

**AGREEMENT AND PLAN OF MERGER
BY AND AMONG**

[BUYER],

[BUYER'S SUBSIDIARY],

[TARGET / SELLER]

AND

[STOCKHOLDER REPRESENTATIVE]

[Date]

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SAMPLE

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this “Agreement”) is made as of [Date] by and among [Buyer], an [State] corporation (the “Purchaser”), [Buyer’s Subsidiary], a Delaware corporation and a wholly-owned subsidiary of the Purchaser (the “Merger Sub”), [Target / Seller], a Delaware corporation (the “Company”), and [Stockholder Representative], a [State] limited liability company, solely in its capacity as the representative of and agent for and on behalf of the Effective Time Holders (the “Holder Representative” and, together with the Purchaser, Merger Sub and the Company, the “Parties”). Except as otherwise set forth herein, capitalized terms used herein have the meanings set forth in Article 1.

PRELIMINARY STATEMENTS

A. The respective boards of directors of the Purchaser, the Merger Sub and the Company have deemed it advisable and in the best interests of their respective corporations and stockholders that the Purchaser, Merger Sub and the Company consummate the business combination and other transactions contemplated by this Agreement.

B. The respective boards of directors of the Merger Sub and the Company have authorized and approved the merger of the Merger Sub with and into the Company in accordance with the provisions of this Agreement.

C. Concurrently with the execution of this Agreement and for the purposes set forth therein, certain Stockholders have entered into voting agreements, effective as of the date hereof (the “Voting Agreements”), with the Company providing that, among other matters, such Stockholders will vote all, or under specified circumstances a portion, of their shares of Company Capital Stock in favor of this Agreement, the Merger and the other transactions contemplated by this Agreement.

D. For the purposes set forth herein, the individuals set forth on Schedule I have entered into employment agreements on or prior to the date hereof with the Company or the Purchaser (the “Employment Agreements”), which agreements will be effective from and after the Closing.

AGREEMENT

Intending to be legally bound and in consideration of the mutual provisions set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For the purposes of this Agreement:

“\$” means United States dollars, the lawful currency of the United States of America.

“Accounts Receivable” means (a) all trade accounts receivable and other rights to payment from customers of any Acquired Company and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped, products sold or services rendered to customers of any Acquired Company, (b) all other accounts or notes receivable of any Acquired Company and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

“Acquired Companies” means, collectively, the Company and its Subsidiaries.

“Acquisition Proposal” means any unsolicited bona fide written offer, proposal, inquiry or indication of interest (other than an offer, proposal, inquiry or indication of interest by Purchaser or any of its Affiliates) contemplating or otherwise relating to any Acquisition Transaction.

“Acquisition Transaction” means (other than the transaction contemplated by this Agreement):

(a) any merger, consolidation, other business combination or similar transaction involving any of the Acquired Companies, pursuant to which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) of Persons would acquire 20% or more of the voting power of the Company;

(b) any sale, lease, license or other disposition directly or indirectly by merger, consolidation, business combination, share exchange, joint venture or otherwise, of assets of the Company (including Equity Interests in any of its Subsidiaries) or any Subsidiary of the Company representing 20% or more of the consolidated assets, revenues or net income of the Acquired Companies, taken as a whole;

(c) any issuance, sale or other disposition (including by way of merger, consolidation, business combination, share exchange, joint venture or similar transaction) by the Company of Equity Interests representing 20% or more of the voting power of the Company;

(d) prior to the termination of this Agreement, any sale or other disposition or series of sales or dispositions (including by way of share exchange or similar transaction) by any Persons who or which have signed Voting Agreements (other than the Company) of Equity Interests representing 30% or more of the voting power of the Company in the aggregate (other than a transfer of Equity Interests by any such Person: (i) if such Person is an individual (x) to any member of such Person’s immediate family, or to a trust for the benefit of such Person or any member of such Person’s immediate family, or (y) upon the death of such Person; (ii) if such Person is a limited partnership or limited liability company, to a partner or member of such Person; or (iii) if such Person is a corporation, to an affiliated entity that controls, is controlled by or is under common control with such Person); or

(e) any combination of the foregoing.

“Affiliate” means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise. For purposes of clarification, neither [Company 2] nor any of its direct or indirect subsidiaries shall be deemed for purposes hereof or for purposes related hereto to be an Affiliate of any of the Acquired Companies.

“Aggregate Liquidation Preference” means the sum of (a) the aggregate number of outstanding shares of Series A Preferred Stock multiplied by \$[Amount], and (b) the aggregate number of outstanding shares of Series [N] Preferred Stock multiplied by \$[Amount],.

“Aggregate Percentage Interest” for each Effective Time Holder means such amount (expressed as a percentage) attributable to the Effective Time Holder, which amount shall be determined as follows: with respect to any Effective Time Holder on any determination date, an amount equal to the quotient obtained by dividing (i) the aggregate value of the Merger Consideration received by such holder, or to

which such holder is entitled, on or prior to such date by (ii) the aggregate value of Merger Consideration received by all Effective Time Holders, or to which all or any Effective Time Holders are entitled, on or prior to such date, in each case with the value of any Purchaser Shares constituting part of such Merger Consideration being based on the Allocation Price (by way of example, the Aggregate Percentage Interest of each Effective Time Holder, based on the stated assumptions described therein, is set forth in the Merger Consideration Spreadsheet attached hereto as Schedule IV).

“Allocation Price” means, for purposes of determining the distribution of Merger Consideration consisting of Purchaser Shares among the Effective Time Holders, the per-share value of Purchaser Shares determined based on the average of the closing price per share of the Purchaser Shares on the NASDAQ Global Select Market (or such other exchange on which the Purchaser Shares are then trading) for the 30-day period ending three days immediately preceding the Closing.

“Ancillary Agreements” means, collectively, the Employment Agreements, the Escrow Agreement, the Exchange Agent Agreement, the Releases and the Voting Agreements.

