consummation of the transactions contemplated by this Agreement; provided, however, that nothing in this [Section 5.1\(b\)\(ix\)](#) shall require Parent’s consent to the Company or any Company Subsidiary hiring any non-officer level employee to replace any terminated employee so long as the compensation and benefits made available to such employee are not materially in excess of the terms applicable to the replaced employee and such compensation and benefits do not include grant of equity or any equity-based compensation;

(x) (A) write-down any of its material assets, including any capitalized Inventory or Company IP, in excess of \$150,000, except for depreciation and amortization in accordance with GAAP or in accordance with the ordinary course of business consistent with past practice or (B) make any change in any method of financial accounting principles, method or practices, in each case except for any such change required by GAAP or applicable Law, including Regulation S-X under the Exchange Act (in each case following consultation with the Company’s independent auditor);

[Table of Contents](#)

(xi) (A) incur any Indebtedness in an amount in excess of \$50,000 or modify in any material respect the terms of any Indebtedness, including by way of a guarantee or an issuance or sale of debt securities, or issue and sell options, warrants, calls or other rights to acquire any debt securities of the Company or any Company Subsidiary, (B) make any loans, advances or capital contributions to, or investments in, any other Person in excess of \$5,000, other than (1) to the Company or any Company Subsidiary or (2) accounts receivable and extensions of credit in the ordinary course of business, and advances in expenses to employees, in each case in the ordinary course of business consistent with past practice or (C) cancel any indebtedness or claim in an amount in excess of \$50,000 owed to the Company or any of its Subsidiaries;

(xii) agree to any exclusivity, non-competition, most favored nation, or similar provision or covenant restricting the Company, any Company Subsidiary, or any of their respective Affiliates, from competing in any line of business or with any Person or in any area or engaging in any activity or business (including with respect to the development, manufacture, marketing or distribution of their respective products or services), or pursuant to which any benefit or right would be required to be given or lost as a result of so competing or engaging, or which would have any such effect on Parent or any of its Affiliates after the consummation of the Merger or the Closing Date;

(xiii) enter into a Contract that would have been a Company Material Contract if it were in effect as of the date hereof, amend any Company Material Contract in any material respect, terminate any Company Material Contract or grant any release or relinquishment of any material rights under any Company Material Contract, except in the ordinary course of business consistent with past practice and except for renewals, expirations or terminations in accordance with the terms of any Company Material Contract;

(xiv) make or change any material Tax election, change any annual Tax accounting period, adopt or change any material method of Tax accounting, file any material Tax Return in a manner inconsistent with past practices, amend any material Tax Returns or file any material claim for Tax refunds, enter into any material closing agreement, enter into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement, settle any material Tax claim, audit or assessment, or surrender any right to claim a material Tax refund or credit;

(xv) (A) institute, compromise or settle (or agree to do any of the preceding with respect to) any Actions, (B) waive, relinquish, release, grant, transfer or assign any right with a value of more than \$100,000 in any individual case except in the ordinary course of business consistent with past practice or (C) commence any material litigation, investigation, arbitration or other Action against any Third Party;

(xvi) engage in (A) any trade loading practices or any other promotional sales or discount activity with any customers or distributors with any intent of accelerating to prior fiscal quarters (including the current fiscal quarter) sales to the trade or otherwise that would otherwise be expected (based on past practice) to occur in subsequent fiscal quarters, (B) any practice which would reasonably be expected to have the effect of accelerating to prior fiscal quarters (including the current fiscal quarter) collections of receivables that would otherwise be expected (based on past practice) to be made in subsequent fiscal quarters, (C) any

[Table of Contents](#)

practice which would reasonably be expected to have the effect of postponing to subsequent fiscal quarters payments by the Company or any Company Subsidiary that would otherwise be expected (based on past practice) to be made in prior fiscal quarters (including the current fiscal quarter) or (D) any other promotional sales or discount activity, in each case in clauses (A) through (C) in a manner outside the ordinary course of business consistent with past practice;

(xvii) cancel or terminate or allow to lapse without commercially reasonable substitute policy therefor, or amend in any material respect or enter into, any material Insurance Policy, other than the renewal of existing Insurance Policies or enter into commercial reasonable substitute policies therefor;

(xviii) except as required by applicable Law, convene any regular or special meeting (or any adjournment thereof) of the stockholders of the Company;

(xix) make any material change in its investment policies with respect to cash or marketable securities;

(xx) amend the Company Rights Agreement or become party to or approve or adopt any other stockholder rights plan or “poison pill” agreement; or

(xxi) authorize or enter into any Contract or otherwise make any commitment to do any of the foregoing.

5.2 Access to Information.

(a) From the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with Article VII, upon reasonable prior written notice by Parent or the Purchaser, the Company shall, and shall use commercially reasonable efforts to cause each Company Subsidiary and each of their respective Representatives: (i) provide to Parent and the Purchaser and their respective Representatives access at reasonable times to the officers, employees, agents, properties, offices and other facilities of the Company and each Company Subsidiary and to the books and records thereof (including Tax Returns) and (ii) furnish such information concerning the business, properties, offices and other facilities, Contracts, assets, liabilities, employees, officers and other aspects of the Company and each Company Subsidiary as Parent or its Representatives may reasonably request. Notwithstanding anything in this Section 5.2 to the contrary, the Company may refuse to provide any access, or to disclose any information, if the Company is advised in writing by its outside legal counsel that providing such access or disclosing such information would (A) violate applicable Law (including antitrust and privacy laws); provided, that, the Company shall provide such access or disclose such information to the greatest extent possible without violating applicable Law or (B) cause the loss of any attorney-client privilege; provided, that, if any information is withheld pursuant to the foregoing clause (B), the Company shall inform the Parent as to the general nature of what is being withheld and the parties shall use commercially reasonable efforts, such as entry into a customary joint defense agreement, to enable the Company to provide such information without causing the loss of any attorney-client privilege. No investigation conducted pursuant to this Section 5.2(a) shall affect or be deemed to modify or limit any representation or warranty made by the Company in this Agreement.

[Table of Contents](#)

(b) With respect to the information disclosed pursuant to [Section 5.2\(a\)](#), Parent shall comply with, and shall cause its Representatives to comply with, all of its obligations under the Confidentiality Agreement.

5.3 [No Solicitation](#).

(a) The Company shall and shall cause each of the Company Subsidiaries and its Representatives to immediately (i) cease and cause to be terminated any solicitation, encouragement, discussions or negotiations with any Persons that may be ongoing with respect to a Competing Proposal or Competing Inquiry and (ii) request, and thereafter use commercially reasonable efforts to cause, each Person that has previously executed a confidentiality agreement in connection with such Person's consideration of a Competing Proposal to return to the Company or destroy any non-public information previously furnished to such Person or to any Person's Representatives by or on behalf of the Company or any Company Subsidiary.

(b) From and after the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with [ARTICLE VII](#), the Company shall not and shall cause each of the Company Subsidiaries and its and their Representatives not to, directly or indirectly, (i) solicit, initiate, knowingly facilitate or encourage (including by way of furnishing non-public information) any Competing Proposal or Competing Inquiry, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other Person any information or afford to any other Person access to the business, properties, assets, books, records or any personnel of the Company or its Subsidiaries, in each case in connection with or for the purpose of encouraging or facilitating, a Competing Proposal or Competing Inquiry, (iii) approve, endorse, recommend, execute or enter into, or publicly propose to approve, endorse, recommend, execute or enter into any term sheet, letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or similar Contract (other than an Acceptable Confidentiality Agreement) with respect to any Competing Proposal (an "*Alternative Acquisition Agreement*"), (iv) take any action to make the provisions of any Takeover Statute (including Section 203 of the DGCL) or any applicable anti-takeover provision in the Company's organizational documents inapplicable to any transactions contemplated by a Competing Proposal, (v) except at the written request of Parent, terminate, amend, release, modify, waive or knowingly fail to enforce any provision of the Company Rights Agreement or exempt any Person not affiliated with Parent from the definition of Acquiring Person thereunder, (vi) terminate, amend, release, modify or knowingly fail to enforce any provision of, or grant any permission, waiver or request under, any standstill, confidentiality or similar contract entered into by the Company in respect of or in contemplation of a Competing Proposal (other than to the extent the Company Board determines in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, that failure to take any such actions under this [Section 5.3\(b\)\(vi\)](#) would be reasonably likely to result in a breach of, or otherwise be inconsistent with, its fiduciary duties under applicable Law) or (vii) propose, resolve or agree to do any of the foregoing.

(c) Notwithstanding anything to the contrary contained in [Section 5.3\(b\)](#) or any other provisions of this Agreement, if, at any time on or after the date of this Agreement and prior to the Acceptance Time, (i) the Company, any Company Subsidiary or any of its Representatives receives a written, bona-fide Competing Proposal from any Person or group of

[Table of Contents](#)

Persons which did not result from any breach by the Company, any Company Subsidiary or their Representatives of this [Section 5.3](#), (ii) the Company Board determines in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, that such Competing Proposal constitutes or would reasonably be expected to lead to a Superior Proposal and (iii) the Company Board determines in good faith, after consultation with the Company's legal advisors, that failure to take such action would be reasonably likely to result in a breach of, or otherwise be inconsistent with, its fiduciary duties under applicable Law, then the Company and its Representatives may (A) furnish, pursuant to an Acceptable Confidentiality Agreement, information (including non-public information) with respect to the Company and the Company Subsidiaries to the Person or group of Persons who has made such Competing Proposal; provided, that the Company shall promptly (and in any event within 24 hours) (1) provide to Parent a copy of such Acceptable Confidentiality Agreement and (2) provide to Parent any material non-public information concerning the Company or any Company Subsidiary that is provided to any Person given such access which was not previously provided to Parent or its Representatives, and (B) engage in or otherwise participate in discussions or negotiations with the Person or group of Persons making such Competing Proposal.

(d) From and after the date of this Agreement, the Company shall promptly (and in any event within 24 hours), notify Parent in the event that the Company, any Company Subsidiary or any of their Representatives receives (i) any Competing Proposal or a Competing Inquiry, (ii) any request for non-public information relating to the Company or any Company Subsidiary other than requests for information in the ordinary course of business consistent with past practice and unrelated to a Competing Proposal or Competing Inquiry or (iii) any Competing Inquiry or request for discussions or negotiations regarding any Competing Proposal. In connection with such notice, the Company shall indicate the identity of such Person or group of Persons, provide a description of the material terms and conditions of such Competing Inquiry, Competing Proposal, indication or request and provide a copy of all written materials provided in connection with such Competing Inquiry, Competing Proposal, indication, or request, including any modifications thereto. Thereafter, the Company shall keep Parent informed (orally and in writing) on a current basis (and in any event at Parent's request and otherwise no later than 24 hours after the occurrence of any material changes, developments, discussions or negotiations) of the status of any Competing Inquiry, Competing Proposal, indication, or request (including the material terms and conditions thereof and of any modification thereto), and any material developments, discussions and negotiations, including furnishing copies of all written materials received by the Company or its Subsidiaries or their respective Representatives relating thereto. Neither the Company nor any Company Subsidiary will enter into any confidentiality agreement or other Contract with any Person subsequent to the date hereof which prohibits the Company from providing any information to Parent in accordance with this [Section 5.3](#).

(e) From and after the date of this Agreement, except as expressly permitted by this [Section 5.3\(e\)](#) and subject in all respects to [Section 5.3\(f\)](#), neither the Company Board nor any committee thereof shall (i) withhold, withdraw, qualify or modify, or publicly propose to withhold, withdraw, qualify or modify the Company Board Recommendation, (ii) fail to include the Company Board Recommendation in the Schedule 14D-9, (iii) if a tender offer or exchange offer for shares of capital stock of the Company other than the Offer is commenced, fail to publicly recommend against acceptance of such tender offer or exchange offer by the

[Table of Contents](#)

stockholders of the Company (taking no position with respect to the acceptance of such tender offer or exchange offer by the stockholders of the Company, shall constitute a failure to recommend against acceptance of such tender offer or exchange offer) within five (5) Business Days after commencement thereof or fail to reaffirm the Company Board Recommendation within two (2) Business Days after Parent so requests in writing, (iv) adopt, approve or recommend, or publicly propose to adopt, approve or recommend, any Competing Proposal made or received after the date of this Agreement (any of the actions described in clauses (i) through (iv) of this [Section 5.3\(e\)](#)), an “**Adverse Recommendation Change**”) or (v) cause or permit the Company or any Company Subsidiary to enter into any Alternative Acquisition Agreement. Notwithstanding anything to the contrary set forth in this Agreement, at any time prior to the Acceptance Time, the Company Board shall be permitted to effect any Adverse Recommendation Change (x) of a type described in clause (i) above solely with respect to a Superior Proposal, subject to compliance with [Section 5.3\(f\)](#), if the Company Board (A) has received a bona fide written Competing Proposal that the Company Board determines in good faith, after consultation with the Company’s independent financial advisors and outside legal counsel, constitutes a Superior Proposal, after having complied with, and giving effect to all of the adjustments which may be offered by Parent and the Purchaser pursuant to [Section 5.3\(f\)](#) and (B) determines in good faith, after consultation with its legal advisors, that failure to take such action would be reasonably likely to result in a breach of its fiduciary duties under applicable Law or (y) in response to an Intervening Event the Company Board determines in good faith, after consultation with its legal advisors, that failure to make an Adverse Recommendation Change would be reasonably likely to result in a breach of its fiduciary duties under applicable Law; provided, that the Company Board may not make an Adverse Recommendation Change in response to an Intervening Event unless the Company (A) provides Parent with a written description of such Intervening Event in reasonable detail, (B) keeps Parent reasonably informed of material developments with respect to such Intervening Event, (C) notifies Parent in writing at least five (5) Business Days before making an Adverse Recommendation Change with respect to such Intervening Event of its intention to do so and specifying the reasons therefor and (D) during such five (5) Business Day period, either (1) Parent does not make a bona fide proposal to amend the terms of this Agreement or (2) Parent makes a bona fide proposal to amend the terms of this Agreement that the Company Board considers in good faith, but following which the Company Board again determines in good faith, after consultation with its legal advisors and taking into account the terms of such proposal, that failure to make an Adverse Recommendation Change as a result of the applicable Intervening Event would be reasonably likely to result in a breach of its fiduciary duties under applicable Law.

(f) From and after the date of this Agreement, the Company Board shall not be entitled to effect an Adverse Recommendation Change with respect to a Superior Proposal unless (i) none of the Company, any Company Subsidiary or any of their Representatives has breached this [Section 5.3](#) in any respect as relates to such Superior Proposal, including with result to any related Competing Proposal or Competing Inquiry, (ii) the Company has provided written notice (a “**Notice of Superior Proposal**”) to Parent and the Purchaser that the Company intends to take such action, which notice includes an unredacted copy of the Superior Proposal that is the basis of such action (including the identity of the Third Party making the Superior Proposal) and copies of all relevant documents relating to such Superior Proposal, (iii) during the five (5) Business Days period following Parent’s and the Purchaser’s receipt of the Notice of Superior Proposal, the Company shall, and shall cause its Representatives to, negotiate with

[Table of Contents](#)

Parent and the Purchaser in good faith (to the extent Parent and the Purchaser desire to so negotiate) to make such adjustments in the terms and conditions of this Agreement so that such Superior Proposal would cease to constitute a Superior Proposal and (iv) following the end of the five (5) Business Days period, the Company Board shall have determined in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, taking into account any changes to this Agreement proposed in writing by Parent and the Purchaser in response to the Notice of Superior Proposal or otherwise, that the Superior Proposal giving rise to the Notice of Superior Proposal continues to constitute a Superior Proposal. Any amendment to the financial terms or any other material amendment of such Superior Proposal shall require a new Notice of Superior Proposal and the Company shall be required to comply again with the requirements of this [Section 5.3\(f\)](#); provided, however, that for purposes of this sentence, references to the five (5) Business Day period above shall be deemed to be references to a three (3) Business Day period.

(g) Nothing contained in this Agreement shall prohibit the Company or the Company Board, directly or indirectly through their respective Representatives, from (i) taking and disclosing to the Company's stockholders a position with respect to a tender or exchange offer by a Third Party pursuant to Rule 14d-9 or Rule 14e-2 under the Exchange Act or (ii) making any "stop, look and listen" communication to the Company's stockholders pursuant to Rule 14d-9(f) under the Exchange Act if the Company Board has determined in good faith, after consultation with its outside legal counsel, that failure to take such action would be reasonably likely to result in a breach of the directors' fiduciary duties under applicable Law; provided, however, that any disclosure permitted under [Section 5.3\(g\)\(i\)](#) that is not an express rejection of any applicable Competing Proposal or an express reaffirmation of the Company Board's recommendation in favor of the transactions contemplated by this Agreement shall be deemed an Adverse Recommendation Change.

(h) The Company agrees that any violation of the restrictions set forth in this [Section 5.3](#) by any Company Subsidiary or any Representative of the Company or any Company Subsidiary shall be deemed a breach of this Agreement (including this [Section 5.3](#)) by the Company.

5.4 Appropriate Action; Consents; Filings .

(a) The Company and Parent shall use (and cause their respective Subsidiaries to use) their commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action and do, or cause to be done, and to assist and cooperate with the other party or parties hereto in doing, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, (ii) obtain from any Governmental Authorities any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained by Parent or the Company or any of their respective Subsidiaries, or to avoid any Action or Order by any Governmental Authority, in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, including the Offer and the Merger and (iii) promptly make all necessary filings, and thereafter make any other required submissions, and pay any fees due in connection therewith, with respect to this Agreement, the Offer and the Merger required under (A) the Exchange Act, the Securities Act and any other

[Table of Contents](#)

applicable securities Laws, (B) the HSR Act and (C) any other applicable Law, if any; provided, that the Company and Parent shall cooperate with each other in all respects in connection with (x) preparing and filing the Offer Documents, the Schedule 14D-9 and any other filings made or required to be made with the SEC in connection with the Offer or the Merger and the transactions contemplated thereby, (y) making an appropriate filing pursuant to the HSR Act as set forth in Section 5.4(d) and determining whether any other action by or in respect of, or filing with, any Governmental Authority is required, in connection with the consummation of the Offer or the Merger and (z) seeking any such actions, consents, approvals or waivers or timely making any such filings. The Company and Parent shall furnish to each other all information required for any application or other filing under the rules and regulations of any applicable Law in connection with the transactions contemplated by this Agreement.

(b) The Company shall give (or shall cause their respective Subsidiaries to give) any notices to Third Parties required to be given by the Company or the Company Subsidiaries, and use, and cause the Company Subsidiaries to use, their commercially reasonable efforts to obtain any Third Party consents (including consents under any Company Material Contracts), (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including the Offer and the Merger, (ii) disclosed or required to be disclosed in the Company Disclosure Schedule or (iii) required to prevent a Company Material Adverse Effect from occurring prior to or after the Effective Time. In the event that the Company shall fail to obtain any Third Party consent described in the first sentence of this Section 5.4(b), the Company shall use its commercially reasonable efforts, and shall take any such actions reasonably requested by Parent, to minimize any adverse effect upon the Company and its Subsidiaries, and their respective businesses resulting, or which could reasonably be expected to result, after the consummation of the Offer or the Effective Time, from the failure to obtain such consent. Notwithstanding anything to the contrary in this Agreement, in connection with obtaining any approval or consent from any Person with respect to the Offer or the Merger, (i) without the prior written consent of Parent, none of the Company or any Company Subsidiary shall pay or commit to pay to such Person whose approval or consent is being solicited any cash or other consideration, make any commitment or incur any liability or other obligation due to such Person and (ii) neither Parent nor the Purchaser shall be required to pay or commit to pay to such Person whose approval or consent is being solicited any cash or other consideration, make any commitment or incur any liability or other obligation due to such Person.

(c) Without limiting the generality of anything contained in this Section 5.4, each party hereto shall: (i) give the other parties prompt notice of any request, inquiry, objection, charge or other Action, actual or threatened, by or before the United States Federal Trade Commission (“**FTC**”), the United States Department of Justice (“**DOJ**”) or any other applicable Governmental Authority or any Third Party with respect to the Offer, the Merger or any of the other transactions contemplated by this Agreement, (ii) keep the other parties informed as to the status of any such request, inquiry, objection, charge or other Action and (iii) promptly inform the other parties of any communication to or from any Governmental Authority or any Third Party regarding the Offer or the Merger. Each party hereto will consult and cooperate with the other parties and consider in good faith the views of the other parties in connection with any filing, analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with the Offer, the Merger or any of the other transactions contemplated by this Agreement (such cooperation shall include consultation with each other

[Table of Contents](#)

where practicable in advance of any meeting or conference with the FTC, the DOJ or any other Governmental Authority or, in connection with any Action by a Third Party, with any other Person, and to the extent permitted by the FTC, the DOJ or such other applicable Governmental Authority or other Person, providing the other party the opportunity to attend and participate in such meetings and conferences).

(d) Without limiting the generality of anything contained in this [Section 5.4](#), each party hereto agrees to: (i) within ten (10) Business Days of the commencement of the Offer, make an appropriate filing of a Notification and Report Form pursuant to the HSR Act (including seeking early termination of the waiting period under the HSR Act) with respect to the transactions contemplated by this Agreement, (ii) supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act by the FTC or the DOJ and (iii) use its commercially reasonable efforts to take or cause to be taken all other actions necessary, proper or advisable consistent with this [Section 5.4](#) to cause the expiration or termination of the applicable waiting periods, or receipt of required authorizations, as applicable, under the HSR Act as soon as practicable. Parent shall be entitled to direct the antitrust defense of the Offer, the Merger or any other transactions contemplated thereby, or negotiations with, any Governmental Authority or other Third Party relating to the Offer, the Merger or regulatory filings under applicable competition Law, subject to the provisions of this [Section 5.4](#). The Company shall use its commercially reasonable efforts to provide full and effective support of Parent in all material respects in all such negotiations and other discussions or actions to the extent requested by Parent. The Company shall not make any offer, acceptance or counter-offer to or otherwise engage in negotiations or discussions with any Governmental Authority with respect to any proposed settlement, consent decree, commitment or remedy, or, in the event of litigation, discovery, admissibility of evidence, timing or scheduling, except as specifically requested by or agreed with Parent. Parent shall bear all filing fees in connection with any filings made under the HSR Act pursuant to this [Section 5.4\(d\)](#). None of Parent, the Purchaser or the Company shall commit to or agree with any Governmental Authority to stay, toll or extend any applicable waiting period under the HSR Act or applicable competition Laws, without the prior written consent of the other parties. If any request for additional information and documents, including a “second request” under the HSR Act, is received from any Governmental Authority then the Parties shall substantially comply with any such request at the earliest practicable date.

(e) Notwithstanding the foregoing or any other provision of this Agreement (but subject in all respects to [Section 5.1](#)), (i) nothing in this [Section 5.4](#) shall limit a party’s right to terminate this Agreement pursuant to [ARTICLE VII](#) hereof and (ii) nothing in this Agreement shall obligate Parent, the Purchaser or any of their respective Affiliates to, or to agree to (and none of the Company or any Company Subsidiary shall, without the prior written consent of Parent): (A) sell, hold separate or otherwise dispose of all or a portion of its respective business, assets or properties, or conduct its business in a specified manner, (B) pay any amounts (other than the payment of filing fees and expenses and fees of counsel), or grant any counterparty to any Contract any accommodation, (C) limit in any manner whatsoever the ability of such entities to conduct, own, operate or control any of their respective businesses, assets or properties or of the businesses, properties or assets of the Company and the Company Subsidiaries, (D) waive any of the conditions set forth in [Annex I](#) of this Agreement or (E) initiate, defend, participate in, continue, or appeal any Action in order to obtain the successful termination of any review of any review of any Governmental Authority regarding the Merger, or any related matter brought by or on behalf of any Governmental Authority.

[Table of Contents](#)

5.5 Certain Notices. From and after the date of this Agreement until the Effective Time, each party hereto shall promptly notify the other party hereto of (a) the occurrence, or non-occurrence, of any event that would be likely to cause any condition to the obligations of any party to effect the Offer, the Merger, or any other transaction contemplated by this Agreement not to be satisfied or (b) the failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement which would reasonably be expected to result in any condition to the obligations of any party to effect the Offer, the Merger or any other transaction contemplated by this Agreement not to be satisfied; provided, however, that the delivery of any notice pursuant to this Section 5.5 shall not cure any breach of any representation, warranty, covenant or agreement contained in this Agreement or otherwise limit or affect the remedies available hereunder to the party receiving such notice.

5.6 Public Announcements. The initial press release with respect to this Agreement, the Offer, the Merger and the other transactions contemplated hereby shall be a joint release mutually agreed upon by the Company and Parent. Thereafter, none of the parties shall (and each of the parties shall cause its Representatives and Affiliates, if applicable, not to) issue any press release or make any public announcement concerning this Agreement, the Offer, the Merger or the other transactions contemplated hereby without obtaining the prior written consent of (a) the Company, in the event the disclosing party is Parent, the Purchaser, any of its Affiliates or Representatives or (b) Parent, in the event the disclosing party is the Company, any Company Subsidiary or any of their Representatives, in each case, with such consent not to be unreasonably conditioned, delayed or withheld; provided, however, that (i) if a party determines in good faith and based upon advice of counsel, that a press release, SEC filing or public announcement is required by applicable Law or the rules or regulations of any applicable stock exchange, such party may make such press release, SEC filing or public announcement, in which case the disclosing party shall use its commercially reasonable efforts to provide the other parties reasonable time to comment on such release or announcement in advance of such issuance, (ii) this Section 5.6 shall terminate upon an Adverse Recommendation Change and (iii) each of the parties may make public statements in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are not materially inconsistent with previous press releases, public disclosures or public statements made jointly by Parent and the Company or previously approved by the other party and do not reveal material, non-public information regarding the other parties, the Offer, the Merger or the transactions contemplated hereby.

5.7 Indemnification of Directors and Officers.

(a) Parent and the Surviving Corporation agree that all rights of indemnification, exculpation and limitation of liabilities existing in favor of past and present directors and officers of the Company as provided in the Company Charter, the Company Bylaws or under any indemnification, employment or other similar Contracts set forth on Section 5.7(a) of the Company Disclosure Schedule between such past and present directors and officers of the Company and the Company, in each case as in effect on the date of this Agreement with

[Table of Contents](#)

respect to acts or omissions in their capacity as directors or officers occurring at or prior to the Effective Time shall survive the Merger and continue in full force and effect in accordance with their respective terms (unless otherwise required by applicable Law). From and after the Effective Time, Parent shall cause the Surviving Corporation, to pay and perform in a timely manner such indemnification obligations in accordance with their terms. Subject to [Section 5.7\(c\)](#), for a period of six (6) years from and after the Effective Time, Parent shall cause the certificate of incorporation and bylaws of the Surviving Corporation to contain provisions no less favorable with respect to indemnification, exculpation, and advancement of expenses of directors and officers of the Company for periods at or prior to the Effective Time than are currently set forth in the Company Charter and the Company Bylaws (unless otherwise required by applicable Law).

(b) Prior to the Effective Time, the Company shall obtain and fully pay the premium for the non-cancellable extension (or “tail”) of the directors’ and officers’ liability coverage of the Company’s existing directors’ and officers’ insurance policies and the Company’s existing fiduciary liability insurance policies (collectively, the “**D&O Insurance**”), in each case for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time from an insurance carrier with the same or better credit rating as the Company’s current D&O Insurance carrier with respect to directors’ and officers’ liability insurance in an amount and scope at least as favorable as the Company’s existing policies; provided, however, that the Company shall not pay a premium for the D&O Insurance in excess of 250% of the last annual premium paid prior to the date of this Agreement, which premium the Company represents and warrants to be as set forth on [Section 5.7\(b\)](#) of the Company Disclosure Schedule; provided further, that if the premium for such insurance coverage exceeds such amount, the Company shall be obligated to obtain a policy with the greatest coverage available, with respect to matters occurring prior to the Effective Time, for a cost not exceeding such amount.

(c) In the event that Parent or the Surviving Corporation (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then proper provision shall be made so that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, shall assume the obligations set forth in this [Section 5.7](#).

(d) The obligations under this [Section 5.7](#) shall not be terminated or modified in such a manner as to adversely affect in any material respect any indemnitee to whom this [Section 5.7](#) applies without the consent of such affected indemnitee, subject to applicable Law (it being expressly agreed that the indemnitees to whom this [Section 5.7](#) applies shall be third party beneficiaries of this [Section 5.7](#)).

5.8 [State Takeover Laws](#). If any Takeover Statute becomes or is deemed to be applicable to the Company, Parent, the Purchaser or any Affiliate of Parent, the execution, delivery or performance of this Agreement, the Offer or the Merger, including the acquisition of Shares pursuant thereto, the Tender Agreements or any other transaction contemplated by this Agreement, then the Company and the Company Board shall take all actions necessary to render such Takeover Statute inapplicable to the foregoing.

[Table of Contents](#)

5.9 Section 16 Matters. Prior to the Effective Time, the Company will take all such steps as may be required to cause any dispositions of Company equity securities (including derivative securities with respect to Company Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act to be exempt under Rule 16b-3 promulgated under the Exchange Act.

5.10 Employees and Employee Benefit Plan Matters.

(a) For a period of twelve (12) months following the Effective Time, Parent shall provide, or shall cause to be provided, to those employees of the Company and the Company Subsidiaries who continue to be employed by Parent and Parent Subsidiaries (individually, “**Company Employee**” and collectively, “**Company Employees**”) annual base salary or base wages that are substantially comparable, to the base salary or base wages provided to similarly situated employees of Parent or the Parent Subsidiaries and benefit that are substantially comparable, in the aggregate, to either (i) the benefits provided to Company Employees as of immediately prior to the Effective Time or (ii) the benefits provided to similarly situated employees of Parent or the Parent Subsidiaries.