“Assumed Taxes” means (a) all Taxes of the Acquired Companies for any period beginning after the Closing Date (including the Post-Closing Straddle Period as determined under Section 9.2), and (b) all Taxes of the Acquired Companies up to the amount reflected as a liability in the calculation of the Closing Net Working Capital as finally determined pursuant to this Agreement.

“Business Day” means any day other than Saturday, Sunday or any day on which banking institutions in New York, New York are generally closed for business.

“Calculation Statement” means the Earn-Out Statements delivered immediately after each Qualifying Royalty Revenue Period and the Closing Date Net Working Capital Statement.

“Capital Gains Taxes” means capital gains Taxes or similar Taxes, including [Country] Taxes, imposed under (or required to be withheld pursuant to) the Laws of any country other than the United States on any deemed or actual transfer or change of control of any asset located in, or having a situs in or nexus to (or deemed to be located in, having a situs in or nexus to) any such country in connection with the consummation of the transactions contemplated by this Agreement.

“Cash Liquidation Preference” means the Aggregate Liquidation Preference multiplied by the Closing Cash Allocation.

“Cash Merger Consideration” means the difference of (a) the Closing Cash Consideration minus (b) the sum of (i) the Retention Plan Closing Cash Payment, (ii) the Holder Representative Fund and (iii) the Closing Cash Option Spread.

“Claim” means any and all claims, demands and causes of action of every nature whatsoever, liquidated or unliquidated, known or unknown, matured or unmatured, fixed or contingent.

“Closing Accounts Receivable” means the Accounts Receivable of the Acquired Companies as of the Effective Time.

“Closing Cash Allocation” means (a) the Closing Cash Consideration divided by (b) the Closing Consideration Value.

“Closing Cash Consideration” means \$[Amount] in cash, as adjusted pursuant to Section 3.6(b).

“Closing Cash Option Spread” means the aggregate amount payable to all holders of Vested Options that are outstanding immediately prior to the Effective Time pursuant to Section 3.2(a)(i).

“Closing Consideration Value” means the Closing Cash Consideration plus the Closing Stock Value.

“Closing Inventory” means the Inventory of the Acquired Companies as of the Effective Time.

“Closing Net Working Capital” means (a) the consolidated book value of the cash, cash equivalents, Closing Accounts Receivable (net of allowances for bad debt), Closing Inventory (net of reserves) and short-term prepaid assets of the Acquired Companies at the Effective Time plus (b) the Net Working Capital Adjustment Amount (as defined in Schedule II) less (c) the consolidated book value of the accounts payable, other payables and accrued liabilities and 45% of the consolidated book value of the deferred revenue of the Acquired Companies at the Effective Time, in each case as determined in accordance with Section 3.6(e) and the methodology and illustration set forth on Schedule II.

“Closing Stock Allocation” means the quotient obtained by dividing (a) the Closing Stock Value by (b) the Closing Consideration Value.

“Closing Stock Consideration” means [No. of Shares] Purchaser Shares (as adjusted after the date hereof for any stock splits, stock dividends, recapitalizations and the like in respect of the Purchaser Shares occurring prior to the Closing).

“Closing Stock Value” means the product obtained by multiplying (a) the Closing Stock Consideration by (b) the Allocation Price.

“Code” means the Internal Revenue Code of 1986.

“Common Stock” means the shares of common stock, par value \$[Amount] per share, of the Company.

“Common Stock Equivalents” means the total number of shares of Preferred Stock (on an as converted to Common Stock basis), Common Stock, and aggregate shares of Common Stock underlying Vested Options, in each case, outstanding immediately prior to the Effective Time.

“Company Board” means the board of directors of the Company.

“Company Capital Stock” means all of the issued and outstanding shares of Common Stock and Preferred Stock.

“Company Employee” means any current, former, or retired employee, officer, or director of any Acquired Company.

“Company Employment Agreement” means each management, employment, severance, consulting, relocation, repatriation, expatriation or similar agreement between any Acquired Company and any employee, consultant or independent contractor. Notwithstanding the foregoing, “Employment Agreement” shall not include any obligation incurred in the Ordinary Course to reimburse employee expenses or any agreement that by its terms may be terminated upon sixty (60) days notice or less and without cost to the Acquired Company or the Purchaser in excess of \$[dollar amount].

“Company Material Adverse Effect” means a Material Adverse Effect on the Acquired Companies, taken as a whole.

“Company Plan” means any employee benefit plan, program or arrangement, including any “employee welfare benefit plan” (as defined in Section 3(1) of ERISA), any Pension Plan, any Title IV Plan, any Multiemployer Plan and any other written or oral plan, policy, Contract or arrangement of any kind involving direct or indirect compensation or benefits, including insurance coverage, severance or other termination pay or benefits, thirteenth month, termination indemnity, redundancy pay, change in control, retention, performance, holiday pay, sick pay, vacation pay, fringe benefits, education assistance, housing assistance, moving expense reimbursement, hospitalization benefits, dental benefits, vision benefits, life insurance, death benefits, disability benefits, pension, superannuation, retirement plans, profit sharing, deferred compensation, bonuses, stock options, stock bonus, stock purchase, restricted stock or stock units, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation, in each case (i) that covers any Company Employee or any current or former consultant of any Acquired Company and that is maintained, sponsored, contributed to, or required to be contributed to by any Acquired Company or ERISA Affiliate, or (ii) pursuant to which any Acquired Company or ERISA Affiliate has any Liability. Notwithstanding the foregoing, “Company Plan” shall not include any Company Employment Agreement.

“Consent” means any approval, consent, ratification, waiver or other authorization.

“Continuing Employees” means any individuals employed by any of the Purchaser and its Affiliates (including the Acquired Companies) immediately after the Effective Time.