(b) With respect to the employee benefit plans maintained by Parent or any of the Parent Subsidiaries that are offered to the Company Employees after the Effective Time (including any Company Employee Plans) (the “**New Plans**”), for purposes of vesting, eligibility to participate and levels of benefits (but not benefit accrual under any defined benefit plan or vesting under any equity incentive plan), each Company Employee shall be credited with his or her years of service with the Company and the Company Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Company Employee was entitled, before the Effective Time, to credit for such service under any similar Company Employee Plan in which such Company Employee participated or was eligible to participate immediately prior to the Effective Time; provided, that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service. In addition, Parent shall use its commercially reasonable efforts to cause for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such Company Employee and his or her covered dependents, to the extent such conditions were inapplicable or waived under the comparable Company Employee Plans in which such Company Employee participated immediately prior to the Effective Time.

(c) Effective as of the day immediately preceding the date that the Purchaser and the Company become part of the same controlled group pursuant to Sections 414(b), (c), (m) or (o) of the Code (the “**Controlled Group Date**”), unless otherwise directed in writing by Parent at least ten (10) Business Days prior to the Controlled Group Date, the Company shall take or cause to be taken all actions necessary to effect the termination of any and all Company Employee Plans intended to qualify as qualified cash or deferred arrangements under Section 401(k) of the Code (each, a “**401(k) Plan**”). The Company shall provide Parent with evidence that each such 401(k) Plan has been terminated pursuant to an action by the Company Board.

[Table of Contents](#)

(d) Notwithstanding anything to the contrary set forth in this Agreement, no provision of this Agreement shall be deemed to (i) guarantee employment for any period of time for, or preclude the ability of Parent or the Surviving Corporation to terminate, any Company Employee for any reason, or (ii) require Parent or the Surviving Corporation to continue any Company Plan or prevent the amendment, modification or termination thereof after the Effective Time. The provisions of this [Section 5.10](#) are solely for the benefit of the parties to this Agreement, and no Company Employee (including any beneficiary or dependent thereof) shall be regarded for any purpose as a third party beneficiary of this Agreement, and no provision of this [Section 5.10](#) shall create such rights in any such Persons.

5.11 [Rule 14d-10\(d\) Matters](#).

(a) The Company shall cause the compensation committee of the Company Board to be, at all times from and after the date of this Agreement until the first date on which Parent's designees constitute a majority of the Company Board pursuant to [Section 1.3](#), composed solely of "independent directors" within the meaning of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto. In furtherance of the foregoing, to the extent necessary, the Company Board shall, at a meeting duly called and held, determine that each of the members of the Compensation Committee of the Company Board is an "independent director." Prior to the Effective Time, the Company, acting through a compensation committee of the Company Board or its independent directors, shall take all steps that may be necessary or advisable to cause each Company Compensation Arrangement and each Parent Compensation Arrangement with any of its directors, officers or employees to be approved as an Employment Compensation Arrangement, and shall take all other action necessary to satisfy the requirements of the non-exclusive safe-harbor with respect to such Company Compensation Arrangements and Parent Compensation Arrangements in accordance to Rule 14d-10(d)(2) under the Exchange Act; provided, that the Company shall deliver to Parent drafts of all calculations, resolutions, consents, disclosures and other documents prepared in connection with the actions required under this [Section 5.11\(a\)](#), and provide ten (10) Business Days for Parent's review and comment on all such calculations, resolutions, consents, disclosures and other documents (and the Company's acceptance of Parent's reasonable comments shall not be unreasonably withheld, conditioned or delayed). For purposes of this Agreement, "**Parent Compensation Arrangement**" means (i) any employment agreement, severance agreement or change of control agreement between Parent or any of its Subsidiaries, on the one hand, and any holder of Shares who is or was a director, officer or employee of the Company or any Company Subsidiary, on the other hand, (ii) any Company Options or Company RSUs awarded to, or any acceleration of vesting of any Company Options or Company RSUs held by, any holder of Shares who is or was a director, officer or employee of the Company or any Company Subsidiary and (iii) other Employment Compensation Arrangements entered into or proposed to be entered into between Parent or any of its direct or indirect Subsidiaries, on the one hand, and any directors, officers or employees of the Company or any of its Subsidiaries, on the other hand.

(b) Notwithstanding anything in this Agreement to the contrary, neither the Company nor any Company Subsidiary shall, from and after the date hereof and until the Effective Time, enter into, establish, amend or modify any plan, program or Contract pursuant to which compensation is paid or payable, or pursuant to which benefits are provided, in each case to any current or former director, manager, officer, employee or independent contractor of the

[Table of Contents](#)

Company or any Company Subsidiary unless, prior to such entry into, establishment, amendment or modification, the Compensation Committee (each member of which the Company Board determined is an “independent director” within the meaning of Section 803A(2) of the NYSE MKT Company Guide and shall be an “independent director” in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act at the time of any such action) shall have taken all such steps as may reasonably be necessary to (i) approve as an Employment Compensation Arrangement each such plan, program or Contract and (ii) satisfy the requirements of the non-exclusive safe harbor under Rule 14d-10(d)(2) under the Exchange Act with respect to such plan, program or Contract; provided, that nothing in this [Section 5.11](#) shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

5.12 [Stockholder Litigation](#). The Company shall promptly (and in any event, within twenty-four (24) hours) inform Parent orally and in writing of any Action brought or threatened in writing by stockholders of the Company against the Company or any Company Subsidiary or any of their respective directors or officers relating to the transactions contemplated by this Agreement, including the Offer and the Merger. The parties shall cooperate and consult with each other in good faith in connection with any such Action and keep each other fully informed on a current basis with respect to the status thereof (including by promptly furnishing to the other party and its Representatives such information relating to such Action as such Persons may reasonably request). Notwithstanding the foregoing, the Company shall (a) give Parent the opportunity and right to participate in and direct and control the defense of any such Action, including in any and all proceedings related to any such Action and the any proposed settlement or disposition thereof and (b) not cease to defend, consent to the entry of any judgment, offer to settle, enter into any settlement or take any other material action with respect to any such Action without the prior written consent of Parent (not to be unreasonably withheld, conditioned or delayed). In connection with any such Action and the Company’s performance of its obligations under this [Section 5.12](#), the parties hereto shall enter into a customary common interest or joint defense agreement or implement such other techniques as reasonably required to preserve any attorney-client privilege; provided, however, that the Company shall not be required to provide information if doing so would cause the loss of any attorney-client privilege; provided, further, that, if any information is withheld pursuant to the foregoing proviso, the Company shall inform the Parent as to the general nature of what is being withheld and the parties shall use commercially reasonable efforts to enable the Company to provide such information without causing the loss of any attorney-client privilege.

5.13 [Exchange Delisting Matters](#). Prior to the Closing Date, the Company shall cooperate with Parent and use its commercially reasonable efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part under applicable Laws and rules and policies of the NYSE MKT to cause the delisting of the Company and of the Company Common Stock from the NYSE MKT as promptly as practicable after the Effective Time and the deregistration of the Common Stock under the Exchange Act as promptly as practicable after such delisting.

5.14 [Obligations of the Purchaser](#). Parent will take all actions necessary to cause the Purchaser to perform its obligations under this Agreement and to consummate the Offer and the Merger on the terms and subject to the conditions set forth in this Agreement.

[Table of Contents](#)

5.15 FIRPTA Certificate. At the Closing, the Company shall deliver to the Purchaser or Parent a certificate and IRS notice that meet the requirements of Treasury Regulation Sections 1.1445-2(c)(3) and 1.897-2(h), dated as of the Closing Date and in form and substance reasonably acceptable to Parent.

5.16 Directors and Officers. At least three (3) Business Days prior to the Closing Date, the Company shall deliver to Parent written resignations of all directors of the Company from the Company Board, to be effective as of the Effective Time, and the Company shall deliver to Parent written resignations of all officers of the Company and all directors and officers of the Company Subsidiaries from their positions as directors or officers as may be requested by Parent, to be effective as of the Effective Time (or if requested by Parent, upon their later resignation or removal).

5.17 Financing Cooperation.

(a) The Company agrees to provide such assistance, and to cause its Subsidiaries and its and their respective Representatives to provide such assistance, with the Debt Financing as is reasonably requested by Parent. Such assistance shall include, but not be limited to, the following: (i) participating in a reasonable number of meetings, drafting sessions, rating agency presentations and due diligence sessions, (ii) furnishing Parent and its lenders with all financial and other information reasonably required by Parent's lenders in connection with the Debt Financing, including, the Required Financial Information, (iii) assisting Parent and its lenders in the preparation of (A) a customary bank information memorandum, confidential information memorandum and similar documents, including customary authorization or reliance letters, for the Debt Financing and (B) materials for rating agency presentations, (iv) cooperating with Parent to satisfy the conditions precedent to the Debt Financing to the extent within the control of the Company and reasonably requested by Parent, (v) assisting in the preparation of, and executing and delivering, definitive financing documents, including, customary closing certificates, as may be reasonably required in connection with the Debt Financing and other customary certificates and collateral security and guarantee documentation, as may be reasonably requested by Parent, (vi) delivering to the Parent at least three (3) Business Days prior to the Closing Date all documentation and other information required under applicable "know your customer" and anti-money laundering rules and regulations (including the U.S.A. Patriot Act), that has been reasonably requested in writing by the Financing Sources at least eight (8) Business Days prior to the Closing Date, (vii) using commercially reasonable efforts to furnish Parent and its lenders as promptly as reasonably practicable with financial, business and other information regarding the Company and its Subsidiaries as may be reasonably requested by the Parent, (viii) using commercially reasonable efforts to ensure that the Financing Sources benefit materially from existing lending and investment banking relationships of the Company and (x) cooperating with Parent to the extent within the control of the Company, and taking all corporate actions, subject to the occurrence of the Closing, reasonably requested by Parent to permit the consummation of the Debt Financing; provided, that (w) the Company shall not be required to pay any fees (other than reasonable out of pocket expenses reimbursed by Parent hereunder) or incur any other liability or give any indemnity in connection with the Debt Financing, (x) no obligation of the Company under any agreement, certificate, document or instrument required to be delivered under this Section 5.17(a) shall be effective until the Closing other than in respect of customary authorization or reliance letters, (y) no Representative of the Company shall be

[Table of Contents](#)

required to take any action that could reasonably be expected to result in or cause any personal liability on the part of any Representative, and (z) nothing in this Agreement will require the Company board of directors to approve any financing, including the Debt Financing, or any definitive documentation related thereto prior to Closing. Parent shall reimburse the Company for all reasonable and documented out of pocket costs and expenses incurred by the Company in connection with the Company's cooperation and compliance with this [Section 5.17\(a\)](#). Parent will indemnify and hold harmless the Company and its Subsidiaries from and against any and all losses, damages, claims, costs or expenses actually suffered or incurred by them in connection with the arrangement of the Debt Financing and any information used in connection therewith. Notwithstanding anything in this [Section 5.17\(a\)](#) to the contrary, the Company may refuse to provide any access, or to disclose any information, if the Company is advised in writing by its outside legal counsel that providing such access or disclosing such information would (A) violate applicable Law (including antitrust and privacy laws); provided, that, the Company shall provide such access or disclose such information to the greatest extent possible without violating applicable Law or (B) cause the loss of any attorney-client privilege; provided, that, if any information is withheld pursuant to the foregoing clause (B), the Company shall inform the Parent as to the general nature of what is being withheld and the parties shall use commercially reasonable efforts, such as entry into a customary joint defense agreement, to enable the Company to provide such information without causing the loss of any attorney-client privilege. The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Debt Financing; provided that such logos are used solely in a manner that is not intended to nor reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries and its or their marks.

(b) The Company shall obtain and deliver to Parent no later than two (2) Business Days prior to the Closing Date, an accurate and complete copy of a payoff letter, dated no more than five (5) Business Days prior to the Closing Date, with respect to the Company Debt and all amounts payable to the lender thereof necessary to (i) satisfy such Company Debt and all other amounts payable to the lender thereof in full as of the Closing and (ii) terminate and release any Liens related thereto.

ARTICLE VI
CONDITIONS TO CONSUMMATION OF THE MERGER

6.1 Conditions to Obligations of Each Party Under This Agreement. The respective obligations of each party to consummate the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions:

(a) The Purchaser shall have accepted for payment, or caused to be accepted for payment, all Shares validly tendered and not withdrawn in the Offer.

(b) There shall not be any Law or Order enacted, entered, enforced, promulgated or which is deemed applicable pursuant to an authoritative interpretation by or on behalf of a Governmental Authority of competent jurisdiction with respect to the Merger which would reasonably be expected to result in any of the consequences referred to in clauses (A) through (C) of paragraph (c)(i) of [Annex I](#).

6.2 Frustration of Closing Conditions. None of the Company, Parent or the Purchaser may rely on the failure of any condition set forth in this ARTICLE VI to be satisfied if such failure was primarily caused by or primarily resulted from such party's breach of this Agreement.

ARTICLE VII TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. This Agreement may be terminated, and the Offer, the Merger and the other transactions contemplated hereby may be abandoned at any time prior to the Effective Time:

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

(b) by either the Company or Parent, if the Offer (as it may have been extended in accordance with Section 1.1) expires or is terminated or withdrawn pursuant to its terms without any Shares being purchased thereunder; provided, however, that the right to terminate the Agreement pursuant to this Section 7.1(b) shall not be available to any party whose breach of this Agreement has been the primary cause of or primarily resulted in the failure or the non-satisfaction of any condition or requirement of the Offer set forth in Annex I;

(c) by either the Company or Parent, if any court or other Governmental Authority, in each case of competent jurisdiction, shall have issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting (i) prior to the Acceptance Time, the acceptance for payment of, or payment for, Shares pursuant to the Offer or (ii) prior to the Effective Time, the Merger, and such Order or other action shall have become final and non-appealable (which Order or other action the party seeking to terminate this Agreement shall have used its commercially reasonable efforts to resist, resolve or lift, as applicable, subject to the provisions of Section 5.4); provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(c) shall not be available to any party if the issuance of such final and non-appealable Order or action was due to the failure by such party (including in the case of Parent, the Purchaser) to perform any of its obligations under this Agreement;

(d) by Parent, at any time prior to the Acceptance Time if (i) an Adverse Recommendation Change shall have occurred (whether or not in compliance with Section 5.3), (ii) the Company shall have breached in any material respect its obligations under Section 5.3, (iii) the Company shall have failed to include the Company Board Recommendation in the Schedule 14D-9 or failed to permit Parent and Purchaser to include the Company Board Recommendation in the Offer Documents, (iv) within five (5) Business Days of the date any Competing Proposal or any material modification thereto is first publicly announced or otherwise communicated to the stockholders of the Company, or otherwise within two (2) Business Days following Parent's written request, the Company fails to issue a press release that expressly reaffirms the Company Board Recommendation to the extent required pursuant to Section 5.3(e)(iii) or (v) the Company or the Company Board (or any committee thereof) shall authorize or publicly propose to do any of the foregoing;

[Table of Contents](#)

(e) by Parent, at any time prior to the Acceptance Time if: (i) there shall be an Uncured Inaccuracy in any representation or warranty of the Company contained in this Agreement or breach of any covenant of the Company contained in this Agreement, in any case, such that any condition to the Offer contained in paragraph (c)(iii) or (c)(iv) of [Annex I](#) is not or is not reasonably likely to be satisfied, (ii) Parent shall have delivered to the Company written notice of such Uncured Inaccuracy or breach and (iii) either such Uncured Inaccuracy or breach is not capable of cure or at least twenty (20) calendar days shall have elapsed since the date of delivery of such written notice to the Company and such Uncured Inaccuracy or breach shall not have been cured;

(f) by the Company, at any time prior to the Acceptance Time if: (i) there shall be an Uncured Inaccuracy in any representation or warranty of Parent or the Purchaser contained in this Agreement or breach of any covenant of Parent or the Purchaser contained in this Agreement that shall have had or is reasonably likely to materially impair the ability of Parent and the Purchaser to consummate, or prevent or materially delay, the Offer, the Merger or any of the other transactions contemplated by this Agreement; (ii) the Company shall have delivered to Parent written notice of such Uncured Inaccuracy or breach; and (iii) either such Uncured Inaccuracy or breach is not capable of cure or at least twenty (20) calendar days shall have elapsed since the date of delivery of such written notice to Parent and such Uncured Inaccuracy or breach shall not have been cured;

(g) by Parent, at any time prior to the Acceptance Time if there has been a Company Material Adverse Effect since the date hereof and the same is continuing; or

(h) by the Company at any time prior to the Acceptance Time if the Purchaser shall fail to accept for payment and pay for Shares validly tendered and not withdrawn in the Offer subject to the terms of and in accordance with [Section 1.1](#) and at such time all of the conditions and requirements of the Offer set forth on [Annex I](#) (including the Minimum Condition) are satisfied or have been waived.

7.2 [Effect of Termination](#) .

(a) In the event of termination of this Agreement by either the Company or Parent as provided in [Section 7.1](#), this Agreement shall become void and there shall be no liability or obligation on the part of Parent, the Purchaser or the Company or their respective Subsidiaries, officers or directors except (i) with respect to [Section 5.2\(b\)](#), this [Section 7.2](#), [ARTICLE VIII](#) and the terms of the Confidentiality Agreement, each of which shall remain in full force and effect and (ii) subject to the last sentence of [Section 7.2\(f\)](#), with respect to any liabilities or damages incurred or suffered as a result of the willful and material breach by the Company, on the one hand, or Parent or the Purchaser, on the other hand, of any of their respective representations, warranties, covenants or other agreements set forth in this Agreement that occurs prior to such termination.

[Table of Contents](#)

(b) The Company shall pay to Parent in cash an amount equal to its Expenses subject to a cap of \$4,000,000 (the “Expense Reimbursement”), by wire transfer of immediately available funds to an account or accounts designated in writing by Parent within two (2) Business Days after demand by Parent:

(i) in the event that this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) (but in the case of a termination by the Company, only if at such time the Parent would not be prohibited from terminating this Agreement pursuant to Section 7.1(b)) and the Minimum Condition has not been satisfied prior to such termination (provided, that the conditions to the Offer set forth in paragraph (b) and paragraphs (c)(i) and (c)(ii) of Annex I are satisfied at the time of such termination pursuant to Section 7.1(b) and the right to terminate this Agreement pursuant to Section 7.1(b) is then available to Parent);

(ii) in the event that this Agreement is terminated by Parent pursuant to Section 7.1(e); or

(iii) in the event that this Agreement is terminated by Parent pursuant to Section 7.1(g).

(c) The Company shall pay to Parent an amount equal to \$9,250,000 in cash (the “**Breakup Fee**”), by wire transfer of immediately available funds to an account or accounts designated in writing by Parent within two (2) Business Days after demand by Parent in the event that:

(i) this Agreement is terminated by Parent pursuant to Section 7.1(d) or by the Company at any time that Parent would have been entitled to terminate this Agreement pursuant to Section 7.1(d); or

(ii) (A) (1) this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) (but in the case of a termination by the Company, only if at such time the Parent would not be prohibited from terminating this Agreement pursuant to Section 7.1(b)) and the Minimum Condition has not been satisfied prior to such termination (provided, that the conditions to the Offer set forth in paragraph (b) and paragraphs (c)(i) and (c)(ii) of Annex I are satisfied at the time of such termination pursuant to Section 7.1(b) and the right to terminate this Agreement pursuant to Section 7.1(b) is then available to Parent), (2) this Agreement is terminated by Parent pursuant to Section 7.1(e), or (3) this Agreement is terminated by Parent pursuant to Section 7.1(g), (B) following the execution and delivery of this Agreement and prior to such termination of this Agreement, a Competing Transaction (as defined below) shall have been publicly announced or shall have become publicly disclosed and, in either case, shall not have been publicly withdrawn or otherwise publicly abandoned by the Person making such Competing Transaction, and (C) within twelve (12) months following such termination of this Agreement, either (y) the Company or any Company Subsidiary enters into a definitive agreement with respect to a Competing Transaction or (z) a Competing Transaction is consummated. For purposes of the foregoing, a “**Competing Transaction**” shall mean a transaction of a type set forth in clauses (i) through (v) of the definition of “**Competing Proposal**”; provided, that for purposes of this Section 7.2(c), all the references to “15%” in the definition of “**Competing Proposal**” shall be replaced by “50%”.

Notwithstanding the foregoing, any payment of a Breakup Fee pursuant to this Section 7.2(c)(ii) shall be reduced by the amount of any Expense Reimbursement previously paid by the Company to Parent pursuant to Section 7.2(b) with respect to the corresponding termination of this Agreement pursuant to Section 7.1.

[Table of Contents](#)

(d) All payments under this [Section 7.2](#) shall be made by wire transfer of immediately available funds to an account designated by in writing by Parent. For the avoidance of doubt, in no event shall the Company be obligated to pay, or cause to be paid, the Breakup Fee on more than one occasion.

(e) In the event that the Company shall fail to pay the Breakup Fee when due, the Company shall reimburse Parent for all reasonable Expenses actually incurred or accrued by Parent and the Purchaser (including reasonable Expenses of counsel) in connection with the collection under and enforcement of this [Section 7.2](#), together with interest on the Termination Fee at a rate per annum equal to the prime lending rate prevailing as published in The Wall Street Journal for the period from the date such Termination Fee was initially due to the date of payment.

(f) Each of Parent, the Purchaser and the Company acknowledges that the agreements contained in this [Section 7.2](#) are an integral part of the Transaction and that neither the Expense Reimbursement nor the Termination Fee is a penalty, but rather is liquidated damages and a reasonable amount that will compensate Parent and the Purchaser in the circumstances in which such payment is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transaction, each of which amounts would otherwise be impossible to calculate with precision. Except in the case of willful and material breach of [Section 5.3](#) or [Section 5.4](#), the payment by the Company of the Expense Reimbursement and Termination Fee, if payable, pursuant to this [Section 7.2](#) shall be the sole and exclusive remedy of Parent and Purchaser in the event of termination of this Agreement under circumstances requiring the payment of the Expense Reimbursement or Termination Fee pursuant to this [Section 7.2](#).

[7.3 Amendment](#). Subject to [Section 1.1\(c\)](#), this Agreement may be amended by the Company, Parent and the Purchaser by action taken by or on behalf of their respective boards of directors at any time prior to the Effective Time. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

[7.4 Waiver](#). Subject to [Section 1.1\(c\)](#), at any time prior to the Effective Time, Parent and the Purchaser, on the one hand, and the Company, on the other hand, may (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any Uncured Inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto and (iii) waive compliance by the other with any of the agreements or covenants contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**ARTICLE VIII
GENERAL PROVISIONS**

8.1 Non-Survival of Representations and Warranties. None of the representations and warranties in this Agreement shall survive the Acceptance Time. None of the covenants in this Agreement, nor any representations, warranties or covenants in any instrument delivered pursuant to this Agreement, shall survive the Effective Time; provided, however, that this Section 8.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

8.2 Fees and Expenses. Subject to Section 5.4(b), Section 5.4(d), Section 5.17(a) and Section 7.2, all Expenses incurred by the parties hereto (including any Expenses incurred in connection with any filings to be made pursuant to (i) the Exchange Act, the Securities Act or the rules and regulations of the NASDAQ or the NYSE MKT or (ii) the DGCL or any Takeover Laws), shall be borne solely and entirely by the party which has incurred the same.

8.3 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be either hand delivered in person, sent by electronic mail, sent by certified or registered first-class mail, postage prepaid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by electronic mail, three (3) Business Days after mailing if sent by mail, and one (1) Business Day after dispatch if sent by express courier, to the following addresses, or such other addresses as any party may notify the other parties in accordance with this Section 8.3.

If to Parent or the Purchaser, addressed to it at:

Integrated Device Technology, Inc.
6024 Silver Creek Valley Road,
San Jose, CA 95138
Phone: (408) 284-8402 and (408) 284-2742
E-mail: greg.waters@idt.com and matthew.brandalise@idt.com
Attention: Gregory L. Waters and Matthew D. Brandalise

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

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Phone: (650) 328-4600
E-mail: mark.roeder@lw.com
josh.dubofsky@lw.com
Attention: Mark Roeder and Josh Dubofsky

[Table of Contents](#)

If to the Company, addressed to it at:

GigPeak, Inc.
130 Baytech Drive
San Jose, CA 95134
Phone: (408) 522-3178
E-mail: akatz@gigpeak.com
Attention: Avi Katz, Chairman and CEO

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

Crowell & Moring LLP
3 Embarcadero Center, 26th Floor
San Francisco, California 94111
Phone: (415) 986-2800
E-mail: jselman@crowell.com
Attention: Jeffrey C. Selman

8.4 Certain Definitions. For purposes of this Agreement, the term:

“**Acceptable Confidentiality Agreement**” means a confidentiality agreement in a customary form that (i) does not contain any provision prohibiting or otherwise restricting the Company or any Company Subsidiary from making any of the disclosures required to be made by Section 5.3 or any other provision of this Agreement and (ii) contains provisions that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement.

“**Acceptance Time**” means such time as the Purchaser accepts for payment Shares tendered and not properly withdrawn pursuant to the Offer representing at least such number of Shares as shall satisfy the Minimum Condition in accordance with the terms of the Offer and this Agreement.

“**Action**” means any suit, claim, action, proceeding, litigation, hearing, writ, injunction, notice of violation, investigation, arbitration, mediation, audit, dispute or demand letter.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. As used in this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**AML Laws**” shall mean laws, regulations, rules, or guidelines relating to money laundering, including, without limitation, financial recordkeeping and reporting requirements, the U.S. Currency and Foreign Transaction Reporting Act, and the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“**beneficial ownership**” (and related terms such as “beneficially owned” or “beneficial owner”) has the meaning set forth in Rule 13d-3 under the Exchange Act.

[Table of Contents](#)

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York or San Francisco, California are authorized or required by applicable Law to close.

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

“**Company Balance Sheet**” means the consolidated balance sheet of the Company and the Company Subsidiaries as of September 25, 2016.

“**Company Debt**” means, as of any date, all Indebtedness of the Company and its Subsidiaries under that certain Third Amended and Restated Loan and Security Agreement, dated April 5, 2016, by and among the Company, certain Subsidiaries of the Company and Silicon Valley Bank.

“**Company Employee Plan**” means each “employee benefit plan,” as defined in Section 3(3) of ERISA, and each employment, consulting, severance, termination, retention, change-in-control or similar contract, plan, arrangement or policy and each other plan or arrangement (written or oral) providing for compensation, bonuses or other incentive compensation, profit-sharing, stock options, restricted stock, deferred stock, performance stock, stock appreciation rights, phantom stock or other stock or equity-related rights, deferred compensation, vacation or paid-time-off, insurance (including any self-insured arrangements), health or medical benefits, retiree medical benefits, dental or vision benefits, employee assistance program, life, accident, disability or sick leave benefits, other welfare fringe benefits, workers’ compensation, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered, participated in or contributed to by the Company or any Company Subsidiary, or with respect to which the Company or any Company Subsidiary has or may have any liability (whether actual or contingent, direct or indirect).

“**Company IP**” means any and all Intellectual Property Rights and Technology owned or purported to be owned by the Company or any Company Subsidiary.

“**Company IP Contract**” means any Contract to which the Company or any Company Subsidiary is party, or by which the Company or any Company Subsidiary is bound, that contains any assignment or license of, or covenant not to assert or enforce, any Intellectual Property Rights or rights in or to Technology.

“**Company Material Adverse Effect**” means any Effect that, individually or in the aggregate, (i) has had or would reasonably be expected to have a materially adverse effect on the business, assets, liabilities, results of operations, prospects or condition (financial or otherwise) of the Company and the Company Subsidiaries, taken as a whole or (ii) prevents or materially delays, or would reasonably be expected to prevent or materially delay, consummation of the Offer or the Merger or the performance by the Company (including any obligation of the Company to cause the Company Subsidiaries to take or omit to take any action) of any of its material obligations under this Agreement, *except for* , in the case of clause (i), any Effect attributable to: (a) changes in general economic or political conditions or financial or securities markets in general in any location where the Company or the Company Subsidiaries have

[Table of Contents](#)

material operations, (b) changes in conditions generally affecting the principal industry in which the Company and the Company Subsidiaries operate, (c) changes in GAAP or applicable Law, or enforcement or interpretation thereof, in each case as applicable to the Company and the Company Subsidiaries, (d) acts of war, armed hostilities, sabotage or terrorism in any location where the Company or Company Subsidiaries have material operations, (e) any hurricane, tornado, flood, earthquake, tsunami, volcano eruption or other natural disaster in any location where the Company or Company Subsidiaries have material operations, (f) the execution and delivery of this Agreement and the Company's performance of its obligations under this Agreement, (g) any failure by the Company to meet any internal or published projections, forecasts, estimates or projections in respect of revenues, cash flow, earnings or other financial or operating metrics for any period or (h) any changes in the market price or trading volume of shares of Company Common Stock (it being understood that the Effects giving rise or contributing to such failure that are not otherwise excluded from the definition of "**Company Material Adverse Effect**" may be taken into account in determining whether a Company Material Adverse Effect has occurred); provided, however, that (1) clause (f) shall be disregarded for purposes of the representations and warranties set forth in Section 3.4 and/or Section 3.5 and the conditions set forth in paragraph (c)(iii) of Annex I solely as it relates to such representations and warranties and (2) any Effect to the extent the same disproportionately affects (individually or together with other Effects) the Company and the Company Subsidiaries, taken as a whole, as compared to other Persons operating in the same principal industry in which the Company and the Company Subsidiaries operate shall be excluded to such extent in the case of clauses (a), (b), (c), (d) and (e).