“Contract” means any contract, agreement, lease, license, binding commitment, warranty, guaranty, mortgage, note, bond, option, warrant, or other instrument, whether written or oral.

“[Country] Taxes” means any Taxes plus interest and penalties, if any, on such Taxes arising under the Laws of [Country] as a result of a Proceeding initiated by a Governmental Authority regarding the deemed or actual transfer or change of control of [Target’s Subsidiary] solely as a result of the Merger.

“CSE Conversion Ratio” for shares within a particular series of Preferred Stock, means the quotient obtained by dividing (a) the Per Preferred Share Original Issue Price applicable to such series by (b) the Per Preferred Share Conversion Price applicable to such series.

“Earn-Out Commencement Date” means the first calendar day of the first full calendar month commencing on or after the Closing Date.

“Earn-Out Consideration” means such cash in U.S. dollars due to be paid, or such Purchaser Shares due to be issued, by the Purchaser to the Exchange Agent or the Surviving Corporation, as the case may be, for the benefit of and further distribution to the Effective Time Holders pursuant to Section 3.7.

“Effective Time Holders” mean the Stockholders, the Retention Plan Participants and the holders of Vested Options outstanding immediately prior to the Effective Time.

“Encumbrance” means any charge, claim, mortgage, servitude, easement, right of way, community or other marital property interest, covenant, equitable interest, license, lease or other possessory interest, lien, option, pledge, hypothecation, security interest, preference, priority, right of first refusal, condition, limitation or restriction of any kind or nature whatsoever (whether absolute or contingent).

“Environmental Law” means any Law relating to the environment, natural resources, pollutants, contaminants, wastes, chemicals or public health and safety, including any Law pertaining to (a) treatment, storage, disposal, generation and transportation of Hazardous Material, (b) air, water and noise pollution, (c) groundwater or soil contamination, (d) the release or threatened release into the environment of Hazardous Material, or (e) manufacture, processing, use, distribution, treatment, storage, disposal, transportation or handling of Hazardous Material.

“Equity Interest” means any share, capital stock, partnership, limited liability company, membership, member, ownership or similar interest in any Person, and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable thereto or therefor.

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

“ERISA Affiliate” means any other Person that, together with any Acquired Company, would be treated as a single employer under Section 414 of the Code.

“Escrow Fund” means the Escrow Shares plus any dividends or other distributions thereon the record date for which occurs while such Escrow Shares are held in the Escrow Account.

“Escrow Percentage Interest” for each Effective Time Holder means such amount (expressed as a percentage) attributable to such Effective Time Holder (and by way of example, the Escrow Percentage Interest of each Effective Time Holder, based on the stated assumptions described therein, is set forth in the Merger Consideration Spreadsheet attached hereto as Schedule IV), which amount shall be the sum of:

(a) an amount equal to the quotient obtained by dividing (i) the product obtained by multiplying (A) the Retention Plan Target Escrow Value by (B) such individual’s Retention Plan Interest by (ii) the product obtained by multiplying (A) [Number] by (B) the Allocation Price, plus

(b) an amount equal to the product obtained by multiplying (i) the quotient obtained by dividing (A) the difference between (x) the product obtained by multiplying (I) [Number] by (II) the Allocation Price minus (y) the Retention Plan Target Escrow Value by (B) by the product obtained by multiplying (x) [Number] by (y) the Allocation Price, by (ii) the quotient obtained by dividing (A) the aggregate amount of Common Stock Equivalents held by such Effective Time Holder immediately prior to the Effective Time by (B) the Common Stock Equivalents.

“Estimated Working Capital Adjustment Amount” means the amount of the increase set forth in Section 3.6(b)(i), represented as a positive number, or the amount of the decrease set forth in Section 3.6(b)(ii), represented as a negative number.

“Exchange Act” means the U.S. Securities Exchange Act of 1934.

“Final Dissenting Shares” means Dissenting Shares for which a payment to the holder thereof was made in connection with the appraisal process contemplated by Section 262 of the DGCL (including any payment made in connection with the settlement thereof).

“GAAP” means generally accepted accounting principles for financial reporting in the United States as in effect from time to time applied consistently throughout the periods involved.

“Governing Document” means, with respect to a particular Person that is not a natural person, such Person’s certificate of incorporation, articles of incorporation, certificate of formation, certificate of

registration, articles of association, bylaws, constitution, operating agreement, partnership agreement, company agreement, trust agreement or other similar organizational documents adopted, filed or registered in connection with the creation, formation, organization or governance of such Person, each as amended or restated at any time prior to the date of determination.

“Governmental Authority” means any (a) nation, region, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, or (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal).

“Governmental Authorization” means any Consent, license, franchise, permit, exemption, clearance or registration issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

“Hazardous Material” means any waste or other substance that is listed, defined, designated or classified by any Governmental Authority as being hazardous, radioactive or toxic or a pollutant or a contaminant that is regulated by any Environmental Law, including any admixture or solution thereof, and including petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials in any form or condition and polychlorinated biphenyls.

“Holder Representative Fund” means \$[Amount] in cash held in an account for the benefit of the Holder Representative in accordance with the provisions set forth herein.

“Indebtedness” means, without duplication, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments or debt securities, (c) all obligations of such Person for the deferred purchase price of property or services (excluding trade payables or accrued expenses payable in the Ordinary Course), (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all indebtedness of Persons (other than any Acquired Company) referred to in clauses (a) through (g) hereof guaranteed, directly or indirectly, in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss, and (i) all indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness.