"**Company Option**" means an option to purchase Shares which was granted pursuant to a Company Stock Plan.

"**Company Products**" means each product or service (including Company Proprietary Software) that is designed, developed, manufactured, sold, licensed, leased, distributed, or made generally commercially available to Third Parties by or on behalf of the Company or any Company Subsidiary.

"**Company Proprietary Software**" means Software owned or purported to be owned by the Company or any Company Subsidiary.

"**Company RSU**" means any restricted stock unit with respect to Company Common Stock which was granted pursuant to a Company Stock Plan.

"**Company Service Provider**" means a non-employee individual service provider of the Company or any Company Subsidiary who, at the Effective Time, continues his or her service with the Surviving Corporation or any of its Subsidiaries, other than any such service provider who is ineligible to be included on a registration statement filed by Parent on Form S-8.

"**Company Stock Plan**" means the 2000 Stock Option Plan of Lumera Corporation (as amended), the 2004 Equity Incentive Plan of Lumera Corporation, the 2007 GigOptix LLC Equity Incentive Plan and the Company's Amended and Restated 2008 Equity Incentive Plan.

"**Company Warrant**" means an outstanding warrant to purchase Company Common Stock.

[Table of Contents](#)

“**Competing Inquiry**” means any inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by Parent or any of its Subsidiaries) that involves or may reasonably be expected to lead to a Competing Proposal.

“**Competing Proposal**” shall mean, other than the transactions contemplated by this Agreement, any proposal or offer from a Third Party relating to (i) a merger, reorganization, sale of assets, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation, joint venture or similar transaction involving the Company or any of the Company Subsidiaries whose assets, individually or in the aggregate, constitute 15% or more of the consolidated assets of the Company and the Company Subsidiaries, as determined on a book-value or fair-market-value basis, (ii) the acquisition (whether by merger, consolidation, equity investment, joint venture or otherwise), lease, exchange, transfer or license by any Person of 15% or more of the consolidated assets of the Company and the Company Subsidiaries, as determined on a book-value or fair-market-value basis, (iii) the purchase or acquisition, in any manner, directly or indirectly, by any Person of 15% or more of the outstanding voting securities or any other Equity Interests in the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 15% or more of the consolidated assets of the Company and the Company Subsidiaries, as determined on a book-value or fair-market-value basis, (iv) any purchase, acquisition, tender offer or exchange offer that, if consummated, would result in any Person beneficially owning 15% or more of the outstanding voting or any other Equity Interests of the Company or any of the Company Subsidiaries whose assets, individually or in the aggregate, constitute 15% or more of the consolidated assets of the Company and the Company Subsidiaries, as determined on a book-value or fair-market-value basis or (v) any combination of the foregoing.

“**Confidentiality Agreement**” means the Mutual Nondisclosure Agreement, dated as of January 18, 2017, by and between Parent and the Company.

“**Continuing Director**” has the meaning set forth in the Company Charter.

“**Contracts**” means any of the legally binding agreements, arrangements, commitments, understandings, contracts, leases (whether for real or personal property), powers of attorney, notes, bonds, mortgages, indentures, deeds of trust, loans, evidences of Indebtedness, purchase and sales orders, letters of credit, undertakings, licenses, instruments, obligations and other legally binding commitments to which a Person is a party or to which any of the assets of such Person or its Subsidiaries are subject, whether oral or written.

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

“**Data**” means customer lists, correspondence, data, submissions and licensing and purchasing histories relating to customers of the Company and all other reports, information and documentation collected or maintained by the Company regarding purchasers of Company Products and the visitors to websites owned or controlled by the Company or any of the Company Subsidiaries.

[Table of Contents](#)

“**Data Protection Laws**” means the data protection and privacy laws of each country where the Company or any of the Company Subsidiaries are established and those of each country where any Personal Information is collected, transmitted, secured, stored, shared or otherwise processed by or on behalf of the Company or any of the Company Subsidiaries, including, without limitation, to the extent applicable to the Company or any of the Company Subsidiaries or any of their respective businesses or employees, such laws and regulations that implement the European Data Protection Directive and the Privacy and Electronic Communications Directive (2002/58/EC) in the European Economic Area and any applicable guidelines and codes issued by a competent data protection authority, or other competent governmental body or agency, in respect of such laws, and shall also mean the Massachusetts data protection law, 201 CMR 17.00, and Section 5 of the (U.S.) Federal Trade Commission Act and any and all laws and regulations governing privacy, cybercrime, use of electronic data, or unfair or deceptive trade practices.

“**Debt Commitment Letter**” means the debt commitment letter, as amended, supplemented or replaced in compliance with this Agreement, pursuant to which the financial institutions party thereto have agreed, subject only to financing conditions set forth therein, to provide or cause to be provided the debt financing set forth therein for the purposes of financing the Offer, the Merger and any of the other transactions contemplated by this Agreement.

“**Debt Financing**” means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter.

“**Effect**” means any change, effect, development, circumstance, condition, state of facts, event or occurrence.

“**Environmental Law**” means any applicable Law or any agreement with any Governmental Authority or other Person, relating to human health and safety, based on the exposure of Persons to Hazardous Substances, the environment or any Hazardous Substance.

“**Environmental Permits**” means, with respect to any Person, all licenses, permits, certificates, waivers, consents, franchises (including similar authorizations or permits), exemptions, variances, expirations and terminations of any waiting period requirements and other authorizations and approvals issued to such Person by or obtained by such Person from any Governmental Authority relating to or required by Environmental Law and affecting, or relating in any way to, the business of such Person or any of its Subsidiaries.

“**Equity Interest**” means any share, capital stock, partnership, member or similar equity interest in any entity, and any option, warrant, right or security convertible, exchangeable or exercisable therefor.

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

[Table of Contents](#)

“**ERISA Affiliate**” of any entity means any other entity that, together with such entity, would be treated as a single employer within the meaning of Section 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exon-Florio**” means the Defense Production Act of 1950, 50 U.S.C. app. § 2170.

“**Expenses**” includes all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, financing sources, experts and consultants to a party hereto and its Affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including the preparation, printing, filing and mailing of the Offer Documents, the Schedule 14D-9 and all other matters related to the transactions contemplated by this Agreement.

“**Export Control Laws**” shall mean any laws, regulations, rules, directives, measures, or guidelines relating to exports, reexports, transfers, releases, shipments, transmissions or any other provision or receipt of goods, technology, software or services, including, without limitation, the U.S. Export Administration Regulations (including the Antiboycott regulations administered by the U.S. Commerce Department’s Office of Antiboycott Compliance) and the U.S. International Traffic in Arms Regulations.

“**Financing Sources**” means the entities that have directly or indirectly committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Debt Financing in connection with the transactions contemplated hereby, including the parties to any joinder agreements, indentures or credit agreements entered pursuant thereto or relating thereto, together with their respective affiliates, and their and their respective affiliates’ officers, directors, employees, partners, controlling persons, advisors, agents and representatives and their respective successors and assigns.

“**GAAP**” means generally accepted accounting principles in the United States, as in effect on the date hereof.

“**Governmental Authority**” means (i) any federal, state, provincial, county, municipal or other local or foreign government or other political subdivision thereof or (ii) any governmental or quasi-governmental body, agency, authority (including any Taxing Authority or transgovernmental or supranational entity or authority), minister or instrumentality (including any court or tribunal) exercising executive, legislative, judicial, regulatory or administrative authority.

“**Hazardous Substance**” means any pollutant, contaminant, waste or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material, or any substance, waste or material having any constituent elements displaying any of the foregoing characteristics, including any substance, waste or material regulated under any Environmental Law because of its dangerous or deleterious characteristics.

[Table of Contents](#)

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

“**In-the-Money Company Option**” means a Company Option with an exercise price per Share subject thereto that is less than the Offer Price.

“**In-the-Money Company Warrant**” means a Company Warrant with an exercise price per Share subject thereto that is less than the Offer Price.

“**Indebtedness**” means, collectively, any (i) indebtedness for borrowed money, (ii) indebtedness evidenced by any bond, debenture, note, mortgage, indenture or other debt instrument or debt security, (iii) amounts owing as deferred purchase price for the purchase of any property, (iv) any capital lease obligations, (v) any obligation under any interest rate, currency, swap or other hedging agreement or (vi) guarantees with respect to any indebtedness or obligation of a type described in clauses (i) through (v) above of any other Person.

“**Intellectual Property Rights**” means and includes all past, present and future rights in and to the following types of intellectual property, which may exist or be created under the laws of any jurisdiction: (i) Patents, (ii) Trademarks; (iii) rights in works of authorship, including any copyrights and rights under copyrights, whether registered or unregistered, moral rights, and any registrations and applications for registration thereof; (iv) mask work rights, and any registrations and applications for registration thereof; (v) rights in databases and data collections (including rights (if any) in design databases, knowledge databases, customer lists and customer databases) under the laws of the United States or any other jurisdiction, whether registered or unregistered, and any applications for registration thereof; (vi) trade secret rights, including trade secret rights in and to the following: know how (including any ideas, formulas, compositions, inventions (whether patentable or not and however documented), processes, techniques, specifications, business plans, proposals, designs, technical data, invention disclosures, customer data, financial information, pricing and cost information, bills of material or other similar information); (vii) rights to any URL and domain name registrations; (viii) all claims and causes of actions arising out of or related to any past, current or future infringement or misappropriation of any of the foregoing and (ix) any other proprietary or intellectual property rights now known or hereafter recognized in any jurisdiction worldwide.

“**Intervening Event**” shall mean any Effect that affects or would reasonably be expected to affect the condition (financial or otherwise), business, assets or results of operations of the Company and its Subsidiaries, taken as a whole, that (i) is material, (ii) was not known to or reasonably foreseeable by the Company or the Company Board as of the date of this Agreement (and which could not have become known or reasonably foreseeable as of the date of this Agreement through any further reasonable investigation, discussion, inquiry or negotiation), (iii) becomes known to the Company Board prior to the Acceptance Time and (iv) does not relate to or involve (a) any Competing Proposal or Competing Inquiry, (b) any action taken by any party hereto pursuant to and in compliance with such party’s obligations under this Agreement, or the consequences of any such action, (c) any fluctuation in the market price or trading volume of the Shares, (d) the timing of any consents, registrations, approvals, permits, clearances or authorizations required to be obtained prior to the Acceptance Time by the Company or Parent or any of their respective Subsidiaries from any Governmental Authority in connection with this

[Table of Contents](#)

Agreement and the consummation of the Offer and Merger or (e) the fact that, in and of itself, the Company exceeds any internal or published projections, estimates or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period, in and of itself (however, the underlying reasons for such events may constitute an Intervening Event).

“**Inventory**” means all inventory, merchandise, finished goods, and raw materials, packaging, labels, supplies and other personal property maintained, held or stored by or for the Company or any Company Subsidiary and any prepaid deposits for any of the same.

“**Knowledge of the Company**” means knowledge, after reasonable and diligent inquiry, of each of the individuals identified in [Section 8.4\(i\)](#) of the Company Disclosure Schedule.

“**Law**” means, with respect to any Person, any international, national, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“**Lien**” means, with respect to any property or asset, any lien, pledge, security interest or other charge, encumbrance or adverse claim of any kind in such property or asset, or any other type of preferential arrangement.

“**NASDAQ**” means the NASDAQ Global Market or the NASDAQ Global Select Market, as applicable.

“**NYSE MKT**” means the NYSE MKT LLC.

“**on a fully diluted basis**” means, as of any date, (i) the number of Shares outstanding, plus (ii) the number of Shares the Company is then required to issue pursuant to options, warrants, rights or other obligations outstanding at such date under any employee stock option, benefit plans, warrant agreements, convertible notes or otherwise (assuming all options and other rights to acquire or obligations to issue such Shares are fully vested and exercisable and all Shares issuable at any time have been issued and regardless of the conversion or exercise price or other terms or conditions of any security), including pursuant to the Company Stock Plans and the Warrants.

“**Order**” means, with respect to any Person, any order, writ, injunction, judgment, decree, decision, determination, subpoena, verdict, award, settlement agreement, ruling or similar action enacted, adopted, promulgated or applied by a Governmental Authority or arbitrator that is binding upon or applicable to such Person or its property.

“**Parent Common Stock**” means the common stock, par value \$0.001 per share, of Parent.

“**Parent IP**” means any and all Intellectual Property Rights and Technology owned or purported to be owned by Parent or any of its respective Affiliates.

[Table of Contents](#)

“ **Patents** ” means any and all patents, utility models, industrial designs and design patents, worldwide, and applications therefor (and any patents that issue as a result of those patent applications), and includes all divisions, continuations, continuations in part, reissues, renewals, re-examinations, provisionals and extensions thereof, and any counterparts worldwide claiming priority therefrom, and all rights in and to any of the foregoing.

“ **Permitted Liens** ” means (i) Liens disclosed on the Company Balance Sheet, (ii) Liens securing the Company Debt as of the date of this Agreement which will be released upon repayment of the Company Debt on the Closing Date in accordance with Section 5.17(b), (iii) statutory liens for current taxes that are (a) not yet due and payable as of the Closing Date or (b) being contested in good faith (and for which adequate accruals or reserves have been established on the most recent financial statements of the Company included in the most recent Form 10-K filed by the Company with the SEC prior to the date of this Agreement), (iv) mechanics’, materialmen’s, carriers’, workmen’s, warehouseman’s, repairmen’s, landlords’ and similar liens granted or which arise in the ordinary course of business, (v) with respect to real property, easements, rights of way, zoning ordinances, and other similar land use and environmental regulations affecting Real Property which are not, individually or in the aggregate, material in amount or with respect to the effect on the business of the Company or the Company Subsidiaries, and (vi) such other Liens or encumbrances which arise in the ordinary course of business that are not material in amount or that, in the aggregate, do not materially impair the value or the continued use and operation of the assets to which they relate.

“ **Person** ” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“ **Personal Information** ” shall mean any information relating to an identified or identifiable natural person; an “identifiable person” is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, including, unique device or browser identifiers, names, addresses, telephone numbers, email addresses, social security numbers, and/or account information; and shall also mean any information that is regulated or protected by one or more Data Protection Laws.

“ **Public Official** ” means: (i) any Representative of any regional, federal, state, provincial, county or municipal government or government department, agency, or other division; (ii) any Representative of any commercial enterprise that is owned or controlled by a government; (iii) any Representative of any public international organization; (iv) any Person acting in an official capacity for any government or government entity, enterprise, or organization identified above; or (v) any political party, party official or candidate for political office.

“ **Registered IP** ” means all Intellectual Property Rights that are registered, filed, or issued under the authority of any Governmental Authority, including all Patents, registered copyrights, registered Trademarks, registered mask works, and domain names, and all applications for any of the foregoing.

[Table of Contents](#)

“ **Representatives** ” means, with respect to any Person, the directors, officers, employees, financial advisors, attorneys, accountants, consultants, agents and other authorized representatives of such Person, acting in such capacity.

“ **Required Financial Information** ” means (i) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders’ equity of the Company for the three (3) most recently completed fiscal years of the Company, ended at least ninety (90) days before the Closing Date, (ii) the unaudited consolidated balance sheets and related statements of operations and cash flows of the Company for each subsequent fiscal quarter of the Company ended at least forty-five (45) days before the Closing Date, (iii) such other information as Parent or the Financing Sources shall reasonably request regarding the business operations and the financial performance of the Company and its Subsidiaries, and (iv) customary authorization letters (including customary representations with respect to accuracy of information provided by the Company) authorizing the distribution of information provided under clauses (i) and (ii) above to the Financing Sources.

“ **Rights** ” has the meaning set forth in the Company Rights Agreement.

“ **Sanctioned Country** ” shall mean, at any time, a country or territory that is subject to comprehensive Sanctions (presently, Cuba, Iran, North Korea, Sudan, Syria and the Crimea region of Ukraine).

“ **Sanctioned Person** ” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“ **OFAC** ”) or the U.S. Department of State, the United Nations Security Council, the European Union, any EU member state, or other relevant Sanctions authority (b) any Person located, operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“ **Sanctions** ” shall mean any laws, regulations, rules, directives, measures, or guidelines relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, European Union, Her Majesty’s Treasury of the United Kingdom, or any other jurisdiction that has or will in the future issue a restrictive trade law applicable to the Company.

“ **Sarbanes-Oxley Act** ” means the Sarbanes-Oxley Act of 2002, and the rules and regulations promulgated thereunder.

“ **Securities Act** ” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ **Software** ” means any computer program, firmware or software code of any nature, including all object code, source code, executable code, hardware configuration data, RTL code, Gerber files and GDSII files, and related developers’ notes, including comments and annotations related thereto, whether in machine-readable form, programming language or any other language or symbols and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature.

[Table of Contents](#)

“**Standard Forms**” means the standard forms of the Company and its Subsidiaries as disclosed or made available to Parent.

“**Standard Software**” means generally commercially available, “off-the-shelf” or “shrink-wrapped” Software that is not redistributed with or used in the development or provision of the Company Products and that has an annual support cost of \$25,000 or less.

“**Subsidiary**” of Parent, the Company or any other Person means any corporation, partnership, joint venture or other legal entity of which Parent, the Company or such other Person, as the case may be (either alone or through or together with any other Subsidiary), owns, directly or indirectly, a majority of the stock or other Equity Interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation, partnership, joint venture or other legal entity, or otherwise owns, directly or indirectly, such Equity Interests, that would confer control of any such corporation, partnership, joint venture or other legal entity, or any Person that would otherwise be deemed a “subsidiary” under Rule 12b-2 promulgated under the Exchange Act.

“**Superior Proposal**” means an unsolicited bona fide written Competing Proposal (except the references therein to “15%” shall be replaced by “85%”) made by a Third Party which was not solicited by the Company, any Company Subsidiary or any of their respective Representatives and which, in the good faith judgment of the Company Board, after consultation with the Company’s independent financial advisors and outside legal counsel, taking into account the various legal, financial and regulatory aspects of the Competing Proposal, including the financing terms thereof, if any, and the Third Party making such Competing Proposal, (i) if accepted, is reasonably capable of being consummated in accordance with its terms and (ii) if consummated would in the good faith judgment of the Company Board, after consultation with the Company’s independent financial advisor, result in a transaction that is more favorable to the Company’s stockholders, from a financial point of view, than the Offer and the Merger (after giving effect to all adjustments to the terms thereof which may have been offered in writing by Parent, including pursuant to [Section 5.3\(f\)](#)).

“**Tax**” means any federal, state, local or foreign income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax or similar assessment or charge of any kind whatsoever imposed by a Governmental Authority (including any national insurance contributions or withholding required by applicable Tax law on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount with respect thereto, whether disputed or not.

“**Tax Return**” means any report, election, return, document, declaration or other information filed or required to be filed with a Taxing Authority, including any schedule, notice, supplement, information returns, any document with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, election, return, document, declaration or other information.

[Table of Contents](#)

“ **Taxing Authority** ” means any Governmental Authority having or purporting to exercise jurisdiction with respect to any Tax.

“ **Technology** ” means tangible embodiments of Intellectual Property Rights including know-how, trade secrets and other proprietary information contained with, protecting, covering or relating to mask sets, wafers, products, development tools, algorithms, APIs, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), assembly designs, assembly methods, network configurations and architectures, proprietary information, protocols, layout rules, schematics, packaging and other specifications, Software, techniques, interfaces, verification tools, technical documentation (including instruction manuals, samples, studies and summaries), designs, bills of material, build instructions, test automation, test reports, performance data, optical quality data, routines, formulae, test vectors, IP cores, net lists, lab notebooks, invention disclosures, prototypes, samples, studies, process flow, process module data, yield data, reliability data, engineering data, test results and all other forms of technical information and technology that are used in, held for use in, or relating to the Company Products and the business of the Company and the Company Subsidiaries. Technology does not include Intellectual Property Rights, including any Intellectual Property Rights in any of the foregoing.

“ **Third Party** ” means any Person or “group” (as defined under Section 13(d) of the Exchange Act) of Persons, other than Parent or any of its Subsidiaries or Representatives.

“ **Third Party Intellectual Property** ” means all Intellectual Property Rights and Technology owned by Third Parties, including Third Party Software, that is either (i) licensed, offered or provided to customers of the Company or any Company Subsidiary as part of or in conjunction with any Company Product or (ii) otherwise used by or licensed to the Company or any Company Subsidiary in connection with the Company Products.

“ **Third Party Software** ” means all Software owned by third parties that is either (i) licensed, offered or provided to customers of the Company as part of or in conjunction with any Company Product or (ii) otherwise used by or licensed to the Company or any Company Subsidiary in connection with the Company Products, excluding Standard Software.

“ **Trademarks** ” means any and all registered and unregistered trademarks, trade names, company names, logos, trade dress, service marks, and other forms indicia of origin, whether or not registerable as a trademark in any given country, together with registrations and applications therefore and the goodwill associated with any of the foregoing.

“ **Transaction** ” means the Merger and the other transactions contemplated by this Agreement.

“ **Treasury Regulations** ” means the regulations promulgated under the Code by the United States Department of Treasury.

“ **Uncured Inaccuracy** ” with respect to a representation or warranty of a party to the Agreement as of a particular date shall be deemed to exist only if such representation or warranty shall be inaccurate as of such date as if such representation or warranty were made as of such date, and the inaccuracy in such representation or warranty shall not have been cured since such date; provided, however, that if such representation or warranty by its terms speaks as of the date

[Table of Contents](#)

of the Agreement or as of another specific date, then there shall not be deemed to be an Uncured Inaccuracy in such representation or warranty unless such representation or warranty shall have been inaccurate as of the date of the Agreement or such other specific date, respectively, and the inaccuracy in such representation or warranty shall not have been cured since such date.

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

“ <i>401(k) Plan</i> ”	Section 5.10(c)
“ <i>Adverse Recommendation Change</i> ”	Section 5.3(e)
“ <i>Agreement</i> ”	Preamble
“ <i>Alternative Acquisition Agreement</i> ”	Section 5.3(b)(iii)
“ <i>Amendment to Company Rights Agreement</i> ”	Section 3.3(c)
“ <i>Anti-corruption Laws</i> ”	Section 3.6(b)
“ <i>Assumed RSU</i> ”	Section 2.4(d)
“ <i>Board Recommendation</i> ”	Recitals
“ <i>Book-Entry Shares</i> ”	Section 2.2(b)
“ <i>Breakup Fee</i> ”	Section 7.2(b)
“ <i>Cashed Out Company Options</i> ”	Section 2.4(a)
“ <i>Cashed Out Company Warrant</i> ”	Section 2.4(e)
“ <i>Certificate of Merger</i> ”	Section 1.3(c)
“ <i>Certificates</i> ”	Section 2.2(b)
“ <i>Closing</i> ”	Section 1.3(b)
“ <i>Closing Date</i> ”	Section 1.3(b)
“ <i>Company</i> ”	Preamble
“ <i>Company Board</i> ”	Recitals
“ <i>Company Board Recommendation</i> ”	Recitals
“ <i>Company Bylaws</i> ”	Section 3.1(b)
“ <i>Company Charter</i> ”	Section 3.1(b)
“ <i>Company Common Stock</i> ”	Section 3.2(a)
“ <i>Company Compensation Arrangement</i> ”	Section 3.13(f)
“ <i>Company Disclosure Schedule</i> ”	ARTICLE III
“ <i>Company Employee</i> ”	Section 5.10(a)
“ <i>Company Financial Advisors</i> ”	Section 3.23
“ <i>Company Material Contract</i> ”	Section 3.14(b)
“ <i>Company Option</i> ”	Section 2.4(a)
“ <i>Company Permits</i> ”	Section 3.6(a)
“ <i>Company Preferred Stock</i> ”	Section 3.2(a)
“ <i>Company Rights Agreement</i> ”	Section 3.3(c)
“ <i>Company SEC Documents</i> ”	Section 3.7(a)
“ <i>Company Subsidiary</i> ”	Section 3.1(a)
“ <i>Competing Transaction</i> ”	Section 7.2(c)
“ <i>Continuing Director Recommendation</i> ”	Recitals
“ <i>Controlled Group Date</i> ”	Section 5.10(c)
“ <i>Dissenting Shares</i> ”	Section 2.3
“ <i>DGCL</i> ”	Recitals
“ <i>DOJ</i> ”	Section 5.4(c)

[Table of Contents](#)

“ <i>D&O Insurance</i> ”	Section 5.7(b)
“ <i>Effective Time</i> ”	Section 1.3(c)
“ <i>Employment Compensation Arrangement</i> ”	Section 3.13(f)
“ <i>Exchange Ratio</i> ”	Section 2.4(c)
“ <i>Expiration Date</i> ”	Section 1.1(d)
“ <i>Fairness Opinions</i> ”	Section 3.23
“ <i>Foreign Plan</i> ”	Section 3.12(i)
“ <i>FTC</i> ”	Section 5.4(c)
“ <i>Grant Date</i> ”	Section 3.2(b)
“ <i>Initial Expiration Date</i> ”	Section 1.1(d)
“ <i>Insurance Policies</i> ”	Section 3.20
“ <i>IT Systems</i> ”	Section 3.17(q)
“ <i>Lease Agreement</i> ”	Section 3.22(b)
“ <i>Leased Real Property</i> ”	Section 3.22(b)
“ <i>Malicious Code</i> ”	Section 3.17(m)
“ <i>Merger</i> ”	Recitals
“ <i>Merger Agreement</i> ”	Annex I
“ <i>Merger Consideration</i> ”	Section 2.1(a)
“ <i>Minimum Condition</i> ”	Section 1.1(a)
“ <i>New Plans</i> ”	Section 5.10(b)
“ <i>Notice of Superior Proposal</i> ”	Section 5.3(f)
“ <i>Offer</i> ”	Recitals
“ <i>Offer Documents</i> ”	Section 1.1(g)
“ <i>Offer Price</i> ”	Recitals
“ <i>Offer to Purchase</i> ”	Section 1.1(c)
“ <i>Option Consideration</i> ”	Section 2.4(a)
“ <i>Option Payments</i> ”	Section 2.4(a)
“ <i>Outside Date</i> ”	Section 1.1(e)
“ <i>Parent</i> ”	Preamble
“ <i>Parent Compensation Arrangement</i> ”	Section 5.11(a)
“ <i>Parent SEC Documents</i> ”	ARTICLE IV
“ <i>Parent Subsidiary</i> ”	Section 4.3
“ <i>Paying Agent</i> ”	Section 2.2(a)
“ <i>Product Warranty</i> ”	Section 3.18(a)
“ <i>Purchaser</i> ”	Preamble
“ <i>Purchaser Common Stock</i> ”	Section 2.1(c)
“ <i>Required Governmental Approvals</i> ”	Annex I
“ <i>RSU Consideration</i> ”	Section 2.4(e)
“ <i>Schedule 14D-9</i> ”	Section 1.2(a)
“ <i>Schedule TO</i> ”	Section 1.1(g)
“ <i>SEC</i> ”	Section 1.1(e)
“ <i>Shares</i> ”	Recitals
“ <i>Stockholder List Date</i> ”	Section 1.2(b)
“ <i>Surviving Corporation</i> ”	Section 1.3(a)
“ <i>Takeover Statutes</i> ”	Section 3.3(a)
“ <i>Tender Agreement</i> ”	Recitals
“ <i>WARN Act</i> ”	Section 3.13(d)
“ <i>Warrant Consideration</i> ”	Section 2.4(f)

[Table of Contents](#)

8.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

8.8 Entire Agreement. This Agreement, together with the Exhibits and the Company Disclosure Schedule and the other documents delivered pursuant hereto, and the Confidentiality Agreement, constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other Person any rights or remedies hereunder.

8.9 Assignment. The Agreement shall not be assigned by any party by operation of law or otherwise without the prior written consent of the other parties; any assignment without such prior consent shall be null and void.

8.10 No Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and subject to Section 8.11, nothing in this Agreement, express or implied, other than pursuant to Section 5.7, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.11 Provisions Applicable to Financing Sources.

(a) Notwithstanding anything to the contrary contained herein, the Company (on behalf of itself, its Representatives, stockholders and Affiliates and the Company Subsidiaries) hereby waives any rights or claims against any Financing Source in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the definitive financing agreements or in respect of any other document or theory of law or equity (whether in tort, contract or otherwise) or in respect of any oral or written representations made or alleged to be made in connection herewith or therewith and the Company (on behalf of itself, its Representatives, stockholders and Affiliates and the Company Subsidiaries) agrees not to commence any action or proceeding against any Financing Source in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the definitive financing agreements or in respect of any other document or theory of law or equity and agrees to cause any such action or proceeding asserted by the Company (on behalf of itself, its Representatives,

[Table of Contents](#)

stockholders and Affiliates and the Company Subsidiaries) in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the definitive financing agreements or in respect of any other document or theory of law or equity against any Financing Source to be dismissed or otherwise terminated. In furtherance and not in limitation of the foregoing waiver, it is acknowledged and agreed that no Financing Source shall have any liability for any claims or damages to the Company, its Representatives, stockholders or Affiliates or any Company Subsidiary in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the definitive financing agreements or the transactions contemplated hereby or thereby.

(b) Notwithstanding the foregoing, each of the parties hereto hereby agrees (on behalf of its Representatives, stockholders and Affiliates and, in the case of the Company, the Company Subsidiaries): (i) that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any of the Financing Sources in any way relating to this Agreement, the Debt Commitment Letter or any of the transactions contemplated hereby or thereby, including any dispute arising out of or relating in any way to the Debt Financing or the performance thereof in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York in the County of New York (and the appellate courts thereof) and that the provisions of Section 8.13(c) relating to the waiver of jury trial shall apply to any such action, cause of action, claim, cross-claim or third-party claim, (ii) not to bring or permit any of its Representatives, stockholders or Affiliates to bring or support anyone else in bringing any such action in any other court, (iii) to waive and hereby irrevocably waive, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court and (iv) that the laws of the State of New York shall govern any such action.

(c) This [Section 8.11](#), [Section 8.10](#), [Section 8.13\(c\)](#) and [Section 8.16](#) and the definitions related hereto and thereto may not be amended without the prior written consent of the Financing Sources.

(d) Notwithstanding anything in this Agreement to the contrary, (i) the Financing Sources shall be deemed to be third-party beneficiaries of this [Section 8.11](#), [Section 8.13\(c\)](#) and [Section 8.16](#) and (ii) this [Section 8.11](#) shall be enforceable by Parent on behalf of any relevant Financing Source.

8.12 Mutual Drafting: Interpretation. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision. For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, the feminine gender shall include the masculine and neuter genders and the neuter gender shall include masculine and feminine genders. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall

[Table of Contents](#)

be deemed to be followed by the words “without limitation.” Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits,” “Annexes” and “Schedules” are intended to refer to Articles, Sections of this Agreement and Exhibits, Annexes and Schedules to this Agreement. The schedules and exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes. The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof. The words “hereof,” “hereto,” “hereby,” “herein,” “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular section or article in which such words appear. The words “shall” and “will” may be used interchangeably herein and shall have the same meaning. All references in this Agreement to “\$” are references to United States dollars. Unless otherwise specifically provided for herein, the term “or” shall not be deemed to be exclusive. Except as otherwise specified, (i) references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder, (ii) references to any Person include the successors and permitted assigns of that Person, and (iii) references from or through any date mean from and including or through and including, respectively. Other than any Company SEC Document publicly available on the SEC’s Electronic Data Gathering Analysis and Retrieval System, a document shall be deemed to have been “delivered,” “provided” or “made available” to Parent or Purchaser only if such document has been made available in the virtual data room established by the Company for the purposes of the transactions contemplated by this Agreement no later than 11:59 p.m. (Pacific Time) on February 10, 2017.

8.13 Governing Law; Consent to Jurisdiction; Enforcement; Waiver of Trial by Jury.

(a) This Agreement and all claims and causes of action arising out of, based upon, or related to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed, interpreted and enforced in accordance with, the Laws of the State of Delaware (without regard to Laws that may be applicable under conflicts of Laws principles, whether of the State of Delaware or any other jurisdiction).

(b) Any action, claim, suit or proceeding between the parties hereto arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be brought solely in the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware and any direct appellate court therefrom). Each party hereby irrevocably submits to the exclusive jurisdiction of such courts in respect of any such action, claim, suit or proceeding and agrees that it will not bring any such action, claim, suit or proceeding in any other court. Furthermore, each party hereby irrevocably waives and agrees not to assert as a defense, counterclaim or otherwise, in any such action, claim, suit or proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with [Section 8.3](#), (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) to the fullest extent permitted by applicable Law, any claim that (A) the action, claim, suit or proceeding in such

[Table of Contents](#)

court is brought in an inconvenient forum, (B) the venue of the action, claim, suit or proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party agrees that notice or the service of process in any action, claim, suit or proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be properly served or delivered if delivered in the manner contemplated by [Section 8.3](#) or in such other manner as may be permitted by applicable Law. Each party agrees that a final judgment in any action or proceeding in such courts as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(c) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF, BASED UPON OR RELATING TO THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF, INCLUDING ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THE DEBT COMMITMENT LETTER OR THE PERFORMANCE THEREOF OR THE DEBT FINANCING CONTEMPLATED THEREBY. EACH OF THE PARTIES (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS [SECTION 8.12\(c\)](#).

8.14 [Counterparts](#). This Agreement may be executed in one or more counterparts (including via facsimile, .pdf or other electronic means), and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

8.15 [Specific Performance](#). The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and any such injunction shall be in addition to any other remedy to which any party is entitled, at law or in equity. In connection with any action for specific performance, each party hereby irrevocably waives any requirement for proof of actual damages or the securing or posting of any bond in connection with the remedies referred to in this [Section 8.15](#).

[Table of Contents](#)

8.16 Non-Recourse . Any claim or cause of action based upon, arising out of, or related to this Agreement may only be brought against Persons that are expressly named as parties hereto, and then only with respect to the specific obligations set forth herein. No former, current or future direct or indirect equity holders, controlling Persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners or assignees of the Company, Parent or the Purchaser or any of their respective affiliates or any former, current or future direct or indirect equity holders, controlling Persons, stockholders, directors, officers, employees, agents, affiliates, members, managers, general or limited partners or assignees of any of the foregoing or any Financing Source shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of the Company, Parent or the Purchaser under this Agreement or of or for any action, suit, arbitration, claim, litigation, investigation, or proceeding based on, in respect of, or by reason of, the transactions contemplated hereby (including the breach, termination or failure to consummate such transactions), in each case whether based on Contract, tort, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a party hereto or another Person or otherwise.

(Signature page follows)

[Table of Contents](#)

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

INTEGRATED DEVICE TECHNOLOGY, INC.

By: /s/ Gregory L. Waters
Name: Gregory L. Waters
Title: President and Chief Executive Officer

GLIDER MERGER SUB, INC.

By: /s/ Gregory L. Waters
Name: Gregory L. Waters
Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

[Table of Contents](#)

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

GIGPEAK, INC.

By: /s/ Dr. Avi S. Katz

Name: Dr. Avi S. Katz

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

ANNEX I

CONDITIONS TO THE OFFER

Notwithstanding any other provisions of the Offer or the Merger Agreement, and in addition to the Purchaser's rights to extend, amend or terminate the Offer in accordance with the provisions of the Merger Agreement and applicable Law, the Purchaser shall not be required to accept for payment or pay, may extend the Offer and may delay the acceptance for payment of, and the payment for, any validly tendered Shares pursuant to the Offer and not validly withdrawn prior to the expiration of the Offer, if (a) the Minimum Condition shall not have been satisfied at the Expiration Date, (b) the Required Governmental Approvals shall not have been obtained or any waiting period (or extension thereof) or mandated filing shall not have lapsed at or prior to the Expiration Date or (c) any of the following events, conditions, state of facts or developments exists or has occurred and is continuing at the Expiration Date:

- (i) there shall be instituted any Action by any Governmental Authority against Parent, the Purchaser, the Company or any Company Subsidiary, or otherwise in connection with the Offer or the Merger, which remains pending and the outcome of which, if resolved in favor of such Governmental Authority, would reasonably be expected to (A) make illegal, restrain, prohibit or impose any limitations on the making or consummation of the Offer or the Merger, (B) make illegal, restrain, prohibit or impose any limitations on the ownership or operation by Parent, the Company or any of their respective Subsidiaries, of all or any portion of the assets or businesses of Parent, the Company or any of their respective Subsidiaries as a result of or in connection with the Offer or the Merger or compel Parent or any of its Subsidiaries to dispose of or hold separately all or any portion of the business or assets of Parent, the Company or any of their respective Subsidiaries or impose any limitations on the ability of Parent, the Company or any of their respective Subsidiaries to conduct its business or own such assets at or following the Acceptance Time or (C) make illegal, restrain, prohibit or impose any limitations on the ability of Parent or the Purchaser to acquire, hold or exercise full rights of ownership of the Shares to be acquired pursuant to the Offer or otherwise in the Merger, including the right to vote any Shares acquired or owned by Parent, the Purchaser or their respective Subsidiaries on all matters properly presented to the stockholders of the Company;
- (ii) there shall be any Law or Order enacted, entered, enforced, promulgated or which is deemed applicable by a Governmental Authority with respect to the Offer or the Merger, which has resulted in or would reasonably be expected to result in any of the consequences referred to in clauses (A) through (C) of paragraph (i) above;
- (iii) (A) any representation or warranty of the Company contained in Section 3.11(a)(ii) shall fail to be true and correct in all respects, as of the date of the Merger Agreement or as of the Expiration Date with the same force and effect as if made on and as of such date, (B) any representation or warranty of the Company contained in Sections 3.1, 3.2, 3.3, 3.17, 3.19, and 3.25 (without giving effect to any references to any Company Material Adverse Effect or materiality qualifications and other qualifications based upon the concept of materiality or similar phrases contained therein) shall fail to be true and correct in all material respects as of the date of the Merger Agreement or as of the Expiration Date

with the same force and effect as if made on and as of such date, except for representations and warranties that relate to a specific date or time (which need only be true and correct in all respects as of such date or time) or (C) any other representation or warranty of the Company contained in the Merger Agreement (without giving effect to any references to any Company Material Adverse Effect or materiality qualifications and other qualifications based upon the concept of materiality or similar phrases contained therein) shall fail to be true and correct in any respect as of the date of the Merger Agreement or as of the Expiration Date with the same force and effect as if made on and as of such date, except for representations and warranties that relate to a specific date or time (which need only be true and correct as of such date or time), except as has not had, individually or in the aggregate with all other failures to be true or correct, a Company Material Adverse Effect; provided, however, the actual combined aggregate number of (x) Shares referred to in clause (i) of the first sentence of Section 3.2(a), (y) Shares subject to outstanding Equity Interests referred to in the first sentence of Section 3.2(b) and (z) Shares or other Equity Interests of the Company that are the subject of any inaccuracy in the representations and warranties contained in Section 3.2(e), exceeds the combined aggregate number of such Shares disclosed in the Merger Agreement and any applicable schedules, by 150,000 or more Shares, such representations and warranties in Section 3.2 shall be deemed to fail to be true and correct in all material respects;

- (iv) the Company shall have breached or failed, in any material respect, to perform or to comply with any agreement or covenant to be performed or complied with by it under the Merger Agreement and such breach or failure shall not have been cured prior to the Expiration Date;
- (v) there shall have occurred since the date of the Merger Agreement and shall be continuing a Company Material Adverse Effect;
- (vi) the Company shall have failed to deliver a certificate of the Company, executed by the Chief Executive Officer and the Chief Financial Officer of the Company, dated as of the Expiration Date, to the effect that the conditions set forth in paragraphs (iii), (iv) and (v) of this Annex I have been satisfied; or
- (vii) the Merger Agreement shall have been terminated in accordance with its terms.

The foregoing conditions (including those set forth in clauses (a), (b) and (c) of the initial paragraph) of this Annex I are, for the sole benefit of the Purchaser and may be asserted by the Purchaser regardless of the circumstances giving rise to any such conditions (except if any breach of the Merger Agreement by Parent or the Purchaser has been the primary cause of or primarily resulted in the failure or the non-satisfaction of any such condition) and, except as set forth in the following proviso, may be waived by the Purchaser in whole or in part at any time and from time to time in its sole discretion, in each case subject to the terms of the Merger Agreement and the applicable rules and regulations of the SEC; provided, however, that clauses (a) and (b) shall not be waivable and may not be waived by the Purchaser. Any reference in this Annex I or the Merger Agreement to a condition or requirement contained in this Annex I being satisfied shall be deemed to be satisfied if such condition or requirement is so waived. The foregoing conditions shall be in addition to, and not a limitation of, the rights of the Purchaser to

[Table of Contents](#)

extend, terminate, amend and/or modify the Offer pursuant to the terms and conditions of the Merger Agreement. The failure by the Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

As used in this [Annex I](#) and the Merger Agreement, the term: “ **Required Governmental Approvals** ” shall mean the expiration or early termination of any applicable waiting period or receipt of required clearance, consent authorization or approval under the HSR Act.

The capitalized terms used in this [Annex I](#) and not defined in this [Annex I](#) shall have the meanings set forth in the Agreement and Plan of Merger (as amended, restated, modified or supplemented from time to time, the “ **Merger Agreement** ”), dated as of February 13, 2017, by and among Integrated Device Technology, Inc., Glider Merger Sub, Inc., and GigPeak, Inc.

JPMORGAN CHASE BANK, N.A.
383 Madison Avenue
New York, New York 10179

February 13, 2017

Integrated Device Technology, Inc.
6024 Silver Creek Valley Road
San Jose, California 95138

Attention : Brian White, Chief Financial Officer

Project Glider
Commitment Letter

Ladies and Gentlemen:

Integrated Device Technology, Inc. (“*you*” or the “*Borrower*”) has advised JPMorgan Chase Bank, N.A. (“*JPMCB*”, the “*Commitment Party*”, “*we*” or “*us*”) that you intend to acquire (the “*Acquisition*”) an entity identified to us as “Glider” (“*Glider*” or the “*Target*”; the Target collectively with its subsidiaries, the “*Acquired Business*”). The Acquisition will be effected through (i) the purchase of shares of common stock of the Target by a newly formed wholly-owned subsidiary of the Borrower (“*Merger Sub*”) in the Offer (as defined in the Acquisition Agreement (as defined below)) and (ii) promptly following the Acceptance Time (as defined in the Acquisition Agreement), the merger (the “*Merger*”) of Merger Sub with and into the Target pursuant to Section 251(h) of the General Corporation Law of the State of Delaware, with the Target surviving the Merger as your direct or indirect wholly-owned subsidiary (the date of consummation of the Merger, the “*Merger Closing Date*”). In connection with the Acquisition, the Company Debt (as defined in the Acquisition Agreement) of the Acquired Business will be repaid in full, all commitments related thereto will be terminated and the security interests with respect thereto will be released (the “*Refinancing*”). The Borrower, the Acquired Business and their respective subsidiaries are sometimes collectively referred to herein as the “*Companies*”.

You have also advised us that in connection with the Acquisition you intend to incur an aggregate principal amount of \$200.0 million of senior secured term B loans (the “*Term B Loan Facility*”). The Acquisition, the Refinancing, the entering into and funding of the Term B Loan Facility and all related transactions (including the payment of fees and expenses in connection therewith) are hereinafter collectively referred to as the “*Transactions*”. The date of the consummation of the Merger and funding of the Term B Loan Facility is referred to herein as the “*Closing Date*”.

1. **Commitments.** In connection with the foregoing, (a) JPMCB is pleased to advise you of its commitment to provide 100% of the principal amount of the Term B Loan Facility (in such capacity, the “*Initial Lender*”), subject only to the conditions set forth in paragraph 5 hereto; and (b) JPMCB is pleased to advise you of its willingness, and you hereby engage JPMCB to act as the sole lead arranger and sole bookrunning manager (in such capacities, the “*Lead Arranger*”) for the Term B Loan Facility, and in connection therewith to form a syndicate of lenders for the Term B Loan Facility (collectively, the “*Lenders*”), in consultation with you and reasonably acceptable to you. It is understood and agreed that (x) JPMCB shall act as administrative agent for the Term B Loan Facility (in such capacity, the “*Administrative Agent*”) and (y) JPMCB may perform its responsibilities hereunder as a Lead Arranger through its affiliate, J.P. Morgan Securities LLC. Notwithstanding anything to the contrary contained herein, the commitment of the Initial Lender with respect to the initial fundings of the Term B Loan Facility will be subject only to the satisfaction (or waiver by the Initial Lender) of the conditions precedent set forth in paragraph 5 hereof. All capitalized terms used and not otherwise defined herein shall have the same meanings as specified therefor in Annexes I and II hereto (the “*Summary of Terms*”).

You agree that no other agents, co-agents, arrangers or bookrunners will be appointed, no other titles will be awarded and no compensation (other than compensation expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid to any Lender expressly in order to obtain its commitment to participate in the Term B Loan Facility unless you and we shall so agree.

2. **Syndication.** The Lead Arranger intends to commence syndication of the Term B Loan Facility promptly after your acceptance of the terms of this Commitment Letter and the Fee Letter (as hereinafter defined); *provided* that we agree not to syndicate our commitments to certain banks, financial institutions and other institutional lenders and any competitors of the Companies, in each case, that have been specified to us by you in writing prior to the date hereof (collectively, “**Primary Disqualified Lenders**”) or Known Affiliates (as defined below) of any Primary Disqualified Lenders (the Primary Disqualified Lenders, together with the Known Affiliates, are hereinafter referred to as “**Disqualified Lenders**”); *provided, further*, that you, upon reasonable notice to us after the date hereof and prior to the launch of general syndication (or to the Administrative Agent after the Closing Date), shall be permitted to supplement in writing the list of persons that are Disqualified Lenders to the extent such supplemented person is or becomes a competitor or a Known Affiliate of a competitor of the Companies, which supplement shall be in the form of a list provided to us (or the Administrative Agent) and become effective 3 business days after delivery to us (or the Administrative Agent), but which supplement shall not apply retroactively to disqualify any parties that have previously acquired an assignment or participated or is party to a pending trade under the Term B Loan Facility at the time such designation would otherwise become effective. As used herein, “**Known Affiliates**” of any person means, as to such person, known affiliates readily identifiable solely on the basis of the similarity of its name, but excluding any affiliate that is a bona fide debt fund or investment vehicle that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit or securities in the ordinary course and with respect to which a Primary Disqualified Lender does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such person. Without limiting your obligations to assist with syndication efforts as set forth herein, it is understood that the Initial Lender’s commitment hereunder is not conditioned upon the syndication of, or receipt of commitments or participations in respect of, the Term B Loan Facility and in no event shall the commencement or successful completion of syndication of the Term B Loan Facility constitute a condition to the availability of the Term B Loan Facility on the Closing Date. You agree, until the Syndication Date (as hereinafter defined), to actively assist, and, to the extent provided for in the Acquisition Agreement, to use your commercially reasonable efforts to cause the Acquired Business to actively assist, the Lead Arranger in achieving a syndication of the Term B Loan Facility that is reasonably satisfactory to the Lead Arranger and you; *provided* that, notwithstanding the Lead Arranger’s right to syndicate the Term B Loan Facility and receive commitments with respect thereto, it is agreed that (i) syndication of, or receipt of commitments or participations in respect of, all or any portion of the Initial Lender’s commitment hereunder prior to the date of the consummation of the Acquisition and the date of the initial funding under the Term B Loan Facility shall not be a condition to the Initial Lender’s commitment and (ii) (a) except as you in your sole discretion may otherwise agree in writing, the Initial Lender shall not be relieved, released or novated from its obligations hereunder (including its obligation to fund the Term B Loan Facility on the Closing Date) in connection with any syndication, assignment or participation of the Term B Loan Facility,

including its commitment in respect thereof, until after the initial funding of the Term B Loan Facility has occurred; (b) no assignment or novation shall become effective with respect to all or any portion of the Initial Lender's commitment in respect of the Term B Loan Facility until after the initial funding of all of the Term B Loan Facility; and (c) the Initial Lender shall retain exclusive control over all rights and obligations with respect to its commitment in respect of the Term B Loan Facility, including all rights with respect to consents, modifications, supplements, waivers and amendments, until the Closing Date has occurred and the initial funding under the Term B Loan Facility has been made. Such assistance shall include (a) your providing and (subject to customary non-reliance agreements) using commercially reasonable efforts to cause your advisors to provide, and, to the extent provided for in the Acquisition Agreement, using your commercially reasonable efforts to cause the Acquired Business, its subsidiaries and its advisors to provide, the Lead Arranger upon request with all customary and reasonably available information reasonably deemed necessary by the Lead Arranger to complete such syndication, including, but not limited to (x) customary and reasonably available information relating to the Transaction as may be reasonably requested by us (including the Projections (as hereinafter defined) and (y) customary forecasts prepared by management of the Borrower of balance sheets, income statements and cash flow statements for each fiscal quarter for the first twelve months following the Closing Date and for each year commencing with the first fiscal year following the Closing Date and for each of the succeeding fiscal years thereafter through the fiscal year ended March 31, 2022; (b) your assistance in the preparation of a customary information memorandum with respect to the Term B Loan Facility (an "**Information Memorandum**") and other customary materials to be used in connection with the syndication of the Term B Loan Facility (collectively with the Summary of Terms and any additional summary of terms prepared for distribution to Lenders, the "**Information Materials**"); (c) your using commercially reasonable efforts to ensure that the syndication efforts of the Lead Arranger benefits from your existing lending relationships, if any, and, to the extent provided for in the Acquisition Agreement, the existing banking relationships of the Acquired Business; (d) your using commercially reasonable efforts to obtain, prior to the launch of syndication of the Term B Loan Facility, monitored public corporate credit or family ratings (but not any specific rating) for you after giving effect to the Transaction and ratings of the Term B Loan Facility from Moody's Investors Service, Inc. ("**Moody's**") and Standard & Poor's Ratings Group, a Standard & Poor's Financial Services LLC business ("**S&P**") (collectively, the "**Ratings**"); (e) until the later of the Syndication Date and the Closing Date, your ensuring, and with respect to the Acquired Business, using your commercially reasonable efforts to ensure, to the extent not in contravention of the Acquisition Agreement, that none of the Companies shall syndicate or issue, attempt to syndicate or issue, or announce or authorize the announcement of the syndication or issuance of, any debt of the Companies (other than the Term B Loan Facility), in each case, that would materially and adversely affect the primary syndication of the Term B Loan Facility without the prior written consent (not to be unreasonably withheld) of the Lead Arranger (it being understood that borrowings under ordinary course short term working capital facilities and ordinary course capital lease, purchase money and equipment financings of any of the Companies, other indebtedness of the Acquired Business permitted to be outstanding or issued under the Acquisition Agreement and indebtedness incurred following the Closing Date to refinance indebtedness under the Term B Loan Facility shall be permitted; and (f) your making appropriate officers of you, and, to the extent provided for in the Acquisition Agreement, using your commercially reasonable efforts to make the appropriate officers of the Acquired Business, available from time to time upon reasonable advance notice to attend and make presentations regarding the business and prospects of the Companies and the Transaction at a reasonable number of meetings of prospective Lenders at mutually agreed upon times and locations. Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter or any other letter agreement or undertaking concerning the financing of the Transaction to the contrary, neither the obtaining of the Ratings referenced above nor the compliance with any of the other provisions set forth in clauses (a) through (f) above or any other provision of this paragraph shall constitute a condition to the commitments hereunder or the funding of the Term B Loan Facility on the Closing Date. Your obligations under the Commitment Letter and Fee Letter to use commercially reasonable efforts to cause the Acquired Business or its management to take (or to refrain from taking) any action will not require you to take any action that is in contravention of, or terminate, the terms of the Acquisition Agreement.

It is understood and agreed that the Lead Arranger will manage and control all aspects of the syndication of the Term B Loan Facility in consultation with you, including any titles offered to prospective Lenders (subject to your consent rights set forth herein and your rights of appointment set forth in paragraph 1 and excluding Disqualified Lenders), when commitments will be accepted, the final allocations of the commitments among the Lenders and the amount and distribution of the fees among the Lenders. It is further understood that the Initial Lender's commitment hereunder is not conditioned upon the syndication of, or receipt of commitments in respect of, the Term B Loan Facility and in no event shall the commencement or successful completion of syndication of the Term B Loan Facility constitute a condition to the availability of the Term B Loan Facility on the Closing Date.

3. Information Requirements. You hereby represent and warrant (prior to the Closing Date, with respect to Information relating to the Acquired Business, to your knowledge) that (a) all written factual information, other than Projections (as defined below), budgets, estimates and other forward-looking information or information of a general economic or industry nature, that has been or is hereafter made available to the Lead Arranger or any of the Lenders by or on behalf of you or any of your representatives in connection with any aspect of the Transaction (including, prior to the Closing Date, such information, to your knowledge, relating to the Acquired Business) (the "**Information**") is and will be correct when taken as a whole, in all material respects, and does not and will not, taken as a whole, contain any untrue statement of a fact or omit to state a fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not materially misleading (in each case, after giving effect to all supplements and updates with respect thereto) and (b) all financial projections concerning the Companies that have been or are hereafter made available to the Lead Arranger or any of the Lenders by or on behalf of you or any of your representatives (the "**Projections**") (prior to the Closing Date, to your knowledge, in the case of Projections provided by the Acquired Business) have been or will be prepared in good faith based upon assumptions believed by you to be reasonable at the time provided (it being understood and agreed that the Projections are as to future events and are not to be viewed as facts or a guarantee of performance or achievement, that the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular Projections will be realized and that actual results may differ from the Projections and such differences may be material). You agree that if at any time prior to the later of (a) the earlier of (i) the date on which a Successful Syndication (as defined in the Fee Letter) is achieved and (ii) 45 days following the Closing Date (the earlier of such dates, the "**Syndication Date**") and (b) the Closing Date, you become aware that any of the representations in the preceding sentence would be incorrect in any material respect if the Information and Projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented (or in the case of Information or Projections relating to the Acquired Business, you will promptly notify the Lead Arranger upon becoming aware that any such Information or Projections are incorrect in any material respect and, to the extent provided for in the Acquisition Agreement, will use commercially reasonable efforts to supplement), the Information and Projections so that such representations (prior to the Closing Date, to your knowledge, in the case of the Acquired Business) will be correct in all material respects at such time, it being understood in each case that such supplementation shall cure any breach of such representation and warranty. In issuing this commitment and in arranging and syndicating the Term B Loan Facility, the Commitment Party is and will be using and relying on the Information and the Projections without independent verification thereof. For the avoidance of doubt, nothing in this paragraph (including the making or supplementing of any representations or warranties, Information or Projections) will constitute a condition to the availability of the Term B Loan Facility on the Closing Date.

You acknowledge that (a) the Lead Arranger on your behalf will make available, on a confidential basis, Information Materials to the proposed syndicate of Lenders by posting the Information Materials on IntraLinks or another similar electronic system (the “**Platform**”) and (b) certain prospective Lenders (such as Lenders, “**Public Lenders**”; all other Lenders, “**Private Lenders**”) may have personnel that do not wish to receive material non-public information (within the meaning of the United States federal securities laws, “**MNPI**”) with respect to the Companies, their respective affiliates or any other entity, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such entities’ securities. If reasonably requested, you will assist the Lead Arranger in preparing an additional version of the Information Materials not containing MNPI (the “**Public Information Materials**”) to be distributed to prospective Public Lenders.

Before distribution of any Information Materials (a) to prospective Private Lenders, you shall provide the Lead Arranger with a customary letter authorizing the dissemination of the Information Materials; and (b) to prospective Public Lenders, you shall provide the Lead Arranger with a customary letter authorizing the dissemination of the Public Information Materials and confirming the absence of MNPI therefrom and, in each case, which exculpate the Companies and us and our affiliates with respect to any liability related to the use of the contents of the Information Materials or related marketing materials by the recipients thereof. In addition, you hereby agree that (x) you will use commercially reasonable efforts to identify (and, at the reasonable request of the Lead Arranger or the Administrative Agent (or its affiliates), shall identify) that portion of the Information Materials that may be distributed to the Public Lenders by clearly and conspicuously marking the same as “PUBLIC”; (y) all Information Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor”; and (z) the Lead Arranger and the Administrative Agent (and its affiliates) shall be entitled to treat any Information Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor”.

You agree that, subject to the confidentiality and other provisions of this Commitment Letter, the Lead Arranger and the Administrative Agent (and its affiliates) on your behalf may distribute the following documents to all prospective Lenders, unless you advise the Lead Arranger and Administrative Agent in writing (including by email) within a reasonable time prior to their intended distributions that such material should only be distributed to prospective Private Lenders (*provided* that such materials have been provided to you and your counsel for review a reasonable period of time prior thereto): (a) administrative materials for prospective Lenders such as lender meeting invitations and funding and closing memoranda, (b) notifications of changes to the terms of the Term B Loan Facility and (c) drafts approved in writing by you and the Administrative Agent (or its affiliates) and final versions of definitive documents with respect to the Term B Loan Facility. If you advise the Lead Arranger and the Administrative Agent that any of the foregoing items should be distributed only to Private Lenders, then the Lead Arranger and the Administrative Agent will not distribute such materials to Public Lenders without your prior consent. You agree that Information Materials made available to prospective Public Lenders in accordance with this Commitment Letter shall not contain MNPI.

4. Fees and Indemnities .

(a) You agree to reimburse the Commitment Party from time to time upon receipt of a reasonably detailed invoice therefor for all reasonable and documented out-of-pocket fees and expenses (in the case of fees and expenses of counsel, limited to the reasonable and documented out-of-pocket fees, disbursements and other out-of-pocket expenses of (x) one firm of lead counsel to the Commitment Party (it being understood and agreed that Cahill Gordon & Reindel LLP shall act as counsel to the Commitment Party) and (y) one firm of local counsel in each relevant jurisdiction reasonably retained by the Administrative Agent) incurred in connection with the Term B Loan Facility, the syndication thereof, the preparation of the Credit Documentation (as defined below) therefor and the other Transactions contemplated hereby, whether or not the Closing Date occurs or any of the Credit Documentation is executed and delivered or any extensions of credit are made under the Term B Loan Facility; *provided* that if the Closing Date does not occur and no termination fee is paid to you pursuant to Section 7.2(c) of the Acquisition Agreement or no expense reimbursement is paid to you pursuant to Section 7.2(b) of the Acquisition Agreement, the aggregate reimbursement by you of such fees and expenses shall not exceed \$250,000. Such amounts shall be paid on the earlier of (i) the Closing Date or (ii) three (3) business days following the termination of this Commitment Letter as provided below (the “**Payment Date**”), in each case to the extent you have received a reasonably detailed invoice at least three (3) business days in advance of the Payment Date. You agree to pay (or cause to be paid) the fees set forth in the separate fee letter addressed to you dated the date hereof from the Commitment Party (the “**Fee Letter**”), if and to the extent payable. The foregoing provisions in this paragraph shall be superseded in each case, to the extent covered thereby, by the applicable provisions contained in the Credit Documentation upon execution thereof and thereafter shall have no further force and effect.