“Intellectual Property” means all of the following anywhere in the world and all legal rights, title or interest in, under or in respect of the following arising under Law, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including all renewals: (a) all Patent Rights; (b) all copyrights, copyright registrations and copyright applications, copyrightable works, and all other corresponding rights (except any moral rights or other rights incapable of being assigned to Company); (c) all mask works, mask work registrations and mask work applications and all other corresponding rights; (d) all Marks and Names; (e) all inventions (whether patentable or unpatentable and whether or not reduced to practice), invention disclosures, know how, technology, technical data, trade secrets, confidential business information, manufacturing and production processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans, advertising and promotional materials, customer, distributor, reseller and supplier lists and information, and other proprietary information of every kind; (f) all Software; (g) all databases and data collections; (h) all other proprietary rights; and (i) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

“Internally Used Shrinkwrap Software” means software licensed to any Acquired Company under a generally available retail shrinkwrap or clickwrap license and used in the Acquired Company’s business, but not customized or adapted for such Acquired Company (excluding any customization performed by such Acquired Company and permitted to be made under the general terms of such license) and not incorporated into software, products or services licensed or sold by any Acquired Company to customers or otherwise resold or distributed by any Acquired Company.

“Inventory” means inventory of the Acquired Companies, wherever located, including all finished goods, work in process, catalysts, raw materials, spare parts, supply and packaging materials and all other materials and supplies used or held for use in the production of finished goods.

“IRS” means the Internal Revenue Service and, to the extent relevant, the Department of Treasury.

“Judgment” means any order, injunction, judgment, decree, ruling, assessment, stipulation, writ, determination or arbitration award entered by or with any Governmental Authority or arbitrator.

“Knowledge” means (a) with respect to an individual, the actual knowledge of such Person after reasonable investigation, (b) with respect to the Acquired Companies, the actual knowledge of [List of Individuals], after reasonable investigation and (c) with respect to a Person other than the Acquired Companies who is not an individual, the actual knowledge of any executive officer of that Person or an Affiliate of such Person, after reasonable investigation. The Company will be considered to have “Knowledge” of a fact or matter if any Acquired Company has Knowledge of the fact or matter. The Purchaser will be considered to have “Knowledge” of a fact or matter if the Purchaser or any of its Subsidiaries (excluding the Acquired Companies) has Knowledge of the fact or matter. For purposes of this definition, a “reasonable investigation” does not require any Person to conduct any formal analysis or study, including any freedom to operate analysis, and does not require any Person to review with any Person not specifically identified in clauses (b) or (c) the representations and warranties set forth in this Agreement.

“Law” means any federal, state, local, municipal, foreign, international, multinational, or other constitution, law, statute, treaty, rule, regulation, ordinance, code, binding case law or principle of common law issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

“Liability” means liabilities, debts or other obligations of any nature, whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated or otherwise, and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, including those arising under any Law, Judgment, Proceeding or Contract.

“Loss” means any loss, damage, fine, penalty, expense (including reasonable attorneys’ or other professional fees and expenses and court costs), injury, liability, or other cost or expense, whether or not involving the Claim of another Person, but excluding unforeseeable, speculative, exemplary and punitive damages (except to the extent any such unforeseeable, speculative, exemplary or punitive damages are recovered by any third parties against a Purchaser Indemnified Party or a Company Indemnified Party, as the case may be).

“Marks and Names” means, collectively, trademarks, service marks, trade dress, trade names, business names, corporate names, logos, internet addresses and domain names, and related registrations and applications, including any intent to use applications and supplemental registrations, and any related renewals or extensions, all other indicia of commercial source or origin, all translations and transliterations of any of the foregoing, and all goodwill arising or resulting from or associated with any of the foregoing.

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has, or would reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on the business, assets, liabilities, operating results, operations or financial condition of a Person and its Subsidiaries, taken as a whole; provided, however, that a Material Adverse Effect shall exclude any event, change, circumstance, effect or other matter resulting or arising from (i) any change in general economic conditions in the industries or markets in which such Person operates or the U.S. or global economy as a whole; (ii) national or international political conditions, including any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, or the worsening thereof; (iii) changes in Law, GAAP, or the interpretation thereof; (iv) acts of God; (v) loss of employees, suppliers or customers (including customer orders or contracts) resulting from the announcement or pendency of this Agreement or the transactions contemplated hereunder; (vi) the failure of such Person or its Subsidiaries to meet internal projections or budgets (it being understood that the facts and circumstances underlying any such failure that are not otherwise excluded from the definition of a “Material Adverse Effect” may be considered in determining whether there has been a Material Adverse Effect); (vii) with respect to the Acquired Companies, (A) any action taken by any of the Acquired Companies at the written direction of Purchaser or Merger Sub or (B) any action specifically required to be taken by the Acquired Companies, or the omission of any action by the Acquired Companies that is specifically prohibited, by the terms of this Agreement; or (viii) any fluctuation of currency values (except, with respect to clauses (i) through (iv) and (viii), to the extent that any such event, change, circumstance, effect or other matter, alone or in combination, materially disproportionately affects the business, assets, liabilities, operating results, operations or financial condition of such Person as compared to other similarly situated Persons in the industries in which such Person operates).

“Merger Consideration” means: (a) the Closing Cash Consideration plus (b) the Stock Merger Consideration plus (c) any Final Working Capital Payment Amount, if applicable, minus (d) any Final Net Working Capital Shortfall Reimbursement Amount, if applicable, plus (e) any Earn-Out Consideration; provided that [No. of Shares] Purchaser Shares of the Stock Merger Consideration will be deposited into escrow pursuant to Section 2.2(c).

“Non-Dissenting Stockholder” means each Stockholder that does not perfect such Stockholder’s appraisal rights under the DGCL and is otherwise entitled to receive Merger Consideration pursuant to Section 3.1.

“Occupational Safety and Health Law” means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any governmental program promulgated by any Governmental Authority and designed to provide safe and healthful working conditions.

“Open Source Software” means any Software that is licensed, provided, distributed or made available or made accessible (whether as “freeware,” “shareware” or otherwise) to another Person and any use, modification, creation of derivative works from, licensing, or distribution of such Software or of any other Software incorporating, derived from or distributed with such Software (such other Software a “Derived Software”) by such Person is conditioned on such other Person’s: (a) making available source code or design information regarding such Software and any Derived Software to members of the public; or (b) granting members of the public a license or permission to use, modify, create derivative works from, license, or distribute such Software and any Derived Software; the term “Open Source Software” includes Software licensed, provided, distributed or made available or made accessible under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL), The Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Source License (SISL) and the Apache Server license.

“Options” means all outstanding options to purchase shares of Common Stock, whether or not exercisable and whether or not vested and whether or not granted under the Stock Option Plan.

“Ordinary Course” means, with respect to any Person, an action taken by such Person if such action is taken in the ordinary course of business and is consistent with the past practices of such Person.

“Outstanding Company Shares” means the sum of (a) the number of shares of Common Stock, plus (b) the number of shares of Common Stock issuable upon conversion of the Preferred Stock, in each case issued and outstanding as of the Effective Time.

“Owned Intellectual Property” means all Company Intellectual Property, other than the Third Party Intellectual Property listed in the Company Disclosure Schedule pursuant to Section 4.13(c) and any Internally Used Shrinkwrap Software.

“Patent Rights” means, collectively, patents and applications for patents (whether provisional, unpublished, published, or otherwise) and all related reissues, reexaminations, divisions, renewals, extensions, provisionals, continuations and continuations in part, and all foreign and international counterparts thereof.

“Per Common Share Contingent Price” means the sum of the maximum potential dollar amount applicable to each share of Common Stock that could become payable in respect of: (a) the Per Share Earn-Out Cash Amount, (b) the Per Share Earn-Out Stock Amount, (c) the Per Share Escrow Amount, (d) the Per Share Representative Fund Amount, and (e) the Per Share Working Capital Payment Amount. For purposes of determining the maximum potential Per Share Earn-Out Cash Amount and the maximum potential Per Share Earn-Out Stock Amount pursuant to the foregoing provision, the maximum potential Earn-Out Consideration shall be deemed to be \$[Amount].

“Per Common Share Maximum Conversion Price” means the sum of the maximum potential dollar amount applicable to each share of Common Stock that could become payable in respect of: (a) the Per Share Residual Cash Amount, (b) the Per Share Residual Stock Amount, (c) the Per Share Earn-Out Cash Amount, (d) the Per Share Earn-Out Stock Amount, (e) the Per Share Escrow Amount, (f) the Per Share Representative Fund Amount, and (g) the Per Share Working Capital Payment Amount. For purposes of determining the maximum potential Per Share Earn-Out Cash Amount and the maximum potential Per Share Earn-Out Stock Amount pursuant to the foregoing provision, the maximum potential Earn-Out Consideration shall be deemed to be \$[Amount].

“Per Preferred Share Conversion Price” means (a) for each share of Series [N] Preferred Stock the Per Preferred Share Original Issue Price applicable to such share, and (b) for each share of Series [N] Preferred Stock, \$[Amount].

“Per Preferred Share Liquidation Preference” means (a) for each share of Series [N] Preferred Stock, \$[Amount] and (b) for each share of Series [N] Preferred Stock, \$[Amount].

“Per Preferred Share Original Issue Price” means (a) for each share of Series [N] Preferred Stock, the Per Preferred Share Liquidation Preference applicable to such share, and (b) for each share of Series [N] Preferred Stock, \$[Amount].

“Per Purchaser Share Value” means, for any Purchaser Shares issued in connection with this Agreement (or amounts of cash paid in lieu of fractional shares), the per-share value of such Purchaser Shares determined based on the volume weighted average price per share of the Purchaser Shares on the NASDAQ Global Select Market (or such other exchange on which the Purchaser Shares are then trading) for the 10 trading day period ending five trading days immediately preceding: (a) the date of this Agreement, for purposes of the Stock Merger Consideration (including the release of Escrow Shares to any Purchaser Indemnified Party); (b) the date of issuance, for purposes of any Purchaser Shares that may be issued pursuant to Section 3.7(b); and (c) the Effective Time, for purposes of determining the number of Purchaser Shares for which the Assumed Options may be exercised, as calculated pursuant to Section 6.11.

“Per Share Closing Cash Amount” means:

(a) for each share of Preferred Stock, the sum of (i) the Per Preferred Share Liquidation Preference applicable to such share multiplied by the Closing Cash Allocation plus (ii) the product obtained by multiplying (A) the Per Share Residual Cash Amount by (B) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the Per Share Residual Cash Amount.

“Per Share Closing Stock Amount” means:

(a) for each share of Preferred Stock, the number of shares equal to the sum of (i) the quotient obtained by dividing (A) the Per Preferred Share Liquidation Preference applicable to such share multiplied by the Closing Stock Allocation by (B) the Allocation Price plus (ii) the product obtained by multiplying (A) the Per Share Residual Stock Amount by (B) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the Per Share Residual Stock Amount.

“Per Share Earn-Out Cash Amount” means:

(a) for each share of Preferred Stock, the product of (i) the quotient obtained by dividing (A) (1) the amount of Earn-Out Consideration for the particular payment of Earn-Out Consideration at that time paid in cash minus (2) the Retention Plan Earn-Out Cash Amount by (B) the Common Stock Equivalents and (ii) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the quotient obtained by dividing (i) (A) the amount of Earn-Out Consideration for the particular payment of Earn-Out Consideration at that time paid in cash minus (B) the Retention Plan Earn-Out Cash Amount by (ii) the Common Stock Equivalents.

“Per Share Earn-Out Stock Amount” means:

(a) for each share of Preferred Stock, the product of (i) the quotient obtained by dividing (A) (1) the amount of Earn-Out Consideration for the particular payment of Earn-Out Consideration at that time paid in stock minus (2) the Retention Plan Earn-Out Shares by (B) the Common Stock Equivalents and (ii) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the quotient obtained by dividing (i) (A) the amount of Earn-Out Consideration for the particular payment of Earn-Out Consideration at that time paid in stock minus (B) the Retention Plan Earn-Out Shares by (ii) the Common Stock Equivalents.