(b) You also agree to indemnify and hold harmless the Commitment Party, each other Lender and each of their affiliates, successors and assigns and their respective partners, officers, directors, employees, trustees, agents, advisors, controlling persons and other representatives involved in the Transaction (each, an “**Indemnified Party**”) from and against (and will reimburse each Indemnified Party within 30 days following written demand (accompanied by reasonable back-up therefor)) any and all claims, damages, losses, liabilities and reasonable and documented out-of-pocket expenses (including, without limitation, the reasonable and documented fees, disbursements and other charges of one firm of counsel for all such Indemnified Parties, taken as a whole and, if necessary, by a single firm of local counsel in each appropriate jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for all such Indemnified Parties, taken as a whole (and, in the case of a conflict of interest where the Indemnified Party affected by such conflict notifies you of the existence of such conflict and thereafter retains its own counsel, by another firm of counsel for all such affected Indemnified Parties)) of amounts payable by you pursuant to clause (a) above) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) any aspect of the Transactions or (b) the Term B Loan Facility, or any use made or proposed to be made with the proceeds thereof, in each case, except to the extent such claim, damage, loss, liability or expense (A) is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s or any of its Related Parties’ gross negligence, bad faith or willful misconduct, (B) is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from a breach of such Indemnified Party’s or any of its Related Parties’ obligations hereunder (C) arises from a proceeding by an Indemnified Party against an Indemnified Party (or any of their respective affiliates or related parties) (other than an action involving (i) conduct by you or any of your affiliates or (ii) against an arranger or administrative agent in its capacity as such) or (D) resulted from any agreement governing any settlement by such Indemnified Party that is effective without your prior written consent (which consent shall not be unreasonably withheld). In the case of any claim, litigation, investigation or proceeding (any of the foregoing, a “**Proceeding**”) to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such Proceeding is brought by you, your equity holders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Transaction is consummated. It is agreed that none of you (or any of your subsidiaries), the Target (or any of its subsidiaries) or any Indemnified Party shall be liable for any indirect, special, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) in connection with this Commitment Letter, the Fee Letter or with respect to any activities related to the Term B Loan Facility, including the preparation of this Commitment Letter, the Fee Letter and the Credit Documentation; *provided* that nothing in this sentence shall limit your indemnification obligations set forth above. It is further agreed that the Commitment Party shall only have liability to you (as opposed to any other person), and that the Commitment Party shall be liable solely in respect of its own commitment to the Term B Loan Facility and agreements set forth herein, on a several, and not joint, basis with any other Lender. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct, actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party or any of its Related Parties as determined by a final non-appealable judgment of a court of competent jurisdiction. You shall not, without the prior written consent of an Indemnified Party, such consent not to be unreasonably withheld or delayed, effect any settlement of any pending or threatened Proceeding against an Indemnified Party in respect of which indemnity could have been sought hereunder by such Indemnified Party unless (i) such settlement includes an unconditional release of such Indemnified Party from all liability or claims that are the subject matter of such Proceeding and (ii) does not include any statement as to any admission of liability. In case any Proceeding is instituted involving any Indemnified Party for which indemnification is to be sought hereunder by such Indemnified Party, then such Indemnified Party will promptly notify you of the commencement of any Proceedings. You shall not be liable for any settlement of any Proceeding affected without your written consent (which consent shall not be unreasonably withheld). “**Related Parties**” means, with respect to the Commitment Party, the Commitment Party’s affiliates and their respective officers, directors, employees, advisors, agents and representatives, in each case, providing services in connection with the subject matter of this Commitment Letter. The foregoing provisions in this paragraph shall be superseded in each case, to the extent covered thereby, by the applicable provisions contained in the Credit Documentation upon execution thereof and thereafter shall have no further force and effect.

5. Conditions to Financing. The commitment of the Initial Lender with respect to the initial funding of the Term B Loan Facility is subject solely to (a) the satisfaction (or waiver by the Lead Arranger) of each of the conditions set forth in Annex II hereto and (b) the execution and delivery of customary definitive credit documentation by the Borrower and the Guarantors with respect to the Term B Loan Facility consistent with this Commitment Letter and the Fee Letter and subject in all respects to the Funds Certain Provisions and giving effect to the Documentation Standard (as defined in Annex I) (the “**Credit Documentation**”) prior to such initial funding. There are no conditions (implied or otherwise) to the commitments hereunder, and there will be no conditions (implied or otherwise) under the Credit Documentation to the funding of the Term B Loan Facility on the Closing Date, other than those that are expressly referred to in the immediately preceding sentence.

Notwithstanding anything in this Commitment Letter, the Fee Letter, the Credit Documentation or any other letter agreement or other undertaking concerning the financing of the Transaction to the contrary, (a) the Credit Documentation shall be in a form such that the terms thereof do not impair availability of the Term B Loan Facility on the Closing Date if the conditions in this paragraph 5 shall have been satisfied or waived by the Lead Arranger (it being understood that to the extent any security interest in Collateral (including the creation or perfection of any security interest) (other than any Collateral the security interest in which may be perfected by the filing of a UCC financing statement or the delivery of certificates, if any, evidencing equity interests of any material wholly-owned domestic subsidiary of the Borrower and the subsidiary Guarantors (after giving effect to the Acquisition) that is part of the Collateral; *provided* that stock or membership interest certificates for certificated stock for the entities comprising subsidiaries of the Target (to the extent required under the terms of Annex II hereto) will, to the extent you have used commercially reasonable efforts to obtain them, only be required to be delivered on the Closing Date to the extent received from the holders thereof prior to the Closing Date)) is not perfected or provided on the Closing Date after your use of commercially reasonable efforts to do so without undue burden or expense, the provision and perfection of such Collateral and security interest shall not constitute a condition precedent to the availability of the Term B Loan Facility on the Closing Date but shall be required to be perfected not later than 90 days (subject to extensions as may be agreed to by the Administrative Agent) after the Closing Date pursuant to arrangements to be mutually agreed by the Borrower and Administrative Agent), and (b) the only representations and warranties the making and accuracy of which shall be a condition to the availability of the Term B Loan Facility on the Closing Date shall be (x) such of the representations made by the Target in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that you (or your affiliate) have the right (taking into account any applicable notice and cure provisions) to terminate your (and/or its) obligations under the Acquisition Agreement or decline to consummate the Acquisition (in each case, in accordance with the terms thereof) as a result of a breach of such representations in the Acquisition Agreement (to such extent, the “**Acquisition Agreement Representations**”) and (y) the Specified Representations (as defined below). “**Specified Representations**” shall mean the representations and warranties of the Borrower and Guarantors (after giving effect to the Acquisition) in the Credit Documentation relating to: (i) (A) corporate status of the Borrower and the Guarantors and (B) corporate power and authority to enter into the Credit Documentation by the Borrower and the Guarantors, (ii) due authorization, execution, delivery and enforceability of the Credit Documentation by the Borrower and the Guarantors, (iii) no conflicts of the Credit Documentation with charter documents of the Borrower and the Guarantors, (iv) compliance with Federal Reserve margin regulations and use of proceeds not in violation of OFAC, AML, FCPA and the U.S.A. Patriot Act, (v) the Investment Company Act, (vi) solvency of the Borrower and its subsidiaries on a consolidated basis and on a pro forma basis for the Transaction (such representations to be substantially identical to those set forth in the Solvency Certificate attached as Annex III to the Commitment Letter (the “**Solvency Certificate**”)), and (vii) subject to the limitations set forth in this paragraph, the provision of guarantees and the creation, validity and perfection of the security interests granted in the Collateral. The provisions of this paragraph are referred to herein as the “**Funds Certain Provisions**”.

Each of the parties hereto agrees that each of this Commitment Letter and the Fee Letter is a binding and enforceable agreement (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law)) with respect to the subject matter contained herein, including an agreement to negotiate in good faith the Credit Documentation by the parties hereto in a manner consistent with this Commitment Letter and, to the extent applicable, the Fee Letter, it being acknowledged and agreed that the funding of the Term B Loan Facility is subject only to the conditions precedent as set forth in this paragraph 5. For clarity, all terms referenced herein to being defined in the Credit Documentation shall be defined in accordance with the Documentation Standard (unless otherwise provided for herein).

6. Confidentiality and Other Obligations. This Commitment Letter and the Fee Letter and the contents hereof and thereof are confidential and may not be disclosed in whole or in part to any person or entity without the prior written consent of the Commitment Party (not to be unreasonably withheld, conditioned or delayed) except (i) this Commitment Letter and the Fee Letter and contents hereof and thereof may be disclosed (A) on a confidential basis to your subsidiaries, directors, officers, employees, accountants, attorneys and other representatives and professional advisors who need to know such information in connection with the Transaction and are informed of the confidential nature of such information, (B) pursuant to the order of any court or administrative agency in any pending legal or administrative proceeding, or otherwise as required by applicable law or stock exchange requirement or compulsory legal process (in which case you agree to use commercially reasonable efforts to inform the Commitment Party promptly thereof prior to such disclosure to the extent permitted by applicable law), and (C) on a confidential basis to the affiliates, members, partners, stockholders, equity holders, controlling persons, directors, officers, employees, accountants, attorneys and other representatives and professional advisors of the Acquired Business; *provided* that any such disclosure of the Fee Letter shall be subject to customary redaction of the fees and the economic "market flex" provisions contained therein, (ii) Annex I and the existence of this Commitment Letter and the Fee Letter (but not the contents of this Commitment Letter and the Fee Letter) may be disclosed to Moody's, S&P and any other rating agency on a confidential basis, (iii) the aggregate amount of the fees (including upfront fees and original issue discount) payable under the Fee Letter may be disclosed as part of generic disclosure regarding sources and uses for closing of the Acquisition, projections, and pro forma information (but without disclosing any specific fees, market flex or other economic terms set forth therein), (iv) this Commitment Letter and the Fee Letter may be disclosed on a confidential basis to your auditors or persons performing customary accounting functions for customary accounting purposes, including accounting for deferred financing costs, (v) to the directors, officers, attorneys and other professional advisors of the Target on a confidential "need to know" basis in connection with the Transaction; *provided* that any disclosure of the Fee Letter and the contents thereof shall be redacted in a manner satisfactory to the Commitment Party, (vi) you may disclose this Commitment Letter (but not the Fee Letter) and its contents in any information memorandum or syndication distribution, as well as in any proxy statement or other public filing or other marketing materials relating to the Acquisition or the Term B Loan Facility and (vii) this Commitment Letter and the Fee Letter may be disclosed to a court, tribunal or any other applicable administrative agency or judicial authority in connection with the enforcement of your rights hereunder (in which case you agree to inform the Commitment Party promptly thereof prior to such disclosure to the extent permitted by applicable law).

The Commitment Party shall use all confidential information provided to it by or on behalf of you hereunder solely for the purpose of providing the services which are the subject of this Commitment Letter and otherwise in connection with the Transaction and shall treat confidentially all such information; *provided*, *however*, that nothing herein shall prevent the Commitment Party from disclosing any such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case the Commitment Party agrees to inform you promptly prior to disclosure to the extent not prohibited by law, rule or regulation), (ii) upon the request or demand of any regulatory authority having jurisdiction over the Commitment Party or any of its affiliates, (iii) to the extent that such information becomes publicly available other than by reason of disclosure in violation of this Commitment Letter, the Fee Letter or other confidential obligation owed by the Commitment Party, (iv) to the Commitment Party's affiliates, employees, legal counsel, independent auditors and other experts, professionals or agents who need to know such information in connection with the Transaction and are informed of the confidential nature of such information, (v) for purposes of establishing a "due diligence" defense available under securities laws, (vi) to the extent that such information is received by the Commitment Party from a third party that is not to the Commitment Party's knowledge subject to confidentiality obligations to you, (vii) to the extent that such information is independently developed by the Commitment Party, (viii) to potential Lenders, participants, assignees or any direct or indirect contractual counterparties to any swap or derivative transaction relating to you or your obligations under the Term B Loan Facility (other than a Disqualified Lender), in each case, who agree to be bound by the terms of this paragraph (or language not less restrictive than this paragraph or as otherwise reasonably acceptable to you and the Commitment Party, including as may be agreed in any confidential information memorandum or other marketing material), (ix) to Moody's and S&P and to Bloomberg, LSTA and similar market data collectors with respect to the syndicated lending industry; *provided* that such information is limited to Annex L, or (x) with your prior written consent. This paragraph shall terminate on the earlier of (a) the initial funding under the Term B Loan Facility and (b) the second anniversary of the date of this Commitment Letter.

You acknowledge that the Commitment Party or its affiliates may be providing financing or other services to parties whose interests may conflict with yours. The Commitment Party agree that they will not furnish confidential information obtained from you to any of their other customers and will treat confidential information relating to the Companies and their respective affiliates with the same degree of care as they treat their own confidential information. The Commitment Party further advises you that it will not make available to you confidential information that it has obtained or may obtain from any other customer.

In connection with all aspects of each transaction contemplated by this Commitment Letter, you acknowledge and agree, and acknowledge your affiliates' understanding, that: (i) the Term B Loan Facility and any related arranging or other services described in this Commitment Letter is an arm's-length commercial transaction between you and your affiliates, on the one hand, and the Commitment Party, on the other hand, (ii) the Commitment Party has not provided any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby and you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, (iii) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby, (iv) in connection with the financing transactions contemplated hereby and the process leading to such transactions, the Commitment Party has been, is, and will be acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for you or any of your affiliates, stockholders, creditors or employees or any other party, (v) the Commitment Party has not assumed and will not assume an advisory, agency or fiduciary responsibility in your or your affiliates' favor with respect to any of the financing transactions contemplated hereby or the process leading thereto, and the Commitment Party has no obligation to you or your affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth in this Commitment Letter, and (vi) the Commitment Party and its respective affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and the Commitment Party has no obligation to disclose any of such interests to you or your affiliates. Without limiting the provisions of paragraph 4(b), you hereby agree not to assert any claims against the Commitment Party with respect to any alleged breach of agency or fiduciary duty in connection with any aspect of any financing transaction contemplated by this Commitment Letter.

The Commitment Party hereby notifies you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "*U.S.A. Patriot Act*"), each of them is required to obtain, verify and record information that identifies the Borrower and the Guarantors, which information includes the name and address of such person and other information that will allow the Commitment Party to identify each such person in accordance with the U.S.A. Patriot Act.

7. Survival of Obligations. The provisions of sections 2, 3, 4, 6 and 8 of this Commitment Letter shall remain in full force and effect regardless of whether any Credit Documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of the Commitment Party hereunder, *provided* that (i) the provisions of sections 2 and 3 shall not survive if all of the commitments and undertakings of the Commitment Party are terminated by any party hereto prior to the effectiveness of the Term B Loan Facility and (ii) if the Term B Loan Facility closes and the Credit Documentation is executed and delivered, the provisions of sections 2 and 3 shall survive only until the Syndication Date and your obligations under this Commitment Letter, other than your obligations in sections 2 and 3, confidentiality of the Fee Letter and section 4 to the extent not addressed in the Credit Documentation, shall automatically terminate and be superseded by the provisions of the Credit Documentation upon the execution and delivery thereof, and you shall automatically be released from all liability in connection therewith at such time. You may terminate this Commitment Letter and/or the Initial Lender's commitment with respect to the Term B Loan Facility (or any portion thereof) hereunder at any time subject to the provisions of the preceding sentence.

8. Miscellaneous. This Commitment Letter and the Fee Letter may be executed in multiple counterparts and by different parties hereto in separate counterparts, all of which, taken together, shall be deemed an original. Delivery of an executed counterpart of a signature page to this Commitment Letter or the Fee Letter by telecopier, facsimile or other electronic transmission (e.g., a "pdf" or "tiff") shall be effective as delivery of a manually executed counterpart thereof. Headings are for convenience of reference only and shall not affect the construction of, or be taken into consideration when interpreting, this Commitment Letter or the Fee Letter.

This Commitment Letter and the Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles that would result in the application of any other laws other than the state of New York; *provided* that, notwithstanding the foregoing, it is understood and agreed that (a) interpretation the definition of “Company Material Adverse Effect” (as defined in Annex II) or the equivalent term under the Acquisition Agreement and whether a Company Material Adverse Effect (or the equivalent term) has occurred, (b) the determination of the accuracy of any Acquisition Agreement Representation and whether as a result of any inaccuracy thereof you have the right (taking into account any applicable cure provisions) to terminate your obligations under the Acquisition Agreement or decline to consummate the Acquisition and (c) the determination of whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement, in each case shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS COMMITMENT LETTER, THE FEE LETTER, THE TRANSACTION AND THE OTHER TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY OR THE ACTIONS OF THE COMMITMENT PARTY IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.** Each party hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City in respect of any suit, action or proceeding arising out of or relating to the provisions of this Commitment Letter, the Fee Letter, the Transaction and the other transactions contemplated hereby and thereby and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto agree that service of any process, summons, notice or document by registered mail addressed to you shall be effective service of process against you for any suit, action or proceeding relating to any such dispute. Each party hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court may be enforced in any other courts to whose jurisdiction the applicable party is or may be subject by suit upon judgment.

This Commitment Letter, together with the Fee Letter and the administrative fee letter between you and JPMCB dated the date hereof, embodies the entire agreement and understanding among the parties hereto and your affiliates with respect to the Term B Loan Facility and supersedes all prior agreements and understandings relating to the subject matter hereof. No party has been authorized by the Commitment Party to make any oral or written statements that are inconsistent with this Commitment Letter. Neither this Commitment Letter (including the attachments hereto) nor the Fee Letter may be amended or any term or provision hereof or thereof waived or modified except by an instrument in writing signed by each of the parties hereto.

This Commitment Letter may not be assigned by you without our prior written consent (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto (and the Indemnified Parties). The Commitment Party may assign its commitment hereunder, in whole or in part, to any of its affiliates or, subject to the provisions of this Commitment Letter, to any Lender; *provided* that, other than with respect to an assignment to which you otherwise consent in writing (which consent, in the case of an assignment by the Commitment Party to its affiliates, shall not be unreasonably withheld by you), the Commitment Party shall not be released from the portion of its commitment hereunder so assigned to the extent such assignee fails to fund the portion of the commitment assigned to it on the Closing Date notwithstanding the satisfaction of the conditions to funding set forth herein.

Please indicate your acceptance of the terms of this Commitment Letter and the Fee Letter by re- turning to the Lead Arranger executed counterparts of this Commitment Letter and the Fee Letter not later than 11:59 p.m. (New York City time) on February 15, 2017, whereupon the undertakings of the parties with respect to the Term B Loan Facility shall become effective to the extent and in the manner provided hereby. This offer shall terminate with respect to the Term B Loan Facility if not so accepted by you at or prior to that time. Thereafter, all commitments and undertakings of the Commitment Party hereunder will expire, unless extended by us in our sole discretion, on the earliest of (a) 11:59 p.m., New York City time, on June 30, 2017, unless the Closing Date occurs on or prior thereto, (b) the consummation of the Merger without the use of the Term B Loan Facility and (c) the termination of the Acquisition Agreement by you in accordance with its terms.

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We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

JPMORGAN CHASE BANK, N.A.

By: /s/ Caitlin Stewart

Name: Caitlin Stewart

Title: Vice President

Signature Page to Project Glider Commitment Letter

The provisions of this Commitment Letter are accepted and agreed to as of the date first written above:

INTEGRATED DEVICE TECHNOLOGY, INC.

By: /s/ Gregory L. Waters

Name: Gregory L. Waters

Title: President and Chief Executive Officer

Signature Page to Project Glider Commitment Letter

SUMMARY OF TERMS AND CONDITIONS
\$200,000,000 TERM B LOAN FACILITY

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex I is attached.

- Borrower:** Integrated Device Technology, Inc., a Delaware corporation (the “*Borrower*”).
- Guarantors:** The obligations of the Borrower (the “*Borrower Obligations*”) under the Term B Loan Facility (as hereinafter defined) will be unconditionally guaranteed jointly and severally on a senior basis (the “*Guarantees*”) by each of the Borrower’s wholly-owned material restricted U.S. subsidiaries (and consistent with the principles set forth herein) (collectively, the “*Guarantors*”); *provided* that Guarantors shall not include (i) unrestricted subsidiaries, (ii) immaterial subsidiaries (to be defined in a mutually acceptable manner as to individual and aggregate revenues or assets excluded), (iii) any subsidiary that is prohibited, but only so long as such subsidiary is prohibited, by applicable law, rule or regulation or by any contractual obligation existing on the Closing Date or existing at the time of acquisition thereof after the Closing Date (so long as such prohibition did not arise as part of such acquisition), in each case, from guaranteeing the Term B Loan Facility or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee unless such consent, approval, license or authorization has been received (but without obligation to seek the same), (iv) any direct or indirect subsidiary of a “controlled foreign corporation” within the meaning of Section 957 of the Internal Revenue Code of 1986, as amended (a “*CFC*”), (v) any CFC, (vi) any domestic subsidiary with no material assets other than equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more foreign subsidiaries that are CFCs (a “*Disregarded Domestic Person*”), (vii) not-for-profit subsidiaries, (viii) any other subsidiary with respect to which the Borrower and the Administrative Agent determine that the adverse consequences of providing a guarantee shall be excessive in relation to the benefits to be obtained by the Lenders therefrom, and (ix) certain special purpose entities. In addition, the Credit Documentation will contain carve outs for “non-ECP Guarantors”, consistent with the LSTA provisions. All guarantees will be guarantees of payment and not of collection. The Target and its subsidiaries included in the Acquired Business that are not excluded from the foregoing requirements pursuant to the terms described above shall be required to become Guarantors (and grant liens in their assets constituting Collateral that can be perfected by filing UCC financing statements) on the Closing Date.
- Notwithstanding the foregoing, additional subsidiaries may be excluded from the guarantee requirements in circumstances where the Borrower and the Administrative Agent reasonably agree that the cost of providing such a guarantee is excessive in relation to the value afforded thereby.

Administrative Agent and Collateral Agent:	JPMCB will act as sole and exclusive administrative and collateral agent for the Lenders (the “ <i>Administrative Agent</i> ”).
Lead Arranger and Bookrunner:	JPMCB will act as the sole lead arranger and bookrunner for the Term B Loan Facility (in such capacities, the “ <i>Lead Arranger</i> ”); <i>provided</i> that JPMCB may perform its responsibilities hereunder as a Lead Arranger through its affiliate, J.P. Morgan Securities LLC.
Lenders:	Banks, financial institutions and institutional lenders selected by the Lead Arranger in consultation with and reasonably acceptable to the Borrower and excluding any Disqualified Lenders and, after the initial funding of the Term B Loan Facility, subject to the restrictions set forth in the Assignments and Participations section below (the “ <i>Lenders</i> ”).
Term B Loan Facility:	A senior secured first lien term loan B facility (the “ <i>Term B Loan Facility</i> ”) in an aggregate principal amount of \$200.0 million.
Purpose:	The proceeds of borrowings under the Term B Loan Facility, together with cash on the balance sheet of the Companies, shall be used (i) to finance the Acquisition and the Refinancing and the other Transactions, (ii) to pay fees and expenses incurred in connection therewith and (iii) for working capital and general corporate purposes.
Availability:	The Term B Loan Facility will be available in a single drawing on the Closing Date. Amounts borrowed under the Term B Loan Facility that are repaid or prepaid may not be reborrowed.
Interest Rates:	<p>The interest rate per annum under the Term B Loan Facility will be, at the option of the Borrower, (i) LIBOR plus the Applicable Margin (as hereinafter defined) or (ii) the Base Rate plus the Applicable Margin. The Applicable Margin means 3.50% per annum, in the case of LIBOR advances, and 2.50% per annum, in the case of Base Rate advances.</p> <p>The Borrower may select interest periods of one, two, three or six months (and, if agreed to by all applicable Lenders, a period shorter than one month or a period of twelve months) for LIBOR advances. Interest shall be payable at the end of the selected interest period, but no less frequently than quarterly.</p> <p>“ <i>LIBOR</i> ” and “ <i>Base Rate</i> ” will have meanings customary and appropriate for financings of this type; <i>provided</i> that (x) LIBOR will be deemed to be not less than 0% per annum (the “ <i>LIBOR Floor</i> ”) and (y) the Base Rate will be deemed to be not less than 100 basis points higher than one-month LIBOR (after giving effect to the LIBOR Floor).</p>

During the continuance of an event of default for non-payment of principal, interest or fees, interest will accrue on such overdue principal, interest or fees at the Default Rate (as defined below). During the continuance of a bankruptcy event of default, the principal amount of all outstanding obligations will bear interest at the Default Rate. As used herein, “**Default Rate**” means (i) on the principal of any loan at a rate of 200 basis points in excess of the rate otherwise applicable to such loan and (ii) on any other overdue amount at a rate of 200 basis points in excess of the non-default rate of interest then applicable to Base Rate loans .

Calculation of Interest:

Other than calculations in respect of interest at the Base Rate (which shall be made on the basis of actual number of days elapsed in a 365/366 day year), all calculations of interest shall be made on the basis of actual number of days elapsed in a 360-day year.

Cost and Yield Protection:

Subject to the Documentation Standard (as defined below) and customary for transactions and facilities of this type, including, without limitation, in respect of breakage or redeployment costs incurred in connection with prepayments (other than loss of margin), changes in capital adequacy and capital requirements or their interpretation, illegality, unavailability, reserves without proration or offset and payments free and clear of withholding or other taxes; *provided* that for all purposes of the Credit Documentation, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case, pursuant to Basel III, shall be deemed introduced or adopted after the Closing Date, so long as, in each case, any amounts with respect thereto assessed by any Lender shall also be so assessed by such Lender against its similarly situated customers generally under agreements containing comparable yield protection provisions.

Maturity:

The Term B Loan Facility will mature on the date that is 7 years after the Closing Date (the “**Term B Loan Facility Maturity Date**”); *provided* that if the Borrower’s 0.875% Convertible Senior Notes due 2022 (the “**2022 Convertible Notes**”) are outstanding on the date that is 91 days prior to November 15, 2022 (the “**Springing Maturity Date**”) and have not otherwise been extended or refinanced such that their maturity date is no earlier than 91 days after the Term B Loan Facility Maturity Date, the Term B Loan Facility Maturity Date shall be the Springing Maturity Date unless the Borrower and the Guarantors shall have cash and cash equivalents and/or undrawn lending commitments from financial institutions reasonably satisfactory to the Administrative Agent in an amount not less than the aggregate principal amount of then outstanding 2022 Convertible Notes.

The Credit Documentation shall contain customary “amend and extend” provisions pursuant to which individual Lenders may agree to extend the maturity date of their outstanding loans or loans under the Term B Loan Facility or any Incremental Facility (which may include, among other things, an increase in the interest rate payable in respect of such extended loans, with such extensions not subject to any “default stoppers”, financial tests or “most favored nation” pricing provisions) upon the request of the Borrower and without the consent of any other Lender (it is understood that (i) no existing Lender will have any obligation to commit to any such extension and (ii) each Lender under the class being extended shall have the opportunity to participate in such extension on the same terms and conditions as each other Lender under such class).

Incremental Facilities :

The Credit Documentation will permit the Borrower to (a) add one or more incremental term loan facilities to the Term B Loan Facility or to increase the existing Term B Loan Facility (each, an “**Incremental Term Facility**”) and/or (b) add one or more incremental revolving credit facilities (each, an “**Incremental Revolving Facility**”) and, together with the Incremental Term Facility, the “**Incremental Facilities**”) and each, an “**Incremental Facility**”) in an aggregate principal amount of up to (x) \$200.0 million plus (y) only in the case of an Incremental Revolving Facility, \$50.0 million plus (z) an unlimited amount so long as, in the case of clause (z) only, on a pro forma basis the Secured Leverage Ratio (as defined below) would not exceed 2.50:1.00, after giving effect to any acquisition consummated in connection therewith and all other appropriate *pro forma* adjustments (in the case of any Incremental Revolving Facility, calculated assuming the entire amount of such Incremental Revolving Facility, was drawn on such date) (it being understood that the Borrower shall be deemed to have used amounts under clause (z) (to the extent compliant therewith) prior to utilization of amounts under clause (x) or (y)); *provided* that (i) no Lender will be required to participate in any such Incremental Facility, (ii) subject to customary limited conditionality provisions in connection with any Incremental Facility incurred to finance a permitted acquisition or similar investment, no event of default or default exists or would exist after giving effect thereto, (iii) subject to customary limited conditionality provisions in connection with any Incremental Facility incurred to finance a permitted acquisition or similar investment, the representations and warranties in the Credit Documentation shall be true and correct in all material respects, (iv) the maturity date of any such Incremental Term Facility shall be no earlier than the maturity date for the Term B Loan Facility, (v) the weighted average life to maturity of any Incremental Term Facility shall be no shorter than the weighted average life to maturity of the Term B Loan Facility, (vi) the interest margins for the Incremental Facility shall be determined by the Borrower and the lenders of the Incremental Facility; *provided* that in the event that the interest margins for any Incremental Term Facility incurred within twelve months after the Closing Date are greater than the Applicable Margin for the Term B Loan Facility by more than 50 basis points, then the Applicable Margin for the Term B Loan Facility shall be increased to the extent necessary so that the interest margins for the Incremental Term Facility are not more than 50 basis points higher than the Applicable Margin for the Term B Loan Facility; *provided, further*, that in determining the interest margins applicable to the Term B Loan Facility and the Applicable Margins for any Incremental Term Facility, (x) original issue discount (“**OID**”) or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower for the account of the Lenders of the Term B Loan Facility in the primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity), (y) customary arrangement, structuring, underwriting, amendment or commitment fees payable to one or more arrangers shall be excluded, and (z) if the LIBOR or Base Rate floor for any Incremental Term Facility is greater than the LIBOR or Base Rate floor, respectively, for the existing Term B Loan Facility, the difference between such floor for the Incremental Term Facility and the Term B Loan Facility shall be equated to an increase in the Applicable Margin for purposes of this clause (vi) (all adjustments made pursuant to this clause (vi), the “**MFN Adjustment**”), (vii) each Incremental Facility shall be secured by *pari passu* liens on the Collateral (as herein after defined) securing the Term B Loan Facility and no other assets and shall be guaranteed by the Guarantors and no other persons, (viii) any Incremental Term Facility shall be on terms and pursuant to documentation to be determined, *provided* that, to the extent such terms and documentation are not consistent with the Term B Loan Facility (except to the extent permitted by clause (i), (ii), (iii), (iv), (v) or (vi) above, as applicable), they shall be reasonably satisfactory to the Administrative Agent and (ix) any Incremental Revolving Facility shall be on terms and pursuant to documentation to be determined, *provided* that, (x) such Incremental Revolving Facility may have a maturity date that is earlier than the maturity date for the Term B Loan Facility and (y) such Incremental Revolving Facility may include financial maintenance covenants and other terms and conditions that are more restrictive to the Borrower and its restricted subsidiaries than the terms applicable to the Term B Loan Facility, solely for the benefit of the Lenders under such Incremental Revolving Facility. The Borrower may seek commitments in respect of any Incremental Facility from existing Lenders or from additional banks, financial institutions and other institutional lenders and to the extent the Administrative Agent would have a consent right on an assignment to such new lender, such new lender shall be reasonably acceptable to the Administrative Agent.