“Per Share Escrow Amount” means, for any particular release of Escrow Shares or other property from the Escrow Account for distribution to the Effective Time Holders:

(a) for each share of Preferred Stock, the product of (i) the quotient obtained by dividing (A) the difference of (1) the total number of such Escrow Shares so released minus (2) the Retention Plan Escrow Shares by (B) the Common Stock Equivalents and (ii) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the quotient obtained by dividing (i) the difference of (A) the total number of such Escrow Shares so released minus (B) the Retention Plan Escrow Shares by (ii) the Common Stock Equivalents.

“Per Share Representative Fund Amount” means:

(a) for each share of Preferred Stock, the product of (i) the quotient obtained by dividing (A) the amount of cash released from the Holder Representative Fund by (B) the Common Stock Equivalents and (ii) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the quotient obtained by dividing (i) the amount of cash released from the Holder Representative Fund by (ii) the Common Stock Equivalents.

“Per Share Residual Cash Amount” means the quotient obtained by dividing (a) the Residual Closing Cash by (b) the Common Stock Equivalents.

“Per Share Residual Stock Amount” means the quotient obtained by dividing (a) the Residual Closing Stock by (b) the Common Stock Equivalents.

“Per Share Working Capital Payment Amount” means:

(a) for each share of Preferred Stock, the product of (i) the quotient obtained by dividing (A) the Final Working Capital Payment Amount by (B) the Common Stock Equivalents and (ii) the CSE Conversion Ratio applicable to such share, and

(b) for each share of Common Stock, the quotient obtained by dividing (i) the Final Working Capital Payment Amount by (ii) the Common Stock Equivalents.

“Permitted Encumbrances” means (a) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar Persons for sums not yet due and payable (or that are being contested) and that do not materially impair the conduct of any Acquired Company’s business or the present use of the affected property or asset, (b) statutory liens for real or personal property Taxes not yet due and payable (or that are being actively contested in good faith) and for which adequate reserves have been recorded by the Acquired Companies in accordance with GAAP, (c) restrictions on transfers of securities under applicable securities Laws, or (d) any other statutory liens that do not materially impair the conduct of any Acquired Company’s business or the present use of the affected property or asset.

“Person” means an individual or an entity, including a corporation, limited liability company, partnership, trust, unincorporated organization, association or other business or investment entity, or any Governmental Authority.

“Post-Closing Straddle Period” means the portion of the Straddle Period that begins the day after the Closing Date.

“Pre-Closing Straddle Period” means the portion of the Straddle Period that begins before the Closing Date and ends on the Closing Date.

“Preferred Stock” means the Series A Preferred Stock and Series [N] Preferred Stock.

“Proceeding” means any action, arbitration, audit, Tax assessment, show cause notice or inquiry with respect to [Country] Taxes, examination, investigation, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before any Governmental Authority or arbitrator.

“Purchaser Material Adverse Effect” means a Material Adverse Effect on the Purchaser and its Subsidiaries, taken as a whole.

“Purchaser Shares” means the shares of common stock of [Buyer], no par value per share, which class of shares is registered under Section 12(b) of the Exchange Act and is listed for quotation on the NASDAQ Global Select Market (or the New York Stock Exchange).

“Residual Closing Cash” means (a) (i) the Closing Cash Consideration minus (ii) the Cash Liquidation Preference minus (iii) the Retention Plan Closing Cash Payment minus (iv) the Holder Representative Fund plus (b) the aggregate exercise price of all Vested Options outstanding immediately prior to the Effective Time.

“Residual Closing Stock” means the number of Purchaser Shares equal to (a) the Closing Stock Consideration minus (b) the Retention Plan Closing Stock Payment minus (c) the Stock Liquidation Preference.

“Retained Taxes” means all Taxes of the Acquired Companies that are not Assumed Taxes and all other amounts that are treated as Retained Taxes pursuant to this Agreement. For the avoidance of doubt, Capital Gains Taxes and [Country] Taxes shall not be considered Retained Taxes.

“Retention Plan” means those certain retention compensation arrangements adopted by the Company Board on [Date].

“Retention Plan Cash Allocation” means the quotient obtained by dividing (a) the Closing Cash Consideration by (b) the Target Merger Consideration.

“Retention Plan Closing Cash Payment” means the product obtained by multiplying (a) the Retention Plan Pool by (b) the Retention Plan Cash Allocation.

“Retention Plan Closing Stock Payment” means the quotient obtained by dividing (a) the Retention Plan Closing Stock Value by (b) the Allocation Price.

“Retention Plan Closing Stock Value” means the product obtained by multiplying (a) the Retention Plan Pool by (b) the Retention Plan Stock Allocation.

“Retention Plan Earn-Out Allocation” means the quotient obtained by dividing (a) \$[Amount] by (b) the Target Merger Consideration.

“Retention Plan Earn-Out Cash Amount” means, with respect to any Earn-Out Consideration that is distributed to the Retention Plan Participants, the product obtained by multiplying (a) the Retention Plan Earn-Out Payment Amount by (b) the quotient obtained by dividing (i) the aggregate amount of such Earn-Out Consideration paid in cash to all Effective Time Holders by (ii) the aggregate value of all such Earn-Out Consideration, whether paid in cash or stock (with any stock included therein being valued at the Per Purchaser Share Value) to all Effective Time Holders.

“Retention Plan Earn-Out Payment Amount” means, with respect to any Earn-Out Consideration that is distributed to the Retention Plan Participants, the product obtained by multiplying (a) the Retention Plan Target Earn-Out Value by (b) the Retention Plan Earn-Out Percentage; provided, however, in no circumstances shall the aggregate amount of all total Retention Plan Earn-Out Payment Amounts paid to the Retention Plan Participants exceed the Retention Plan Target Earn-Out Value.