Refinancing Facilities:

The Credit Documentation will permit the Borrower to refinance loans under the Term B Loan Facility or loans under any Incremental Facility (each, “**Refinanced Debt**”) from time to time, in whole or part, with (x) one or more new term facilities (each, a “**Refinancing Term Facility**”) under the Credit Documentation with the consent of the Borrower, the Administrative Agent (not to be unreasonably withheld, delayed or conditioned) and the institutions providing such Refinancing Term Facility or (y) one or more series of unsecured notes or loans, notes secured by the Collateral on a *pari passu* basis with the Term B Loan Facility or notes or loans secured by the Collateral on a junior lien basis to the Term B Loan Facility, which will be subject to customary intercreditor terms reasonably acceptable to the Administrative Agent and the Borrower (any such notes or loans, “**Refinancing Notes**”) and together with the Refinancing Term Facilities, the “**Refinancing Indebtedness**”); *provided* that (i) any Refinancing Term Facility or Refinancing Notes do not mature prior to the maturity date of, or have a shorter weighted average life than, the applicable Refinanced Debt (without giving effect to any amortization or prepayments on the outstanding loans under the Term B Loan Facility or loans made under any Incremental Facility, as applicable), (ii) any Refinancing Notes consisting of notes do not mature prior to the maturity date of the applicable Refinanced Debt or have any scheduled amortization, (iii) there shall be no issuers, borrowers or guarantors in respect of any Refinancing Indebtedness that are not the Borrower or a Guarantor and no Refinancing Indebtedness shall be secured by assets other than the Collateral, (iv) any Refinancing Notes shall not contain any mandatory prepayment provisions (other than related to customary asset sale and change of control offers or events of default) that could result in prepayments of such Refinancing Notes prior to the maturity date of the applicable Refinanced Debt, (v) the other terms and conditions of such Refinancing Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, fees and optional prepayment or optional redemption provisions) are not materially more favorable (when taken as a whole) to the lenders or investors providing such Refinancing Indebtedness than the terms of the applicable Refinanced Debt unless (1) Lenders under the corresponding Refinanced Debt also receive the benefit of such more restrictive terms or (2) any such provisions apply after the maturity date of the applicable Refinanced Debt and (vi) the proceeds of such Refinancing Indebtedness (a) shall not be in an aggregate principal amount greater than the aggregate principal amount of the applicable Refinanced Debt plus any fees and premiums associated therewith, and costs and expenses related thereto and (b) shall be immediately applied to permanently prepay in whole or in part the applicable Refinanced Debt.

Documentation Standard:

The Credit Documentation for the Term B Loan Facility (i) shall be based upon the Credit Agreement, dated August 16, 2016, of Cavium, Inc. with appropriate modifications to baskets and materiality thresholds to reflect the size, industry, leverage and ratings of the Borrower after giving effect to the Acquisition and with appropriate modifications to reflect the structure of the Term B Loan Facility as a “term B loan facility”, to reflect changes in law or accounting standards since the date of such precedent and to give due effect to the Model (as defined below), (ii) shall contain the terms and conditions set forth in this Summary of Terms, (iii) shall reflect the operational and strategic requirements of the Borrower and its subsidiaries (after giving effect to the Acquisition) in light of their size, industries and practices and (iv) shall reflect the customary agency and operational requirements of the Administrative Agent (collectively, the “**Documentation Standard**”), in each case, subject to the Funds Certain Provisions. The Credit Documentation shall, subject to the “market flex” provisions contained in the Fee Letter, contain only those conditions to borrowing, mandatory prepayments, representations and warranties, covenants (affirmative, negative and financial) and events of default expressly set forth in this Summary of Terms, in each case, applicable to the Borrower and its restricted subsidiaries and, subject to the Documentation Standard and limitations as set forth herein, with materiality thresholds, standards, qualifications, exceptions, “baskets”, and grace and cure periods to be mutually agreed and consistent with the Documentation Standard.

**Limited Condition
Acquisitions:**

For purposes of (i) determining compliance with any provision of the Credit Documentation which requires the calculation of the Secured Leverage Ratio or the Total Leverage Ratio, (ii) determining compliance with representations, warranties, defaults or events of default or (iii) testing availability under baskets set forth in the Credit Documentation (including baskets measured as a percentage of Consolidated EBITDA), in each case, in connection with an acquisition (or similar investment) by one or more of the Borrower and its restricted subsidiaries of any assets, business or person permitted to be acquired by the Credit Documentation, in each case whose consummation is not conditioned on the availability of, or on obtaining, third party financing (any such acquisition, a “**Limited Condition Acquisition**”), at the option of the Borrower (the Borrower’s election to exercise such option in connection with any Limited Condition Acquisition, an “**LCA Election**”), the date of determination of whether any such action is permitted hereunder, shall be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the “**LCA Test Date**”), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent test period ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with.

For the avoidance of doubt, if the Borrower has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket (including due to fluctuations in pro forma Consolidated EBITDA, including of the target of any Limited Condition Acquisition) at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket on or following the relevant LCA Test Date and prior to the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a pro forma basis assuming (i) such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of debt and the use of proceeds thereof) have been consummated and (ii) such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of debt and the use of proceeds thereof) had not been consummated.

Financial Definitions:

The “**Secured Leverage Ratio**” means the ratio of (i) Consolidated Funded Indebtedness of the Borrower and its restricted subsidiaries that is secured by a lien on any assets or property of the Borrower or any restricted subsidiary (“**Secured Debt**”) to (ii) trailing four-quarter Consolidated EBITDA (as defined below) of the Borrower and its restricted subsidiaries.

“**Total Leverage Ratio**” means the ratio of (i) Consolidated Funded Indebtedness of the Borrower and its restricted subsidiaries to (ii) trailing four-quarter Consolidated EBITDA of the Borrower and its restricted subsidiaries.

“**Consolidated Funded Indebtedness**” means the outstanding principal amount of all third party debt for borrowed money, un reimbursed drawings under letters of credit, capital lease obligations, purchase money indebtedness and third party debt obligations evidenced by notes or similar instruments, determined in accordance with GAAP.

“**Consolidated EBITDA**” is to be defined in a manner consistent with the Documentation Standard beginning with consolidated net income, with add-backs (and corresponding deductions, to the extent applicable) to include, without limitation and without duplication, the following:

- i. expected cost savings, operating expense reductions, restructuring charges and expenses and synergies related to the Transaction as set forth in the Borrower’s model received by JPMCB on February 9, 2017 (the “**Model**”);
- ii. expected cost savings, operating expense reductions, restructuring charges and expenses and synergies related to mergers and other business combinations, acquisitions, divestitures, restructuring, cost savings initiatives which are reasonably identifiable and factually supportable and other similar initiatives and projected by the Borrower in good faith to result from actions with respect to which substantial steps have been, will be, or are expected to be, taken and which are expected to be realized (in the good faith determination of the Borrower) within 18 months after such transaction or initiative is consummated; *provided* that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (ii) in any test period shall not exceed 20% of Consolidated EBITDA for such test period (calculated prior to giving effect to such add-backs);
- iii. non-cash losses, charges and expenses (including non-cash compensation charges);
- iv. extraordinary, unusual or non-recurring losses, charges and expenses;

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- v. cash restructuring and related charges and business optimization expenses;
 - vi. unrealized gains and losses due to foreign exchange adjustments (including, without limitation, losses and expenses in connection with currency and exchange rate fluctuations);
 - vii. costs and expenses in connection with the Transaction;
 - viii. expenses or charges related to any equity offering, permitted investment, acquisition, disposition, recapitalization or incurrence of permitted indebtedness (whether or not consummated), including non-operating or non-recurring professional fees, costs and expenses related thereto;
 - ix. interest, taxes, amortization and depreciation; and
 - x. losses from discontinued operations.

Scheduled Amortization:

The Term B Loan Facility shall be subject to quarterly amortization of principal equal to 0.25% of the original aggregate principal amount of the Term B Loan Facility, with the balance payable on the Term B Loan Facility Maturity Date.

Mandatory Prepayments:

In addition to the amortization set forth above and subject to the next two paragraphs, mandatory prepayments required with respect to the Term B Loan Facility shall be limited to: (i) subject to customary exceptions and thresholds (with exceptions for, among others, ordinary course dispositions, dispositions of obsolete or worn-out property, property no longer used or useful in the business and other exceptions to be mutually agreed), the receipt of net cash proceeds by the Borrower or any of its restricted subsidiaries in excess of an amount to be mutually agreed from any disposition of assets outside the ordinary course of business or casualty event by the Borrower or any of its restricted subsidiaries, in each case, to the extent such proceeds are not reinvested (or committed to be reinvested) in the business of the Borrower or any of its subsidiaries within twelve months after the date of receipt of such proceeds from such disposition or casualty event and, if so committed to be reinvested, reinvested no later than 180 days after the end of such twelve month period; (ii) following the receipt of net cash proceeds from the issuance or incurrence after the Closing Date of additional debt of the Borrower or any of its restricted subsidiaries (other than debt permitted under the Credit Documentation other than Refinancing Indebtedness); and (iii) in an amount equal to 0% of annual Excess Cash Flow (to be defined in the Credit Documentation) of the Borrower and its restricted subsidiaries beginning with the Borrower's fiscal year ending March 31, 2018 with one step up to 50% when the Secured Leverage Ratio is greater than 1.75 to 1.00 (with a dollar-for-dollar credit for optional prepayments of the Term B Loan Facility and any Incremental Facility (in the case of any Incremental Revolving Facility, to the extent accompanied by a permanent reduction of the corresponding commitment) subsequent to the first day of the relevant year other than to the extent financed with long-term debt), in each case of clauses (i) - (iii), subject to the limitations set forth in the paragraph immediately following, such amounts shall be applied, without premium or penalty, to the remaining amortization payments under the Term B Loan Facility in direct order of maturity.

Any Lender under the Term B Loan Facility may elect not to accept its pro rata portion of any mandatory prepayment other than a prepayment pursuant to clause (ii) above (each a “ **Declining Lender** ”). Any prepayment amount declined by a Declining Lender may be retained by the Borrower (such amount, a “ **Declined Amount** ”).

Mandatory prepayments in clauses (i) and (iii) above shall be limited to the extent the upstreaming or transfer of such amounts from a foreign subsidiary to the Borrower or any other applicable subsidiary would result in material adverse tax consequences until such time as the Borrower or its applicable subsidiary may upstream or transfer such amounts and shall be subject to permissibility under local law of upstreaming proceeds (including financial assistance and corporate benefit restrictions and fiduciary and statutory duties of the relevant directors). The non-application of any mandatory prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a default or an event of default, and such amounts shall be available for working capital purposes of the Borrower and its subsidiaries.

Optional Prepayments:

The Term B Loan Facility may be prepaid at any time in whole or in part without premium or penalty, upon written notice, at the option of the Borrower, except (x) that any prepayment of LIBOR advances other than at the end of the applicable interest periods therefor shall be made with customary reimbursement for any funding losses and redeployment costs (but not loss of margin) of the Lenders resulting therefrom and (y) as set forth in “Soft-Call Premium” below. Each optional prepayment of the Term B Loan Facility shall be applied as directed by the Borrower (and absent such direction, in direct order of maturity thereof).

Soft-Call Premium:

In the event that all or any portion of the Term B Loan Facility is (i) repaid, prepaid, refinanced or replaced with term loan indebtedness with a lower effective yield (to be defined) than the effective yield of such Term B Loan Facility or (ii) repriced through any waiver, consent or amendment that has the effect of reducing the effective yield of the Term B Loan Facility (a “ **Repricing Transaction** ”), in each case, prior to the six-month anniversary of the Closing Date and other than in connection with a change of control, such repayment, prepayment, refinancing, replacement or repricing will be accompanied by a premium of 1% of the principal amount so repaid, prepaid, refinanced, replaced or repriced. If all or any portion of the Term B Loan Facility held by any Lender is required to be assigned pursuant to a “yank-a-bank” provision in the Credit Documentation as a result of, or in connection with a Repricing Transaction prior to the six-month anniversary of the Closing Date, such Lender not agreeing or otherwise consenting to any waiver, consent or amendment referred to in clause (ii) above (or otherwise in connection with a Repricing Transaction), such replacement will be accompanied by a premium equal to 1% of the principal amount so required to be assigned.

Security:

Subject to the limitations set forth below in this section and subject to certain other exceptions, the Borrower Obligations, the Guarantees and any interest rate protection or other swap or hedging arrangements, or cash management arrangements, in each case, entered into with a Lender or agent or any affiliate of a Lender or agent (collectively, the “**Secured Obligations**”) will be secured, on a first priority basis, by: (a) a perfected pledge of 100% of each direct subsidiary of the Borrower and of each Guarantor (which pledge, in the case of capital stock of any foreign subsidiary that is a CFC or any Disregarded Domestic Person shall be limited to 65% of the voting capital stock and 100% of the non-voting capital stock of such foreign subsidiary or Disregarded Domestic Person) and (b) perfected security interests in substantially all of the Borrower’s and each Guarantor’s assets, including tangible and intangible personal property of the Borrower and each Guarantor (including but not limited to accounts receivable, inventory, equipment, general intangibles, deposit and securities accounts, investment property, intellectual property, intercompany notes, instruments, chattel paper and documents and proceeds of the foregoing) (the items described in clauses (a) and (b) above, but excluding the Excluded Assets (as defined below), collectively, the “**Collateral**”).

Notwithstanding anything to the contrary, the Collateral shall exclude the following: (i) all fee-owned real property and all real property leasehold interests, (ii) any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such licenses, franchise, charter or authorization would be prohibited thereby (including any legally effective prohibition) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable law, (iii) pledges and security interests prohibited by applicable law, rule or regulation (including any legally effective requirement to obtain the consent of any governmental authority), (iv) margin stock and, to the extent prohibited by the terms of any applicable organizational documents, joint venture agreement or shareholders’ agreement, equity interests in any person other than wholly-owned restricted subsidiaries, (v) assets to the extent a security interest in such assets would result in material adverse tax consequences as reasonably determined by the Borrower, (vi) any equity interests in any subsidiary that is a CFC or Disregarded Domestic Person (other than to the extent expressly provided in the previous paragraph), (vii) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; and (viii) any lease, license or other agreement or any property subject to a purchase money security interest or similar arrangement permitted by the Credit Documentation to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other similar applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other similar applicable law notwithstanding such prohibition. The Collateral may also exclude those assets as to which the Administrative Agent and the Borrower agree in writing that the cost of obtaining such a security interest is excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the foregoing described in the previous two sentences are collectively referred to as the “**Excluded Assets**”). In addition, (a) landlord, bailee or warehouseman waivers or collateral access agreements shall not be required, control agreements shall not be required with respect to any deposit accounts, securities accounts or commodities accounts and no perfection actions other than the filing of UCC financing statements shall be required with respect to motor vehicles and other assets subject to certificates of title, letter of credit rights, except as to which perfection may be accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), commercial tort claims with a value of less than an amount to be agreed and promissory notes evidencing debt in a principal amount of less than an amount to be agreed and (b) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create or perfect any security interests in assets located or titled outside of the U.S. (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non U.S. jurisdiction).

All the above-described pledges, security interests and mortgages shall be set forth in the Credit Documentation; and none of the Collateral shall be subject to other pledges, security interests or mortgages, other than certain customary permitted encumbrances and other exceptions and baskets to be set forth in the Credit Documentation.

**Conditions Precedent to
Initial Borrowing on the
Closing Date:**

The availability of the Term B Loan Facility on the Closing Date will be limited to those applicable conditions specified in paragraph 5 of the Commitment Letter.

**Representations and
Warranties:**

Limited to the following and applicable to the Borrower and its restricted subsidiaries: organizational status and good standing; corporate power and authority, and enforceability of Credit Documentation; with respect to the execution, delivery and performance of the Credit Documentation, no violation of or default under law, organizational documents or material agreements; compliance with law; no undisclosed material litigation; margin regulations; material governmental and third party approvals with respect to the execution, delivery and performance of the Credit Documentation; Investment Company Act; anti-corruption and sanction laws, including the USA PATRIOT Act, OFAC, AML and FCPA; no default; accuracy of historical financial statements; taxes; ERISA matters; subsidiaries; environmental laws; use of proceeds; ownership of properties; creation, perfection and priority of liens and other security interests; insurance; consolidated Closing Date solvency of the Borrower and its subsidiaries; no material adverse change; intellectual property; labor matters; margin regulations; and disclosure, subject, where applicable, in the case of each of the foregoing representations and warranties, to qualifications and limitations for materiality to be provided in the Credit Documentation.

Covenants:

Subject to the Documentation Standard, with customary materiality qualifiers, limitations, exceptions, thresholds and baskets to be reasonably and mutually agreed, covenants shall be limited to the following:

- (A) *Affirmative Covenants*: Limited to the following (to be applicable to the Borrower and its restricted subsidiaries only): (i) compliance with laws and regulations (including, without limitation, ERISA and environmental laws); (ii) compliance with anticorruption laws and applicable sanctions, including USA PATRIOT Act, OFAC, AML and FCPA; (iii) payment of taxes; (iv) maintenance of customary insurance; (v) preservation of corporate existence, rights (charter and statutory), franchises, permits, licenses and approvals; (vi) reasonable inspection rights; (vii) keeping of proper books in accordance with generally accepted accounting principles; (viii) maintenance of properties; (ix) further assurances as to perfection and priority of security interests; (x) guaranties and collateral from future subsidiaries and after-acquired property; (xi) use of proceeds; (xii) customary financial and other reporting and notice requirements (including, without limitation, audited annual financial statements (which shall not be qualified or limited in any respect (other than any exception, qualification or explanatory paragraph that is expressly solely with respect to, or expressly resulting solely from (i) an upcoming maturity date under the Term B Loan Facility or any Incremental Facility occurring within one year from the time such opinion is delivered or (ii) any potential inability to satisfy a financial maintenance covenant contained in the Credit Documentation) delivered within 90 days after the end of any fiscal year and quarterly unaudited financial statements delivered within 45 days after the end of the first three fiscal quarters of any fiscal year, in each case, accompanied by a customary MD&A, annual budgets, compliance certificates, certain customary reports and other business and financial information as any Lender shall reasonably request); (xiii) quarterly lender calls (it being understood that this covenant shall be satisfied if Lenders are permitted to join the Borrower's quarterly calls with its common equity holders); (xiv) commercially reasonable efforts to maintain credit ratings for the Term B Loan Facility and public corporate rating for the Borrower, *provided* that the maintenance of any particular rating shall not be required; (xv) notices of defaults and other material events; and (xvi) designation and redesignation of unrestricted subsidiaries, subject, in the case of each of the foregoing covenants, to exceptions and qualifications to be provided in the Credit Documentation.

- (B) *Negative Covenants* : Limited to the following (to be applicable to the Borrower and its restricted subsidiaries):
- (a) limitations on the incurrence of debt (which shall permit, among other things to be agreed, (i) the indebtedness under the Term B Loan Facility, Incremental Facilities and Refinancing Indebtedness, (ii) indebtedness of the Borrower and its restricted subsidiaries outstanding on the Closing Date; *provided* that, any permitted refinancing of the 2022 Convertible Notes shall be subject to terms and conditions to be agreed, including that such refinancing indebtedness mature no earlier than 91 days after the Term B Loan Facility Maturity Date, (iii) non-speculative hedging arrangements entered into in the ordinary course of business, (iv) any junior secured or unsecured notes or junior secured or unsecured term loans issued in lieu of the Incremental Facilities (*provided* that, in lieu of complying with the Secured Leverage Ratio of 2.50 to 1.00 set forth in the section entitled “Incremental Facilities”, in case of unsecured debt, the Total Leverage Ratio (calculated on a pro forma basis and calculated on the same basis as the Secured Leverage Ratio) would not exceed 4.25 to 1.00; *provided* that (I) the incurrence of such indebtedness shall reduce dollar for dollar the amount of indebtedness that the Borrower may incur in respect of the Incremental Facilities (and any unsecured debt shall be deemed Secured Debt for purposes of calculating the Secured Leverage Ratio in connection with incurring Secured Debt under this clause (iv) and the Incremental Facilities), (II) such indebtedness matures at least 91 days after the latest date of maturity of the Term B Loan Facility and of any Incremental Facility, (III) any subsidiaries of the Borrower that do not guarantee the Term B Loan Facility shall not guarantee such indebtedness, (IV) any secured debt shall be secured solely by Collateral on a junior lien basis and shall be subject to a customary intercreditor agreement reasonably acceptable to the Administrative Agent and the Borrower and (V) such debt shall be on other terms to be set forth in the Credit Documentation, (v) indebtedness incurred and/or assumed on the terms set forth in the second succeeding paragraph, (vi) purchase money indebtedness and capital leases in an amount to be agreed, (vii) indebtedness arising from agreements providing for adjustments of purchase price or “earn outs” entered into in connection with acquisitions subject to customary limitations, (viii) other indebtedness of the Borrower and its restricted subsidiaries, which requires no mandatory repayment or redemption (other than customary change of control or asset sale offers or upon any event of default) prior to the date which is 91 days later than the latest maturity date of the Term B Loan Facility and any Incremental Facility, maturing at least 91 days after the latest maturity date of the Term B Loan Facility and any Incremental Facility subject to no default or event of default having occurred (before or after giving effect to such incurrence) and the Borrower’s Total Leverage Ratio (calculated on a pro forma basis) not exceeding 4.25 to 1.00; *provided* that the aggregate amount of such indebtedness that may be incurred under this clause (viii) by restricted subsidiaries that are not or do not become Guarantors, together with debt incurred under the second succeeding paragraph, shall be limited to an aggregate amount to be agreed, (ix) a general debt basket equal to \$50.0 million, (x) a nonguarantor debt basket in an amount to be agreed and (xi) certain ordinary course performance guarantees);

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- (b) limitations on liens (which shall permit, among other things to be agreed, (i) junior liens securing any secured debt issued pursuant to clause (a)(iv) above, (ii) liens on the Collateral securing Refinancing Indebtedness, (iii) liens securing debt assumed in connection with a Permitted Acquisition (as defined below); *provided* that, such liens extend to the same assets (and any after acquired assets attaching thereto as a matter of law) that such liens extended to, and secure the same indebtedness, that such liens secured, immediately prior to such assumption and were not created in contemplation thereof, (iv) a general lien basket equal to \$50.0 million and (v) liens securing indebtedness of non-guarantor subsidiaries, *provided* such liens only extend to assets of non-guarantor subsidiaries);
 - (c) limitations on asset sales (including sales of subsidiaries) (which shall be permitted on the terms set forth in the third succeeding paragraph);
 - (d) limitations on investments, including acquisitions (which, among other things to be agreed, shall permit (i) acquisitions on the terms set forth in the fourth succeeding paragraph, (ii) a general investment basket in an amount to be agreed plus, subject to the Borrower being able to incur \$1 of debt under the Total Leverage Ratio test described above under clause (a)(iv) under “**Negative Covenants**” on a pro forma basis, the Available Amount Basket and (iii) unlimited investments subject to no event of default existing or resulting therefrom and compliance on a pro forma basis with a Total Leverage Ratio of 3.00 to 1.00 (the “**Leverage Based Investment Basket**”));

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- (e) limitations on dividends or distributions on, or redemptions of, the Borrower's or any restricted subsidiary's equity ("**Restricted Payments**") (which shall permit, among other things to be agreed, (i) a general Restricted Payment basket of, subject to no event of default existing or resulting therefrom, \$25.0 million plus, subject to no event of default existing or resulting therefrom and compliance on a pro forma basis with a Total Leverage Ratio of 4.00 to 1.00, the Available Amount Basket, (ii) unlimited Restricted Payments subject to no event of default existing or resulting therefrom and compliance on a pro forma basis with a Total Leverage Ratio of 2.75 to 1.00 (the "**Leverage Based RP Basket**") and (iii) subject to no event of default existing or resulting therefrom, repurchases of up to \$60.0 million per fiscal year of the Borrower's common stock;
 - (f) limitations on prepayments or redemptions of subordinated or junior lien indebtedness for borrowed money, or the 2022 Convertible Notes (collectively, "**Junior Debt**") or amendments of the documents governing such Junior Debt in a manner materially adverse to the Lenders (which shall permit, among other things to be agreed (i) a general prepayment basket in an amount to be agreed plus, subject to the Borrower being able to incur \$1 of debt under the Total Leverage Ratio test described above under clause (a)(iv) under "**Negative Covenants**" on a pro forma basis, the Available Amount Basket, (ii) unlimited prepayments subject to no event of default existing or resulting therefrom and compliance on a pro forma basis with a Total Leverage Ratio of 3.00 to 1.00 (the "**Leverage Based Prepayments Basket**"), (iii) refinancing or exchanges of Junior Debt for like or junior debt subject to terms and conditions to be set forth in the Credit Documentation and (iv) conversion of Junior Debt to common or "qualified preferred" equity);
 - (g) limitations on agreements restricting distributions, dividends and other specified transfers from restricted subsidiaries to the Borrower or any Guarantor, fundamental changes and negative pledge clauses;
 - (h) limitations on transactions with affiliates;

- (i) limitations on changes in fiscal year and in lines of business; and
- (j) modifying organizational documents in a manner materially adverse to Lenders

The negative covenants will be subject, in the case of each of the foregoing covenants to exceptions, qualifications and “baskets” to be set forth in the Credit Documentation. In addition, the negative covenants described in clauses (d), (e) and (f) above shall include an “**Available Amount Basket**”, which shall mean a cumulative amount equal to (a) 50% of Excess Cash Flow (*provided* that the calculation of Excess Cash Flow shall exclude Excess Cash Flow generated by non-U.S. subsidiaries that would be prohibited under any applicable laws from being repatriated to the United States or that the Borrower determines in good faith would result in a tax liability that is material to the amount of funds otherwise required to be repatriated (including any withholding tax) if repatriated to the United States) for each fiscal year (commencing with the fiscal year ending March 31, 2018), plus (b) the cash proceeds of new public or private qualified equity issuances or an equity capital contribution to the Borrower (other than disqualified stock) after the Closing Date, plus (c) the aggregate cash proceeds from debt and disqualified stock incurred after the Closing Date exchanged or converted into qualified equity, plus (d) the net cash proceeds received by the Borrower and its restricted subsidiaries after the Closing Date from sales of investments made using the Available Amount Basket (up to the amount, when combined with any amount set forth in clause (e) below, of the original investment), plus (e) returns, profits, distributions and similar amounts received in cash or cash equivalents by the Borrower and its restricted subsidiaries after the Closing Date on investments made using the Available Amount Basket (up to the amount, when combined with any amount set forth in clause (f) above, of the original investment), plus (f) the investments of the Borrower and its restricted subsidiaries in any unrestricted subsidiary out of the Available Amount Basket that has been re-designated as a restricted subsidiary or that has been merged or consolidated with or into the Borrower or any of its restricted subsidiaries after the Closing Date (up to the fair market value of the original investments by the Borrower and its restricted subsidiaries in such unrestricted subsidiary) minus (g) all Restricted Payments made pursuant to the Leverage Based RP Basket, all investments made pursuant to the Leverage Based Investment Basket and all prepayments made pursuant to the Leverage Based Prepayment Basket; *provided* that in no event shall the Available Amount Basket at any time be less than \$0.