“Retention Plan Earn-Out Percentage” means, with respect to any Earn-Out Consideration that is distributed to the Effective Time Holders, the quotient obtained by dividing (a) the dollar value of such Earn-Out Consideration (with any Purchaser Shares included therein being valued at the Per Purchaser Share Value) by (b) \$[Amount].

“Retention Plan Earn-Out Shares” means, with respect to any Earn-Out Consideration paid in Purchaser Shares that is distributed to the Retention Plan Participants, the quotient obtained by dividing (a) the Retention Plan Earn-Out Stock Amount by (b) the Per Purchaser Share Value.

“Retention Plan Earn-Out Stock Amount” means, with respect to any Earn-Out Consideration paid in Purchaser Shares that is distributed to the Retention Plan Participants, the product obtained by multiplying (a) the Retention Plan Earn-Out Payment Amount by (b) the quotient obtained by dividing (i) the aggregate amount of such Earn-Out Consideration paid in Purchaser Shares (valued at the Per Purchaser Share Value) to all Effective Time Holders by (ii) the aggregate value of all Earn-Out Consideration, whether paid in cash or stock (with any stock included therein being valued at the Per Purchaser Share Value), to all Effective Time Holders.

“Retention Plan Escrow Allocation” means the quotient obtained by dividing (a) the product obtained by multiplying (i) [Number] by (ii) the Allocation Price by (b) the Target Merger Consideration.

“Retention Plan Escrow Percentage” means, for any particular release of Escrow Shares or other property from the Escrow Account for distribution to the Retention Plan Participants, the quotient obtained by dividing (a) the total number of Escrow Shares so released by (b) [Number].

“Retention Plan Escrow Shares” means, for any particular release of Escrow Shares or other property from the Escrow Account for distribution to the Retention Plan Participants, the quotient obtained by dividing (a) the Retention Plan Escrow Value by (b) the Allocation Price.

“Retention Plan Escrow Value” means, for any particular release of Escrow Shares or other property from the Escrow Account for distribution to the Retention Plan Participants, the product obtained by multiplying (a) the Retention Plan Target Escrow Value by (b) the Retention Plan Escrow Percentage.

“Retention Plan Interest” means, with respect to each Retention Plan Participant, the percentage interest set forth opposite such Retention Plan Participant’s name on the Retention Plan Participant List.

“Retention Plan Participants” means the Company Employees or other individuals set forth on the Retention Plan Participant List.

“Retention Plan Pool” means \$[Amount] or such lesser amount determined by the Company Board prior to the Closing and set forth in the Retention Plan Participant List.

“Retention Plan Stock Allocation” means the quotient obtained by dividing (a) the product obtained by multiplying (i) [Number] by (ii) the Allocation Price by (b) the Target Merger Consideration.

“Retention Plan Target Earn-Out Value” means, with respect to any Earn-Out Consideration that is distributed to each Retention Plan Participant, the product obtained by multiplying (a) the Retention Plan Pool by (b) the Retention Plan Earn-Out Allocation.

“Retention Plan Target Escrow Value” means the product obtained by multiplying (a) the Retention Plan Pool by (b) the Retention Plan Escrow Allocation.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the U.S. Securities Act of 1933.

“Series A Preferred Stock” means the Series A Preferred Stock, par value \$[Amount] per share, of the Company.

“Series [N] Preferred Stock” means the Series B Preferred Stock, par value \$[Amount] per share, of the Company.

“Share Issuance Requirements” mean, with respect to the Purchaser Shares issuable as Stock Merger Consideration or pursuant to Section 3.7(b), that (a) such Purchaser Shares are at the time of issuance (i) approved for quotation on the NASDAQ Global Select Market or listing on the New York Stock Exchange, subject to official notice of issuance, (ii) exempt from registration pursuant to Section 3(a)(10) of the Securities Act or registered under the Securities Act pursuant to a Registration Statement filed with the SEC, such that, in either case, such Purchaser Shares are freely transferable (subject, in the

case of the Stock Merger Consideration, to the Lock-Up Restriction), and (iii) duly authorized, (b) such Purchaser Shares will be, upon issuance, fully paid and nonassessable, and (c) the issuance of such Purchaser Shares (together with all other Purchaser Shares previously issued pursuant to this Agreement and all other Purchaser Shares (whether represented by Purchaser Shares or securities convertible into or exercisable for Purchaser Shares) that otherwise count toward such total under The NASDAQ Stock Market Listing Rule 5635 (or any successor provision)) will not exceed [percent]% of the Purchaser Shares outstanding immediately prior to the Effective Time (not including any Purchaser Shares that are owned by the Purchaser and without assuming the conversion or exercise of any options, warrants or other convertible securities) and will not, except as set forth in clause (i) above, require any Consent other than those Consents which have already been received prior to such issuance.

“Software” means, individually and collectively, any computer program or programs of software, firmware, code, development tools, and algorithms, including all sub-components, sub-products, features and functions, application, object code, source code, lines of code, libraries, records and files.

“Specified [Software Product] Products” means [Software Product] software and protocols licensed for use in [product].

“Stock Liquidation Preference” means the number of Purchaser Shares equal to the quotient obtained by dividing (a) the product of (i) the Aggregate Liquidation Preference multiplied by (ii) the Closing Stock Allocation by (b) the Allocation Price.

“Stock Merger Consideration” means [No. of Shares] Purchaser Shares, as adjusted after the date hereof for any stock splits, stock dividends, recapitalizations and the like in respect of the Purchaser Shares occurring prior to the Closing.

“Stock Option Plan” means the Company’s [Nth] Amended and Restated [Year] Stock Incentive Plan.

“Stockholder” means any record holder of Company Capital Stock immediately prior to the Effective Time.

“Straddle Period” means any taxable year or period beginning before and ending after the Closing Date.