The Borrower or any restricted subsidiary will be permitted to incur and/or assume indebtedness in connection with a Permitted Acquisition so long as (i) with respect to any newly incurred indebtedness, (x) the maturity date of such indebtedness is no earlier than 91 days later than the final maturity date of the Term B Loan Facility and any Incremental Facility, (y) such indebtedness requires no mandatory repayment or redemption (other than customary change of control or asset sale offers or upon any event of default) prior to the date which is 91 days later than the latest maturity date of the Term B Loan Facility and any Incremental Facility, and (z) such indebtedness is unsecured or is only secured to the extent permitted pursuant to clause (b) under the heading "Negative Covenants" above, (ii) with respect to assumed indebtedness, such indebtedness is only the obligation of the person and/or person's subsidiaries that are acquired or that acquired the relevant assets and such indebtedness was not incurred in contemplation of such acquisitions, (iii) the Total Leverage Ratio (calculated on a pro forma basis) would not exceed 4.25 to 1.00 and (iv) before and after giving effect thereto, no default or event of default has occurred and is continuing; *provided* that the aggregate amount of indebtedness that may be incurred under this paragraph by restricted subsidiaries that are not Guarantors together with debt incurred under clause (a)(viii) of the first paragraph under "**Negative Covenants**" shall not exceed an amount to be agreed.

The Borrower or any restricted subsidiary will be permitted to make non-ordinary course of business asset sales or dispositions so long as (a) such sales or dispositions are for fair market value, (b) at least 75% of the consideration for asset sales and dispositions shall consist of cash or cash equivalents (subject to exceptions to be set forth in the Credit Documentation, which shall include a basket for non-cash consideration that may be designated as cash consideration in an amount equal to 2.0% of the Borrower's consolidated total assets) and (c) before and after giving effect to such asset sale, no event of default has occurred and is continuing.

The Borrower or any restricted subsidiary will be permitted to make acquisitions of the equity interests in a person that becomes a restricted subsidiary, or all or substantially all of the assets (or all or substantially all the assets constituting a business unit, division, product line or line of business) of any person (each, a "**Permitted Acquisition**") so long as (a) there is no event of default existing at the time of or after giving pro forma effect to such acquisition, (b) the acquired company or assets are in a similar, ancillary, complementary or related line of business as the Borrower and its subsidiaries and (c) subject to the limitations set forth in "Guarantees" and "Security" above, the acquired company and its subsidiaries (other than any subsidiaries of the acquired company designated as an unrestricted subsidiary as provided in "Unrestricted Subsidiaries" below) will become Guarantors and pledge their Collateral to the Administrative Agent. Acquisitions of entities that do not become Guarantors and of assets by entities that are not Guarantors shall not exceed an amount to be agreed.

**Financial Maintenance
Covenants:**

None.

Unrestricted Subsidiaries:

The board of directors of the Borrower may at any time after the Closing Date designate any restricted subsidiary as an unrestricted subsidiary or any unrestricted subsidiary as a restricted subsidiary; *provided* that (i) immediately before and after such designation on a pro forma basis, no default or event of default shall have occurred and be continuing and (ii) immediately after giving effect to such designation or redesignation, the Borrower shall be able to incur at least \$1 of debt under the Total Leverage Ratio test described above under clause (a)(iv) under “*Negative Covenants*”. The designation of any subsidiary as an unrestricted subsidiary after the Closing Date shall constitute an investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower’s investment therein. The designation of any unrestricted subsidiary as a restricted subsidiary shall constitute (i) the incurrence at the time of designation of any investment, indebtedness or liens of such unrestricted subsidiary existing at such time and (ii) a return on any investment by the Borrower or any restricted subsidiary in an unrestricted subsidiary pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower’s investment in such subsidiary. Unrestricted subsidiaries will not be subject to the representation and warranties, affirmative or negative covenant or event of default provisions of the Credit Documentation and the results of operations and indebtedness of unrestricted subsidiaries will not be taken into account for purposes of determining compliance with any financial ratio contained in the Credit Documentation.

Events of Default:

Limited to the following (to be applicable to the Borrower and its restricted subsidiaries only): nonpayment of principal when due; nonpayment of interest or other amounts after a customary five (5) business day grace period; violation of covenants (subject, in the case of affirmative covenants (other than notices of default and maintenance of the Borrower’s existence), to a thirty (30) day grace period); any representation or warranty proving to have been materially incorrect when made; cross default to indebtedness of an amount in excess of an amount to be agreed; bankruptcy or other insolvency events of the Borrower or its material restricted subsidiaries (with a 60 day grace period for involuntary events); unpaid or unstayed monetary judgments of an amount in excess of an amount to be agreed; customary ERISA events; actual or asserted invalidity of a material portion of the Guarantees, the security documents or any security interest in Collateral and change of control with respect to the Borrower (to be defined in a customary and mutually agreeable manner).

Assignments and Participations:

Each Lender will be permitted to make assignments in minimum amounts to be agreed to other entities approved by (x) the Administrative Agent and (y) so long as no payment or bankruptcy default has occurred and is continuing, the Borrower, each such approval not to be unreasonably withheld or delayed; *provided, however*, that (i) no approval of the Borrower shall be required in connection with assignments to other Lenders or any of their affiliates or approved funds, (ii) the Borrower shall be deemed to have given consent to an assignment if it shall have failed to respond to a written request within 10 business days of Borrower's receipt of such written request and (iii) no approval of the Administrative Agent shall be required in connection with assignments to other Lenders or any of their affiliates or approved funds. Each Lender will also have the right, without consent of the Borrower or the Administrative Agent, to assign as security all or part of its rights under the Credit Documentation to any Federal Reserve Bank. Lenders will be permitted to sell participations with voting rights limited to customary significant matters. An assignment fee in the amount of \$3,500 will be charged with respect to each assignment unless waived by the Administrative Agent in its sole discretion. Notwithstanding the foregoing, no loans or commitments shall be assigned or participated to (x) the Borrower or any of its subsidiaries (except as permitted below), (y) any natural person or (z) Disqualified Lenders to the extent the list of Disqualified Lenders has been made available to all Lenders.

In addition, loans under the Term B Loan Facility may be purchased by and assigned to the Borrower or any of its subsidiaries on a non-pro rata basis through (a) open market purchases or (b) Dutch auctions open to all applicable Lenders on a pro rata basis in accordance with customary procedures, in each case, subject to conditions to be set forth in the Credit Documentation, including that (1) no default or event of default has occurred and is continuing, (2) any such loans are permanently cancelled immediately upon acquisition thereof and (3) the Borrower or any such subsidiaries shall either (x) make a representation that it is not in possession of material non-public information with respect to the Borrower, its subsidiaries or their respective securities or (y) disclose to the assigning Lender that it cannot make such representation.

Waivers and Amendments:

Amendments and waivers of the provisions of the Credit Documentation will require the approval of Lenders holding more than 50% of the Term B Loan Facility (the "**Required Lenders**"), except that (a) the consent of each Lender directly and adversely affected thereby will also be required with respect to (i) increases in commitment amount of such Lender, (ii) reductions of principal, interest, or fees payable to such Lender (other than waivers of default interest, a default or event of default or mandatory prepayment); (iii) extensions of scheduled maturities or times for payment of amounts payable to such Lender (it being understood and agreed that the amendment or waiver of any mandatory prepayment, waiver of default interest, default or event of default shall only require the consent of the Required Lenders) and (iv) changes in certain pro rata provisions and the waterfall from enforcement and (b) the consent of each Lender shall be required with respect to (i) releases of all or substantially all of the Collateral or the release of all or substantially all of the value of any guarantees (other than in connection with permitted asset sales, dispositions, mergers, liquidations or dissolutions or as otherwise permitted under the Credit Documentation) and (ii) the percentage contained in the definition of Required Lenders or other voting provisions.

In connection with any proposed amendment, modification, waiver or termination (a “**Proposed Change**”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent to such Proposed Change of other Lenders whose consent is required is not obtained (but the consent of the Required Lenders or Lenders holding more than 50% of the directly and adversely affected facility, as applicable, is obtained) (any such Lender whose consent is not obtained being referred to as a “**Non-Consenting Lender**”), then the Borrower may, at its option and at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to customary restrictions on assignment), all its interests, rights and obligations under the Credit Documentation to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that, such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its loans, accrued interest thereon, accrued fees and all other amounts then due and owing to it under the Credit Documentation (at the option of the Borrower, with respect to the class or classes of loans or commitments subject to such Proposed Change) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts). The Credit Documentation shall contain other customary “yank-a-bank” provisions.

Notwithstanding anything to the contrary set forth herein, the Credit Documentation shall provide that the Borrower may at any time and from time to time request that all or a portion of any loans under the Term B Loan Facility be converted to extend the scheduled maturity date of any payment of principal with respect to all or a portion of any principal amount of such loans (any such loans which have been so converted, “**Extended Loans**”) and upon such request of the Borrower, any individual Lender shall have the right to agree to extend the maturity date of its outstanding loans without the consent of any other Lender or the Required Lenders; *provided* that all such requests shall be made prorata to all Lenders within the Term B Loan Facility. The terms of Extended Loans shall be identical to the loans of the existing class from such Extended Loans are converted except for interest rates, fees, amortization (so long as the weighted average life to maturity of the Extended Loans exceeds the then remaining weighted average life to maturity of the Term B Loan Facility), final maturity date or final termination date, provisions permitting optional and mandatory prepayments to be directed first to the non-extended loans prior to being applied to Extended Loans and certain other customary provisions to be agreed.

Indemnification:

The Administrative Agent, the Lead Arranger and the Lenders and their respective affiliates and controlling persons and their respective officers, directors, employees, partners, agents, advisors and other representatives (each, an “*indemnified person*”) will be indemnified for and held harmless against, any losses, claims, damages and liabilities (it being understood that any such losses, claims, damages or liabilities that consist of legal fees and/or expenses shall be limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of counsel for all such indemnified persons, taken as a whole and, if necessary, by a single firm of local counsel in each appropriate jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for all such indemnified persons, taken as a whole (and, in the case of an actual or potential conflict of interest where the indemnified person affected by such conflict notifies Borrower of the existence of such conflict and thereafter retains its own counsel, by another firm of counsel for all such affected indemnified persons)) incurred in respect of the Credit Documentation, the Term B Loan Facility or the use or the proposed use of proceeds thereof, the Transactions or any other transactions contemplated hereby, except to the extent they arise from the (a) gross negligence or willful misconduct of, or material breach of the Credit Documentation by, such indemnified person (or any of its Related Parties) as determined by a final, non-appealable judgment of a court of competent jurisdiction, or (b) material breach of such indemnified persons’ (or any of its Related Parties’) obligations under the Credit Documentation, as determined by a final, non-appealable judgment of a court of competent jurisdiction or (c) any dispute solely among the indemnified persons (or any of their Related Parties) (other than any claims against an indemnified person in its capacity as the Administrative Agent or Lead Arranger or similar role under the Term B Loan Facility) and not arising out of any act or omission of the Borrower or any of its affiliates.

G o v e r n i n g L a w :

New York.

Expenses:

Following written demand (including documentation reasonably supporting such request), the Borrower will pay all reasonable and documented out-of-pocket costs and expenses associated with the preparation, due diligence, administration, syndication and closing of all Credit Documentation (in the case of legal fees and expenses, limited to the reasonable and documented fees and out-of-pocket expenses of Cahill Gordon & Reindel LLP and of any local counsel to the Lenders retained by the Lead Arranger or the Administrative Agent, limited to one counsel in each relevant jurisdiction, which, in each case, shall exclude allocated costs of in-house counsel); *provided* that if the Closing Date does not occur and no termination fee is paid to you pursuant to Section 7.2(c) of the Acquisition Agreement or no expense reimbursement is paid to you pursuant to Section 7.2(b) of the Acquisition Agreement, the aggregate reimbursement by you of such fees and expenses shall not exceed \$250,000. The Borrower will also, if the Closing Date occurs, pay the reasonable and other counsel (in total) to all of the Lenders (in the absence of conflict) in connection with the enforcement of any of the Credit Documentation.

**Counsel to the
Commitment Party:**

Cahill Gordon & Reindel LLP.

Miscellaneous:

Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to exclusive New York jurisdiction. The Credit Documentation shall contain (x) customary provisions for replacing the commitments of a (i) “defaulting lender” and (ii) a Lender seeking indemnity for increased costs or grossed-up tax payments and (y) customary EU “Bail-In” provisions.

Annex I-23

CONDITIONS PRECEDENT TO CLOSING

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex II is attached.

The initial extensions of credit under the Term B Loan Facility will, subject in all respects to the Funds Certain Provisions, be subject to satisfaction of the following conditions precedent:

(i) The Merger shall have been, or shall substantially concurrently be, consummated in accordance with the terms of the Agreement and Plan of Merger, dated February 13, 2017 among Merger Sub, the Borrower and the Target (together with all Schedules and Exhibits thereto, the “*Acquisition Agreement*”) without giving effect to any consent or amendment, change or supplement or waiver of any provision thereof (including any change in the purchase price) in any manner that is materially adverse to the interests of the Initial Lender or the Lead Arranger (in their capacities as such) without the prior written consent (not to be unreasonably withheld, delayed or conditioned) of the Commitment Party; *provided* that (i) any immaterial reduction in the purchase price for the Acquisition set forth in the Acquisition Agreement shall not be deemed to be material and adverse to the interests of the Initial Lender (in its capacity as such) and (ii) any increase in the purchase price set forth in the Acquisition Agreement shall be deemed to be not material and adverse to the interests of the Initial Lender (in its capacity as such) so long as such purchase price increase is funded with cash on hand and/or proceeds of common equity of the Borrower.

(ii) Since September 25, 2016, there shall not have occurred a Company Material Adverse Effect (as defined in the Acquisition Agreement).

(iii) The Administrative Agent shall have received the Solvency Certificate from the Borrower’s chief financial officer or other person with similar responsibilities in substantially the form attached hereto on Annex III.

(iv) The Administrative Agent shall have received (A) customary opinions of counsel to the Borrower and the Guarantors, (B) customary corporate (or other organizational) resolutions from the Borrower and the Guarantors, customary secretary’s certificates from the Borrower and the Guarantors appending such resolutions, charter documents and an incumbency certificate and (C) a customary borrowing notice (*provided* that such notice shall not include any representation or statement as to the absence (or existence) of any default or event of default).

(v) The Administrative Agent shall have received: (A) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders’ equity of each of the Borrower and the Target for the three most recently completed fiscal years of the Borrower and the Target, respectively, ended at least 90 days before the Closing Date; (B) the unaudited consolidated balance sheets and related statements of operations and cash flows of each of the Borrower and the Target for each subsequent fiscal quarter of the Borrower and the Target, respectively, ended at least 45 days before the Closing Date (the “*Quarterly Financial Statements*”); and (C) a pro forma balance sheet and related statement of operations of the Borrower and its subsidiaries (including the Acquired Business) as of and for the twelve-month period ending with the latest quarterly period of the Borrower covered by the Quarterly Financial Statements, in each case after giving effect to the Transaction (the “*Pro Forma Financial Statements*”), which need not comply with the requirements of Regulation S-X under the Securities Act, as amended, or include adjustments for purchase accounting or any reconciliation to generally accepted accounting principles in the United States. The Administrative Agent hereby acknowledges receipt of (i) the audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders’ equity for the Target’s fiscal year ended on December 31, 2015, December 31, 2014 and December 31, 2013 (ii) audited consolidated balance sheets and related consolidated statements of operations, cash flows and shareholders’ equity for the Borrower’s fiscal year ended on April 3, 2016, March 29, 2015 and March 30, 2014, (iii) the unaudited consolidated balance sheets and related statements of operations and cash flows of the Target’s fiscal quarters ended on March 27, 2016, June 26, 2016 and September 25, 2016 and (iv) the unaudited consolidated balance sheets and related statements of operations and cash flows of Borrower for the fiscal quarters ended on July 3, 2016, October 2, 2016 and January 1, 2017 (collectively, the “*Delivered Financial Information*”).

(vi) The Lead Arranger shall have received a customary Information Memorandum (other than portions thereof customarily provided by financing arrangers and limited, in the case of the financial information to the financial statements described in clauses (A) and (B) of paragraph (v) above (it being understood that only the Delivered Financial Information shall be required to be delivered under this clause (vi)) (the “**Required Information**”) for the Term B Loan Facility not later than 15 consecutive business days prior to the Closing Date.

(vii) All fees due to the Administrative Agent, the Lead Arranger and the Lenders under the Fee Letter and the Commitment Letter to be paid on or prior to the Closing Date, and all reasonable and documented out-of-pocket expenses to be paid or reimbursed under the Commitment Letter to the Administrative Agent and the Lead Arranger on or prior to the Closing Date that have been invoiced at least three business days prior to the Closing Date, shall have been paid, in each case, from the proceeds of the initial funding under the Term B Loan Facility (which amounts may be offset against the proceeds of the Term B Loan Facility).

(viii) The Refinancing shall have been, or shall substantially concurrently with the initial funding of the Term B Loan Facility be, consummated.

(ix) The Borrower and each of the Guarantors shall have provided the documentation and other information to the Administrative Agent that are required by regulatory authorities under applicable “know-your-customer” rules and regulations, including the Patriot Act, at least 3 business days prior to the Closing Date to the extent such information has been reasonably requested in writing by the Administrative Agent at least 10 business days prior to the Closing Date.

(x) Subject in all respects to the Funds Certain Provisions, all documents and instruments required to create and perfect the Administrative Agent’s security interests in the Collateral shall have been executed and delivered by the Borrower and the Guarantors (or, where applicable, the Borrower and the Guarantors shall have authorized the filing of financing statements under the Uniform Commercial Code) and, if applicable, be in proper form for filing.

SOLVENCY CERTIFICATE ¹

[], 201[]

This SOLVENCY CERTIFICATE (this “*Certificate*”) is delivered in connection with that certain Credit Agreement dated as of [], 201[] (as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time, the “*Credit Agreement*”) among Integrated Device Technology, Inc., a Delaware corporation (the “*Borrower*”), [], as administrative agent and collateral agent, the financial institutions from time to time party thereto as lenders and the other parties thereto. Capitalized terms used herein without definition have the same meanings as in the Credit Agreement.

As of the date hereof, in my capacity as a Responsible Officer of Company (as defined below), and not in my individual or personal capacity, I believe that:

1. Company (as used herein “*Company*” means the Borrower and its subsidiaries, taken as a whole) is not now, nor will the incurrence of the obligations under the Credit Agreement and the consummation of the Acquisition on the Closing Date (and after giving effect to the application of the proceeds of the Loans), on a pro forma basis, render Company “insolvent” as defined in this paragraph; in this context, “insolvent” means that (i) the fair value of assets (on a going concern basis) of the Company is less than the amount that will be required to pay the total liability on existing debts as they become absolute and matured, (ii) the present fair salable value of assets (on a going concern basis) of the Company is less than the amount that will be required to pay the total liability on existing debts as they become absolute and matured in the ordinary course of business, or (iii) the Company ceases to pay its current obligations in the ordinary course of business as they generally become due. The term “debts” as used in this Certificate includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent and “values of assets” shall mean the amount of which the assets (both tangible and intangible) in their entirety would change hands between a willing buyer and a willing seller, with a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under compulsion to act.

2. The incurrence of the obligations under the Credit Agreement and the consummation of the other Transactions on the Closing Date (and after giving effect to the application of the proceeds of the Loans), on a pro forma basis, will not leave Company with property remaining in its hands constituting “unreasonably small capital”. I understand that “unreasonably small capital” depends upon the nature of the particular business or businesses conducted or to be conducted, and I have reached my conclusion based on my current assumptions regarding the needs and anticipated needs for capital of the businesses conducted or anticipated to be conducted by Company in light of projected financial statements and available credit capacity, which current assumption I do not believe to be unreasonable in light of the circumstances applicable thereto.

¹ Defined terms to be aligned with those in the definitive Credit Agreement, but consistent with this form of solvency certificate.

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate in such undersigned's capacity as an officer of the Borrower, on behalf of the Borrower, and not individually, as of the date first above written.

INTEGRATED DEVICE TECHNOLOGY, INC.

By: _____
Name:
Title:

Signature Page to Solvency Certificate

TENDER AND SUPPORT AGREEMENT

This TENDER AND SUPPORT AGREEMENT (this “**Agreement**”), dated as of February 13, 2017, is entered into by and among Integrated Device Technology, Inc., a Delaware corporation (“**Parent**”), Glider Merger Sub, Inc., a Delaware corporation and a wholly-owned Subsidiary of Parent (the “**Purchaser**”), and each of the Persons set forth on Schedule A hereto (each, a “**Stockholder**”). All capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

WHEREAS, as of the date hereof, each Stockholder is the record or beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of the number of shares of common stock (“**Common Stock**”), par value \$0.001, of GigPeak, Inc., a Delaware corporation (the “**Company**”) set forth opposite such Stockholder’s name on Schedule A hereto (all such shares set forth on Schedule A, together with any shares of Common Stock of the Company that are hereafter issued to or otherwise acquired or owned by any Stockholder prior to the termination of this Agreement, which shall not include any unvested Company RSUs, being referred to herein as the “**Subject Shares**”);

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent, the Purchaser and the Company are entering into an Agreement and Plan of Merger, dated as of the date hereof (as it may be amended from time to time, the “**Merger Agreement**”), which provides, among other things, for the Purchaser to commence an offer to purchase all of the issued and outstanding Common Stock of the Company and the Merger of the Company and the Purchaser, upon the terms and subject to the conditions set forth in the Merger Agreement; and

WHEREAS, as a condition to their willingness to enter into the Merger Agreement, Parent and the Purchaser have required that each Stockholder enter into this Agreement, and each Stockholder has agreed to do so in order to induce Parent and Purchaser to enter into, and in consideration of their entering into, the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I AGREEMENT TO TENDER

1.1. **Agreement to Tender**. Each Stockholder agrees to validly tender or cause to be tendered in the Offer all of such Stockholder’s Subject Shares pursuant to and in accordance with the terms of the Offer, free and clear of all Encumbrances (other than Permitted Encumbrances). Without limiting the generality of the foregoing, as promptly as practicable after, but in no event later than ten (10) Business Days after, the commencement of the Offer, each Stockholder shall deliver pursuant to the terms of the Offer all of the Subject Shares owned by the Stockholder as of the date of such tender (the “**Tender Date**”) and all other documents or instruments required to be delivered by the Company’s stockholders pursuant to the terms of the Offer, including (A) a letter of transmittal with respect to such Stockholder’s Subject Shares complying with the terms of the Offer and (B) a certificate representing such Stockholder’s Subject Shares or an “agent’s message” (or such other evidence, if any, of transfer as the Paying Agent may reasonably request) in the case of a book-entry share of any

uncertificated Subject Shares. If any Stockholder acquires any Subject Shares after the Tender Date, such Stockholder shall tender into the Offer such Subject Shares prior to the earlier of (x) three (3) Business Days following the date that the Stockholder shall acquire such Subject Shares and (y) the Expiration Date. Each Stockholder agrees that, once such Stockholder's Subject Shares are tendered, such Stockholder shall not withdraw or cause to be withdrawn any of such Subject Shares from the Offer, unless and until this Agreement shall have been terminated; provided, however, that a Stockholder shall not be required to (x) exercise any unexercised Company Options for the purposes of this Agreement or (y) tender any Subject Shares into the Offer if such tender could cause such Stockholder to incur liability under Section 16(b) of the Exchange Act.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each Stockholder represents and warrants to Parent and the Purchaser as to such Stockholder on a several basis, that:

2.1. **Authorization; Binding Agreement**. If such Stockholder is a corporation, partnership, limited partnership, limited liability company or other entity, such Stockholder is duly organized, validly existing and in good standing (or the equivalent concept to the extent applicable) under the Laws of the jurisdiction in which it is incorporated or constituted and the consummation of the transactions contemplated hereby are within such Stockholder's corporate or organizational powers and have been duly authorized by all necessary corporate or organizational actions on the part of such Stockholder, and such Stockholder has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. If such Stockholder is an individual, he or she has full legal capacity, right and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized, executed and delivered by such Stockholder, and constitutes a valid and binding obligation of such Stockholder enforceable against such Stockholder in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law).

2.2. **Non-Contravention**. The execution and delivery of this Agreement by such Stockholder does not, and the performance by such Stockholder of such Stockholder's obligations hereunder and the consummation by such Stockholder of the transactions contemplated hereby will not (i) except for applicable requirements under federal securities Law, the securities Laws of any state or other jurisdiction, the rules of any applicable securities exchange, state takeover Laws, the pre-merger notification requirements of the HSR Act, and filings and recordation of appropriate merger documents as required by the DGCL or any other applicable Law or regulation, require any consent, approval, order, authorization, permit or other action by, or filing with or notice to, any Person (including any Governmental Authority) under, constitute a default (with or without the giving of notice or the lapse of time or both) under, or give rise to any right of termination, cancellation or acceleration under, or result in the creation of any Encumbrances on any of the Subject Shares pursuant to, any Contract, Order or other instrument binding on such Stockholder or any applicable Law, (ii) if such Stockholder is a corporation, partnership or limited liability company, violate any provision of such Stockholder's organizational documents or (iii) violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to such Stockholder, except, in the case of clauses (i) and (iii), for matters that, individually or in the aggregate, would not reasonably be expected to prevent or materially delay or impair the consummation by such Stockholder of the transactions contemplated by this Agreement or otherwise adversely impact such Stockholder's ability to perform its obligations hereunder.

2.3. **Ownership of Subject Shares; Total Shares.** Except as set forth on Schedule A, such Stockholder is the record and beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of such Stockholder's Subject Shares and has good and marketable title to such Subject Shares free and clear of any liens, claims, proxies, voting trusts or agreements, options, rights, understandings or arrangements or any other encumbrances or restrictions whatsoever on title, transfer or exercise of any rights of a stockholder in respect of such Subject Shares (collectively, "**Encumbrances**"), except (i) as provided hereunder or (ii) pursuant to any applicable restrictions on transfer under the Securities Act (collectively, "**Permitted Encumbrances**"). The Subject Shares listed on Schedule A opposite such Stockholder's name constitute all of the shares of Common Stock of the Company owned (both beneficially and of record) by such Stockholder as of the date hereof. Except pursuant to the Merger Agreement, no Person has any contractual or other right or obligation to purchase or otherwise acquire any of such Stockholder's Subject Shares.

2.4. **Voting and Disposition Power.** Except as set forth on Schedule A, such Stockholder has full and sole voting power with respect to such Stockholder's Subject Shares and full and sole power of disposition, full and sole power to issue instructions with respect to the matters set forth herein and full and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of such Stockholder's Subject Shares. None of such Stockholder's Subject Shares are subject to any stockholders' agreement, proxy, voting trust or other agreement or arrangement with respect to the voting of such Subject Shares, except as provided hereunder.

2.5. **Reliance.** Such Stockholder has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its attorney, that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement and the Merger Agreement in its entirety and have had it fully explained to them by its counsel, that it is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence. Such Stockholder understands and acknowledges that Parent and the Purchaser are entering into the Merger Agreement in reliance upon such Stockholder's execution, delivery and performance of this Agreement.

2.6. **Absence of Litigation.** With respect to such Stockholder, as of the date hereof, there is no Action pending against, or, to the actual knowledge of such Stockholder, threatened in writing against such Stockholder or any of such Stockholder's properties or assets (including the Subject Shares) before or by any Governmental Authority that could reasonably be expected to prevent or materially delay or impair the consummation by such Stockholder of the transactions contemplated by this Agreement or otherwise materially impair such Stockholder's ability to perform its obligations hereunder.

2.7. **Brokers.** No broker, finder, financial advisor, investment banker or other Person is entitled to any brokerage, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of such Stockholder.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF PARENT AND THE PURCHASER

Each of Parent and the Purchaser jointly and severally represent and warrant to each Stockholder that:

3.1. **Organization; Authorization**. Parent and the Purchaser are each duly organized, validly existing and in good standing under the Laws of the State of Delaware. The consummation of the transactions contemplated hereby are within each of Parent's and the Purchaser's corporate powers and have been duly authorized by all necessary corporate actions on the part of Parent and the Purchaser. Parent and the Purchaser have full corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

3.2. **Binding Agreement**. This Agreement has been duly authorized, executed and delivered by each of Parent and the Purchaser and constitutes a legal, valid and binding obligation of Parent and the Purchaser enforceable against Parent and the Purchaser in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law).

3.3 **Non-Contravention**. The execution and delivery of this Agreement by Parent and the Purchaser does not, and the performance by each of them of its obligations hereunder and the consummation by each of them of the transactions contemplated hereby will not except for applicable requirements under federal securities Law, the securities Laws of any state or other jurisdiction, the rules of any applicable securities exchange, state takeover Laws, the pre-merger notification requirements of the HSR Act, and filings and recordation of appropriate merger documents as required by the DGCL or any other applicable Law or regulation, require any consent, approval, order, authorization or other action by, or filing with or notice to, any Person (including any Governmental Authority) under, constitute a default (with or without the giving of notice or the lapse of time or both) under, or give rise to any right of termination, cancellation or acceleration under, or result in the creation of any Encumbrances on any of on the properties or assets of Parent or the Purchaser pursuant to, any Contract, Order or other instrument binding on Parent or the Purchaser or any applicable Law, except, in each case, for matters that, individually or in the aggregate, would not reasonably be expected to prevent or materially delay or impair the consummation by Parent and the Purchaser of the transactions contemplated by this Agreement or otherwise adversely impact Parent's and the Purchaser's ability to perform its obligations hereunder.

ARTICLE IV
ADDITIONAL COVENANTS OF THE STOCKHOLDERS

Each Stockholder hereby covenants and agrees that until the termination of this Agreement:

4.1. Voting of Subject Shares; Proxy.

(a) At any meeting of the stockholders of the Company held while this Agreement is in effect, however called, and at every adjournment or postponement thereof, or in connection with any written consent of the stockholders of the Company or in any other circumstances upon which a vote, consent or other approval of all or some of the stockholders of the Company is sought, such Stockholder shall, or shall cause the holder of record of its Subject Shares on any applicable record date to, appear at such meeting or otherwise cause such Stockholder's Subject Shares to be counted as present thereat for purposes of establishing a quorum at any such meeting and vote (or cause to be voted) all of such Stockholder's Subject Shares to the extent that any of the Subject Shares are entitled to vote at such meeting or in such written consent (the "**Vote Shares**") (i) in favor of (A) approval and adoption of the Merger Agreement and the transactions contemplated thereunder or any other transaction pursuant to which Parent proposes to acquire the Company (whether by tender offer or merger) in which the stockholders of the Company would receive aggregate cash consideration per share of Company Common Stock equal to or greater than the cash consideration to be received by such stockholders in the Offer and the Merger and (B) approval of any proposal to adjourn or postpone the meeting to a later date, if there are not sufficient votes for the approval of the Merger Agreement or such other transaction on the date on which such meeting is held, (ii) against (A) any action or agreement which is intended or would reasonably be expected to impede, delay, postpone, interfere with, nullify or prevent, in each case in any material respect the Offer or the Merger, including, but not limited to, any other extraordinary corporate transaction, including, a merger, acquisition, sale, consolidation, reorganization, recapitalization, extraordinary dividend or liquidation involving the Company and any Person (other than Parent, the Purchaser or their Affiliates), or any other proposal of any Person (other than Parent, the Purchaser or their Affiliates) to acquire the Company or all or substantially all of the assets thereof, (B) any Competing Proposal and any action in furtherance of any Competing Proposal, (C) any amendment to the Company Charter or Company Bylaws, (D) any material change to the capitalization of the Company, (E) any change in a majority of the directors of the Company Board or (F) any action, proposal, transaction or agreement that would reasonably be expected to result in the occurrence of any condition set forth in Annex I to the Merger Agreement or result in a breach of any covenant, representation or warranty or any other obligation or agreement of such Stockholder under this Agreement and/or (iii) in favor of any other matter necessary for consummation of the transactions contemplated by the Merger Agreement, which is considered at any such meeting of the Company stockholders.

(b) Such Stockholder hereby revokes (and agrees to cause to be revoked) any proxies that such Stockholder has heretofore granted with respect to the Subject Shares. Solely with respect to the matters described in Section 4.1(a), while this Agreement is in effect, such Stockholder hereby irrevocably grants to, and appoints, Parent, the Chief Executive Officer of Parent and any designee thereof, as such Stockholder's proxy and attorney-in-fact, for and in the name, place and stead of such Stockholder, to (i) attend any meeting of the stockholders of the Company on behalf of such Stockholder with respect to the matters set forth in Section 4.1(a), (ii) cause such Stockholder's Subject Shares to be counted as present for purposes of establishing a quorum at any such meeting and (iii) vote all Vote Shares, or grant or withhold a consent or approval in respect of the Vote Shares, or issue instructions to the record holder of such Stockholder's Vote Shares to do any of the foregoing, in connection with any meeting of the stockholders of the Company or any action by written consent in lieu of a meeting of the stockholders of the Company with respect to the matters set forth in Section 4.1(a), in a manner consistent with the provisions of Section 4.1(a). Such Stockholder authorizes such proxy and attorney-in-fact to substitute any other Person to act hereunder, to revoke any substitution and to file this proxy and any substitution or revocation with the Secretary of the Company. Such

Stockholder hereby affirms that the irrevocable proxy set forth in this Section 4.1(b) is given in connection with the execution of the Merger Agreement and granted in consideration of and as an inducement to Parent and the Purchaser to enter into the Merger Agreement, and that such irrevocable proxy is given to secure the performance of the duties of such Stockholder under this Agreement, subject to the termination of this Agreement pursuant to Section 5.2. Such Stockholder hereby further affirms that the proxy set forth in this Section 4.1(b) is coupled with an interest, is intended to be irrevocable (and as such shall survive and shall not be affected by the death, incapacity, mental illness or insanity of such Stockholder, as applicable), subject, however, to its automatic termination upon the termination of this Agreement pursuant to Section 5.2, and shall not be terminated by operation of Law or upon the occurrence of any other event other than the termination of this Agreement pursuant to Section 5.2. Parent agrees not to exercise the proxy granted herein for any purpose other than the purposes described in this Agreement.

4.2. No Transfer; No Inconsistent Arrangements.

(a) Except as provided hereunder (including pursuant to Section 1.1 or Section 4.1) or under the Merger Agreement, from and after the date hereof and until this Agreement is terminated, such Stockholder shall not, directly or indirectly, (i) create or permit to exist any Encumbrance, other than Permitted Encumbrances, on any such Stockholder's Subject Shares, (ii) transfer, sell, assign, gift, hedge, mortgage, pledge or otherwise dispose of, or enter into any derivative arrangement with respect to (collectively, "**Transfer**"), any or all of such Stockholder's Equity Interests in the Company, including any Subject Shares, or any right or interest therein (or consent to any of the foregoing), (iii) enter into any Contract with respect to any Transfer of such Subject Shares or any interest therein, (iv) grant or permit the grant of any proxy, power-of-attorney or other authorization or consent in or with respect to any such Stockholder's Subject Shares, (v) deposit or permit the deposit of any of such Stockholder's Equity Interests in the Company, including any Subject Shares, into a voting trust or enter into a voting agreement or arrangement with respect to any of such Stockholder's Equity Interests in the Company, including the Subject Shares or (vi) take or permit any other action that would in any way restrict, limit or interfere with the performance of such Stockholder's obligations hereunder or otherwise make any representation or warranty of such Stockholder herein untrue or incorrect; provided, that the restrictions contained in this Section 4.2 shall not apply with respect to any transfer of the Subject Shares by a Stockholder pursuant to applicable Laws of descent and distribution; provided, further, that any such proposed transferee must agree in writing to take such Subject Shares subject to and to be bound by the terms and conditions of this Agreement applicable to such Subject Shares. Any action taken in violation of the foregoing sentence shall be null and void ab initio and such Stockholder agrees that any such prohibited action may and should be enjoined. If any involuntary Transfer of any of the Subject Shares shall occur (including, but not limited to, a sale by such Stockholder's trustee in any bankruptcy, or a sale to a purchaser at any creditor's or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Subject Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement. Such Stockholder agrees that it shall not, and shall cause each of its Affiliates not to, become a member of a "group" (as defined under Section 13(d) of the Exchange Act) with respect to any Equity Interests in the Company for the purpose of opposing or competing with or taking any actions inconsistent with the transactions contemplated by the Merger Agreement. Notwithstanding the foregoing, such Stockholder may make Transfers of Subject Shares (a) to any wholly-owned Subsidiary of such Stockholder, in which case the Subject Shares shall continue to be bound by this Agreement; provided, that, any such transferee agrees in writing to be

bound by the terms and conditions of this Agreement prior to the consummation of any such Transfer, or (b) as Parent may agree in writing in its sole discretion. If so requested by Parent, such Stockholder agrees that the Subject Shares shall bear a legend stating that such Subject Shares are subject to this Agreement (provided , such legend shall be removed upon the valid termination of this Agreement).

(b) At all times until the Expiration Date, in furtherance of this Agreement, such Stockholder shall, and hereby does authorize and instruct the Company or its counsel to notify the Company's transfer agent that, from the date hereof until the Expiration Date, there is a stop transfer order with respect to all of the Subject Shares of such Stockholder (and that this Agreement places limits on the voting and transfer of such Shares until the Expiration Date); provided, however, that if this Agreement shall have been terminated in accordance with its terms, the foregoing authorization and instruction shall be null and void and shall have no further force or effect.

(c) For the avoidance of doubt, no forfeiture of any Shares, or net settlement or purchase by the Company to satisfy tax withholding obligations, shall be deemed to be a breach of any provision hereof.

4.3. **No Solicitation**. Such Stockholder shall not and shall cause its Representatives not to directly or indirectly, if and to the extent prohibited by Section 5.3 of the Merger Agreement (assuming for this purpose that such Stockholder is the "Company", as such term is defined in the Merger Agreement): (i) solicit, initiate, knowingly facilitate or encourage (including by way of furnishing nonpublic information) any Competing Proposal or Competing Inquiry, (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other Person any information or afford to any other Person access to the business, properties, assets, books, records or any personnel of the Company or its Subsidiaries, in each case in connection with or for the purpose of encouraging or facilitating, a Competing Proposal or Competing Inquiry, (iii) approve, endorse, recommend, execute or enter into, or publicly propose to approve, endorse, recommend, execute or enter into any Alternative Acquisition Agreement, (iv) take any action to make the provisions of any Takeover Statute (including Section 203 of the DGCL) or any applicable anti-takeover provision in the Company's organizational documents inapplicable to any transactions contemplated by a Competing Proposal, (v) except at the written request of Parent, terminate, amend, release, modify, waive or knowingly fail to enforce any provision of the Company Rights Agreement or exempt any Person not affiliated with Parent from the definition of Acquiring Person thereunder, (vi) terminate, amend, release, modify or knowingly fail to enforce any provision of, or grant any permission, waiver or request under, any standstill, confidentiality or similar contract entered into by the Company in respect of or in contemplation of a Competing Proposal (other than to the extent the Company Board determines in good faith, after consultation with the Company's independent financial advisors and outside legal counsel, that failure to take any such actions would be reasonably likely to result in a breach of, or otherwise be inconsistent with, its fiduciary duties under applicable Law) or (vii) propose, resolve or agree to do any of the foregoing. Such Stockholder shall not and shall cause its Representatives not to directly or indirectly knowingly engage in any conduct prohibited by Section 5.3 of the Merger Agreement (assuming for this purpose that such Stockholder is the "Company", as such term is defined in the Merger Agreement). Such Stockholder represents and warrants that such Stockholder has reviewed the terms of Section 5.3 of the Merger Agreement with outside counsel to the Company.

4.4. **No Exercise of Appraisal Rights**. Such Stockholder hereby irrevocably and unconditionally (a) waives and agrees not to exercise, assert or perfect, or attempt to exercise, assert or perfect any appraisal rights or dissenters' rights in respect of such Stockholder's Subject Shares that may arise with respect to the Merger and/or the transactions contemplated by the Merger Agreement (including, without limitation, under Section 262 of the DGCL) and (b) agrees not to commence or participate in, and to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, (i) against the Company, any of its Representatives or any of its successors, including claims relating to the negotiation, execution, or delivery of this Agreement or the Merger Agreement or the consummation of the Merger, including any claim alleging a breach of any fiduciary duty of the Company Board in connection with the Merger Agreement, the Merger or the other transactions contemplated thereby, or (ii) challenging the validity of or seeking to enjoin the operation of any provision of this Agreement.

4.5. **Documentation and Information**. Such Stockholder shall not make any public announcement regarding this Agreement and the transactions contemplated hereby without the prior written consent of Parent, except as may be required by applicable Law (provided, that reasonable notice of any such disclosure will be provided to Parent). Such Stockholder consents to and hereby authorizes Parent, the Purchaser and/or their Affiliates to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Parent, the Purchaser and/or their Affiliates reasonably determines to be necessary in connection with the Offer, the Merger and any transactions contemplated by the Merger Agreement, such Stockholder's identity and ownership of the Subject Shares, the existence of this Agreement and the nature of such Stockholder's commitments and obligations under this Agreement, and such Stockholder acknowledges that Parent, the Purchaser and/or their respective Affiliates may, in Parent's sole discretion, file this Agreement or a form hereof with the SEC or any other Governmental Authority. Such Stockholder agrees to promptly give each of Parent, the Purchaser and/or their respective Affiliates any information it may reasonably require for the preparation of any such disclosure documents, and such Stockholder agrees to promptly notify such parties of any required corrections with respect to any written information supplied by such Stockholder specifically for use in any such disclosure document, if and to the extent that any such information shall have become false or misleading in any material respect.

4.6. **Adjustments**. In the event (a) of any stock split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares or the like of the capital stock of the Company affecting the Subject Shares or (b) that such Stockholder shall become the record or beneficial owner of any additional shares of Company Common Stock, then the terms of this Agreement shall apply to the shares of Company Common Stock held by such Stockholder immediately following the effectiveness of the events described in clause (a) or such Stockholder becoming the record or beneficial owner thereof as described in clause (b), as though, in either case, they were Subject Shares hereunder. In the event that such Stockholder shall become the beneficial owner of any other Equity Interests entitling the holder thereof to vote or give consent with respect to the matters set forth in Section 4.1 hereof, then the terms of Section 4.1 hereof shall apply to such other Equity Interests as though they were Subject Shares hereunder.

**ARTICLE V
MISCELLANEOUS**

5.1. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be either hand delivered in person, sent by electronic mail, sent by certified or registered first-class mail, postage prepaid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by electronic mail, three (3) Business Days after mailing if sent by mail, and one (1) Business Day after dispatch if sent by express courier.

If to Parent or the Purchaser, addressed to it at:

Integrated Device Technology, Inc.
6024 Silver Creek Valley Road,
San Jose, CA 95138
Phone: (408) 284-8402 and (408) 284-2742
E-mail: greg.waters@idt.com and matthew.brandalise@idt.com
Attention: Gregory L. Waters and Matthew D. Brandalise

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

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Phone: (650) 328-4600
E-mail: mark.roeder@lw.com
josh.dubofsky@lw.com
Attention: Mark Roeder and Josh Dubofsky

If to a Stockholder, addressed to such Stockholder at such Stockholder's address or email address set forth on a signature page hereto, or to such other address or email address as such party may hereafter specify in writing for the purpose by notice to each other party hereto.

5.2. **Termination.** This Agreement shall terminate automatically, without any notice or other action by any Person, upon the first to occur of (i) the termination of the Merger Agreement in accordance with its terms and (ii) the Effective Time. Upon termination of this Agreement with respect to any party, such party shall not have any further obligations or liabilities under this Agreement; provided, however, that (A) nothing set forth in this Section 5.2 shall relieve any party from liability for any breach of this Agreement prior to termination hereof and (B) the provisions of this Article V shall survive any termination of this Agreement.

5.3. **Amendments and Waivers.** Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed, in the case of an amendment, by each of (x) Parent and the Purchaser, on the one hand, and (y) the Stockholder with respect to which such amendment is to be effective, on the other, or, in the case of a waiver, by each party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

5.4. **Expenses.** All fees and expenses incurred by the parties hereto in connection herewith and the transactions contemplated hereby shall borne solely and entirely by the party which has incurred the same, whether or not the Offer or the Merger is consummated.

5.5. **Assignment; No Third-Party Beneficiaries.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties (whether by operation of law or otherwise) without (x) in the case of an assignment by Parent and/or the Purchaser, the prior written consent of each Stockholder and (y) in the case of an assignment by a Stockholder, the prior written consent of Parent and the Purchaser, and any assignment without such prior written consent shall be null and void; provided, that, each of Parent and the Purchaser may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to one or more direct or indirect wholly-owned Subsidiaries of Parent without the consent of any Stockholder, but no such assignment shall relieve Parent and the Purchaser of any of their respective obligations under this Agreement. This Agreement shall be binding upon and inure solely to the benefit of and be enforceable by the parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement (including the right to rely upon the representations and warranties set forth herein).

5.6. **Governing Law; Venue.**

(a) This Agreement and all claims and causes of action arising out of, based upon, or related to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed, interpreted and enforced in accordance with, the Laws of the State of Delaware (without regard to Laws that may be applicable under conflicts of Laws principles, whether of the State of Delaware or any other jurisdiction).

(b) Any action, claim, suit or proceeding between the parties hereto arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be brought solely in the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware and any direct appellate court therefrom). Each party hereby irrevocably submits to the exclusive jurisdiction of such courts in respect of any such action, claim, suit or proceeding and agrees that it will not bring any such action, claim, suit or proceeding in any other court. Furthermore, each party hereby irrevocably waives and agrees not to assert as a defense, counterclaim or otherwise, in any such action, claim, suit or proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with Section 5.1, (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) to the fullest extent permitted by applicable Law, any claim that (A) the action, claim, suit or proceeding in such court is brought in an inconvenient forum, (B) the venue of the action, claim, suit or proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party agrees that notice or the service of process in any action, claim, suit or proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be properly served or delivered if delivered in the manner contemplated by Section 5.1 or in such other

manner as may be permitted by applicable Law. Each party agrees that a final judgment in any action or proceeding in such courts as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(c) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF, BASED UPON OR RELATING TO THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF. EACH OF THE PARTIES (1) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.6(c).

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

5.8. **Entire Agreement**. This Agreement, together with Schedule A, constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof.

5.9. **Severability**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

5.10. **Specific Performance**. The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine. It is accordingly agreed that Parent and Purchaser, on the one hand, and each of the Stockholders, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement against the other exclusively in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and any such injunction shall be in addition to any other remedy to which any party is entitled, at law or in equity. In connection with any action for specific performance, each party hereby irrevocably waives any requirement for proof of actual damages or the securing or posting of any bond in connection with the remedies referred to in this Section 5.10.

5.11. **Headings**. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.12. **Mutual Drafting; Interpretation**. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision. For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, the feminine gender shall include the masculine and neuter genders and the neuter gender shall include masculine and feminine genders. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” Except as otherwise indicated, all references in this Agreement to “Sections,” “Articles” and “Schedules” are intended to refer to Sections, Articles and Schedules to this Agreement. Schedule A attached to this Agreement constitutes a part of this Agreement and is incorporated herein for all purposes. The words “hereof,” “hereto,” “hereby,” “herein,” “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular section or article in which such words appear. The words “shall” and “will” may be used interchangeably herein and shall have the same meaning. All references in this Agreement to “\$” are references to United States dollars. Unless otherwise specifically provided for herein, the term “or” shall not be deemed to be exclusive. Except as otherwise specified, (i) references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder, (ii) references to any Person include the successors and permitted assigns of that Person, and (iii) references from or through any date mean from and including or through and including, respectively.

5.13. **Further Assurances**. Parent, the Purchaser and each Stockholder will execute and deliver, or cause to be executed and delivered, all further documents and instruments and use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations, to perform their respective obligations under this Agreement.

5.14. **Capacity as Stockholder**. Each Stockholder signs this Agreement solely in such Stockholder’s capacity as a Stockholder of the Company, and not in such Stockholder’s capacity as a director, officer or employee of the Company or any Company Subsidiary. Notwithstanding anything herein to the contrary, nothing herein shall in any way restrict a director or officer of the Company in the taking of any actions (or failure to act) in his or her capacity as a director or officer of the Company, or in the exercise, in such Stockholder’s sole discretion, of his or her fiduciary duties as a director or officer of the Company, or prevent or be construed to create any obligation on the part of any director or officer of the Company from taking any action in his or her capacity as such director, officer, trustee or fiduciary.

5.15. **No Agreement Until Executed.** This Agreement shall not be effective unless and until (i) the Merger Agreement is executed by all parties thereto and (ii) as to a Stockholder, this Agreement is executed by Parent, the Purchaser and such Stockholder.

5.16. **Stockholder Obligation Several and Not Joint; Independent Nature of Obligations.** The obligations of each Stockholder hereunder shall be several and not joint, and no Stockholder shall be liable for any breach of the terms of this Agreement by any other Stockholder. Each of Parent and Purchaser, on the one hand, and each Stockholder, on the other, shall be entitled to enforce its rights under this Agreement against the other, and it shall not be necessary for any other Stockholder to be joined as an additional party in any proceeding for such purpose. No Stockholder may enforce this Agreement against any other Stockholder party hereto. A default by any Stockholder of its obligations pursuant to this Agreement shall not relieve any other Stockholder of any of its obligations to Parent and/or the Purchaser under this Agreement.

5.17. **No Ownership Interest.** Except as otherwise provided herein, nothing contained in this Agreement shall be deemed to vest in Parent or the Purchaser any direct or indirect ownership or incidence of ownership of or with respect to the Subject Shares. Except as otherwise provided herein or in the Merger Agreement, all rights, ownership and economic benefits of and relating to the Subject Shares shall remain vested in and belong to each applicable Stockholder, and neither Parent nor the Purchaser shall have any authority to manage, direct, restrict, regulate, govern, or administer any of the policies or operations of the Company or exercise any power or authority to direct such Stockholder in the voting of any of the Subject Shares.

(Signature page follows)

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

INTEGRATED DEVICE TECHNOLOGY, INC.

By: /s/ Gregory L. Waters
Name: Gregory L. Waters
Title: President and Chief Executive Officer

GLIDER MERGER SUB, INC.

By: /s/ Gregory L. Waters
Name: Gregory L. Waters
Title: President and Chief Executive Officer

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ Dr. Avi S. Katz

Name: Dr. Avi S. Katz

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ Kimberly D.C. Trapp

Name: Kimberly D.C. Trapp

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ John J. Mikulsky

Name: John J. Mikulsky

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ Neil J. Miotto

Name: Neil J. Miotto

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ Frank Schneider

Name: Frank Schneider

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth on the cover page of this Agreement.

STOCKHOLDER

By: /s/ Joseph J. Lazzara

Name: Joseph J. Lazzara

Address:

E-mail:

[Signature Page to Tender and Support Agreement]

Schedule A

<u>Name of Stockholder</u>	<u>Number of Subject Shares as of the Date Hereof</u>
Dr. Avi Katz	319,996
Neil J. Miotto	187,839
Kimberly D.C. Trapp	101,001
Frank Schneider	195,619
John J. Mikulsky	175,456
Joseph J. Lazzara	172,322

[Schedule A to Tender and Support Agreement]



FOR IMMEDIATE RELEASE

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Financial Contact for GigPeak, Inc.:

Jim Fanucchi
 Darrow Associates
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 E-mail: jim@darrowir.com

IDT TO ACQUIRE GIGPEAK FOR \$3.08 PER SHARE

- Projected to add approximately \$16M of quarterly revenue at 70% non-GAAP gross margin
- Immediately accretive to earnings in first full quarter following close
- Creates New Industry Franchise in High Performance Optical Interconnect
- Extends IDT Leadership in Communications & Cloud Data Center Products
- Conference call to be held on Tuesday, February 14, 2017 at 5am PT / 8am ET

SAN JOSE, Calif., February 13, 2017 — Integrated Device Technology, Inc. (IDT®) (NASDAQ: IDTI) and GigPeak, Inc. (NYSE MKT: GIG) today announced that they have signed a definitive agreement for IDT to acquire GigPeak, Inc., for total cash consideration of \$3.08 per share, or approximately \$250 million in cash. This per share consideration would represent a premium of approximately 22% to GigPeak's closing share price on February 10, 2017.

The acquisition of GigPeak provides IDT with a highly regarded optical interconnect product and technology business that is complementary to IDT's leadership position in real-time interconnect products.

GigPeak's optical interface products are already broadly used by leading companies in the Communications, Cloud Data Center, and Military/Aviation markets. IDT will now provide seamless ultra-high speed data connectivity products using electrical, RF, and optical technologies.

“GigPeak is a recognized leader in high performance Optical, RF, and Video Transport technology, and is a perfect fit for IDT. The products, technology, and culture of GigPeak all complement and represent an acceleration of our current strategy,” said Gregory Waters, IDT President & CEO. “We gain an exceptional group of talented people and valuable intellectual property with the GigPeak team, and welcome them into one of the most innovative companies in the semiconductor industry.”

“IDT’s acquisition of GigPeak will be a meaningful milestone for all of our stakeholders — stockholders, employees, customers and partners,” said Dr. Avi Katz, Founder, Chairman and CEO of GigPeak, Inc. “We find an exceptional culture, customers, business and technology compatibility with IDT, and we are delighted to join this fine team. Upon the consummation of this acquisition, our leading product suite, which currently addresses the need for greater bandwidth across the network, will now have the advantage of leveraging the scale of resources and broad distribution channels of IDT.”

Offer Recommended by GigPeak Board of Directors

Under the terms of the merger agreement, IDT will commence a tender offer to acquire all of the issued and outstanding common stock of GigPeak for \$3.08 per share. The implied fully-diluted equity value of the offer amounts to approximately \$250 million.

The Boards of Directors of both GigPeak and IDT have unanimously approved the terms of the merger agreement, and the Board of Directors of GigPeak has resolved to recommend that stockholders accept the offer, once it is commenced.

The acquisition is structured as an all-cash tender offer for all outstanding issued common stock of GigPeak followed by a merger in which remaining shares of GigPeak would be converted into the same dollar per share consideration as in the tender offer. The transaction is not subject to a financing condition, and completion is anticipated during the second calendar quarter of 2017.

The transaction is subject to customary conditions, including the tender of the majority of the outstanding GigPeak shares and the expiration or earlier termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The transaction is expected to close during the second calendar quarter of 2017. GigPeak is expected to be delisted from the NYSE MKT and integrated into IDT thereafter.

Cowen and Company, LLC and Needham & Company, LLC acted as financial advisers and Crowell & Moring LLP acted as legal adviser to GigPeak. J.P. Morgan Securities LLC acted as exclusive financial adviser to IDT and provided financing commitment for the transaction, and Latham & Watkins LLP acted as legal adviser to IDT.

Conference Call

IDT management will host a conference call on Tuesday, February 14, 2017 to discuss the transaction at 5:00 a.m. PT / 8:00 a.m. ET. This call will replace GigPeak's previously scheduled earnings call which has been canceled. The call can be accessed by dialing 877-852-6583 (toll free) using passcode 1358127. The call will also be webcast live on the IDT website at www.idt.com and on the GigPeak website at www.gigpeak.com. A replay of the webcast will be made available on the IDT and GigPeak websites beginning at 9:00 a.m. ET tomorrow.

About IDT

Integrated Device Technology, Inc. develops system-level solutions that optimize its customers' applications. IDT's market-leading products in RF, real-time interconnect, wireless power, and SmartSensors are among the company's broad array of complete mixed-signal solutions for the communications, computing, consumer, automotive and industrial segments. Headquartered in San Jose, Calif., IDT has design, manufacturing, sales facilities and distribution partners throughout the world. IDT stock is traded on the NASDAQ Global Select Stock Market® under the symbol "IDTI." Additional information about IDT can be found at www.IDT.com. Follow IDT on Facebook, LinkedIn, Twitter, YouTube and Google+

About GigPeak

GigPeak, Inc. (NYSE MKT: GIG) is a leading innovator of semiconductor ICs and software solutions for high-speed connectivity and high-quality video compression over the network and the cloud. The focus of the company is to develop and deliver products that enable lower power consumption and faster data connectivity, more efficient use of network infrastructure, broader connectivity to the cloud, and reduce the total cost of ownership of existing network pipes from the core to the end user. GigPeak addresses both the speed of data transmission and the amount of bandwidth the data consumes within the network, and provides solutions that increase the efficiency of the Internet of Things, leveraging its strength in high-speed connectivity and high-quality video compression. The extended product portfolio provides more flexibility to support changing market requirements from ICs and MMICs through full software programmability and cost-efficient custom ASICs.

Additional Information and Where to Find It

This press release does not constitute an offer to sell or the solicitation of an offer to buy any securities. The tender offer for the outstanding shares of GigPeak's common stock described in this press release has not commenced. At the time the tender offer is commenced, IDT will file or cause to be filed a Tender Offer Statement on Schedule TO with the SEC and GigPeak will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC related to the tender offer. The Tender Offer Statement (including an Offer to Purchase, a related Letter of Transmittal and other tender offer documents) and the Solicitation/Recommendation Statement will contain important information that should be read carefully before any decision is made with respect to the tender offer. Those materials will be made available to GigPeak's stockholders at no expense to them by the information agent to the tender offer, which will be announced. In addition, all of those materials (and any other documents filed with the SEC) will be available at no charge on the SEC's website at www.sec.gov.

Forward-Looking Statements

This press release contains forward-looking statements, including, but not limited to, statements related to the anticipated consummation of the acquisition of GigPeak and the timing, benefits and financing thereof, IDT's strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, anticipated product portfolio, development programs, patent terms and other statements that are not historical facts. These forward-looking statements are based on IDT's current expectations and inherently involve significant risks and uncertainties. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to IDT's ability to complete the transaction on the proposed terms and schedule; whether IDT or GigPeak will be able to satisfy their respective closing conditions related to the transaction; whether sufficient stockholders of GigPeak tender their shares of GigPeak common stock in the transaction; whether IDT will obtain financing for the transaction on the expected timeline and terms; the outcome of legal proceedings that may be instituted against GigPeak and/or others relating to the transaction; the possibility that competing offers will be made; risks associated with acquisitions, such as the risk that the businesses will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of the transaction will not occur; risks related to future opportunities and plans for the acquired company and its products, including uncertainty of the expected financial performance of the acquired company and its products; disruption from the proposed transaction, making it more difficult to conduct business as usual or maintain relationships with customers, employees or suppliers; the calculations of, and factors that may impact the calculations of, the acquisition price in connection with the proposed merger and the allocation of such acquisition price to the net assets acquired in accordance with applicable accounting rules and methodologies; and the possibility that if the acquired company does not achieve the perceived benefits of the proposed transaction as rapidly or to the extent anticipated by financial analysts or investors, the market price of IDT's shares could decline, as well as other risks related to IDT's and GigPeak's businesses detailed from time-to-time under the caption "Risk Factors" and elsewhere in IDT's and the GigPeak's respective SEC filings and reports, including the Annual Report of GigPeak on Form 10-K for the year ended December 31, 2015 and the Annual Report of IDT on Form 10-K for the year ended April 3, 2016. IDT undertakes no duty or obligation to update any forward-looking statements contained in this press release as a result of new information, future events or changes in its expectations.