“Subsidiary” means, with respect to any Person, any other Person that is not a natural person, whether incorporated or unincorporated, of which such Person, directly or indirectly through one or more other subsidiaries of such Person, (a) beneficially owns a majority of the voting securities or (b) possesses the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Equity Interests, by Contract or otherwise (including control of the board of directors (or similar body)).

“Superior Proposal” means an unsolicited bona fide written offer made by a third party to acquire, directly or indirectly, by merger or otherwise, all or substantially all of the outstanding shares of Company Capital Stock (on an as converted to Common Stock basis) or assets of the Acquired Companies representing all or substantially all of the value of their combined assets, which the Company Board determines in its reasonable judgment would, if consummated, result in a transaction that is more favorable from a financial point of view to the Stockholders than the terms of the Merger (as such may be modified in accordance with Section 6.9(c)(i)(F) or Section 6.9(c)(ii)(C)), after taking into account, among other things, all legal, financial, regulatory and other aspects of the proposal and the Person making the proposal, including any Expense Reimbursement or Termination Fee that would be owed to

the Purchaser, the likelihood that such transaction would be consummated in a timely manner, the costs reasonably likely to be incurred in connection with any negotiation of such transaction and the type and quality of the consideration to be received by the Effective Time Holders and an opinion of an independent financial advisor of nationally recognized reputation (it being understood that [Investment Bank 1] qualifies as such); provided, however, that any such offer shall not be deemed to be a “Superior Proposal” if any financing required to consummate the transaction contemplated by such offer is not committed and is not reasonably capable of being timely obtained by such third party.

“Target Merger Consideration” means the sum of (a) the Closing Cash Consideration, (b) \$[Amount], and (c) the product obtained by multiplying (i) [No. of Shares] by (ii) the Allocation Price.

“Tax” means (a) any national, local, foreign, federal, state or other tax, including those imposed on any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), sales, use, franchise, excise, value added, stamp, customs duty, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall or other profits, severance, license, registration, payroll, environmental, capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee’s income withholding, other withholding, unemployment, workers’ compensation, social security or other tax of whatever kind that is imposed by any Governmental Authority, (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this paragraph or any related contest or dispute, and (c) any items described in this paragraph that are attributable to another Person but that any Acquired Company is liable to pay by Law, by Contract or otherwise.

“Tax Return” means any report, return, rendition, declaration, claim for refund, or information return or statement related to Taxes, including any schedule or attachment thereto, filed or provided (or required to be filed or provided) to any Governmental Authority, any amendment thereof, and any Reports of Foreign Bank and Financial Accounts due to the U.S. Department of Treasury.

“Unvested Option” means any unexercised and unexpired Option or portion thereof that is not a Vested Option.

“Vested Option” means (a) an Option or any portion thereof that has not expired and has vested, or will vest, prior to [Date] and that remains unexercised immediately prior to the Effective Time, and (b) an Option or any portion thereof held by a Person that is not a Continuing Employee, and that has not expired and that will vest on or after [Date] and prior to the Effective Time, and that remains unexercised immediately prior to the Effective Time.

Section 1.2 Additional Defined Terms. For purposes of this Agreement, the following terms have the meanings specified in the indicated Section of this Agreement:

<u>Defined Term</u>	<u>Section</u>
Agreed Portion	10.3(b)
Agreement	Preamble
Applicable D&O Claim	10.5(e)
Applicable Escrow Final [Country] Tax Reimbursement Shortfall	10.3(g)(iii)
Applicable Escrow/Setoff Final [Country] Tax Reimbursement Shortfall	10.3(g)(iii)
Applicable Excess	10.3(g)(ii)
Asserted Losses	10.3(a)
Assumed Option	6.11

Assumed Option Exercise Price	6.11
Assumed Option Holder	6.11(a)(i)
Assumed Option Spread Value Per Share	6.11(a)(ii)
Balance Sheet	4.5(a)(i)
Block Trade	3.9(c)
Certificate	3.3(a)(i)
California Commissioner	4.3
Change in Recommendation	6.9(b)
Charter Amendment	6.19
Closing	2.2
Closing Date	2.2
Closing Date Net Working Capital Statement	3.6(c)
Closing Disbursement	2.2(c)(ii)
COBRA	4.16(c)
Company	Preamble
Company Board Recommendation	6.9(a)
Company Disclosure Schedule	Article 4
Company Indemnified Parties	10.2
Company Intellectual Property	4.13(a)
Company Materiality Qualified Provisions	10.1
Company Representatives	6.5(a)
Company Specified Representations	10.5(a)
Confidentiality Agreement	6.6(a)
Contingent Assumed Option	6.11(a)(iii)
Contingent Payment Amounts	6.11(b)
Contractors	4.17(b)
Controlling Party	10.3(e)
D&O Indemnified Parties	6.17(a)
De Minimis Amount	10.5(c)
Deposit	9.4(d)
DGCL	2.1
Disputed Line Items	3.8(b)
Dissenting Shares	3.5
DOL	4.16(b)
Earn-Out Period	3.7(a)
Earn-Out Shares	3.1(c)
Earn-Out Statement	3.7(a)
Effective Time	2.2(a)
Employment Agreement	Preamble
End Date	8.1(b)
Escrow Account	2.2(c)(i)
Escrow Agent	2.2(c)(i)
Escrow Agreement	2.2(c)(i)
Escrow Final [Country] Tax Reimbursement	10.3(g)(iii)
Escrow Shares	2.2(c)(i)
Estimated Amount	10.3(g)(ii)
Estimated Closing Net Working Capital	3.6(a)
Estimated Net Working Capital Statement	3.6(a)
Exchange Agent	2.2(c)(ii)
Exchange Agent Agreement	2.2(c)(ii)
Expense Reimbursement	8.3(a)(ii)

Fairness Approval	6.8(b)
Fairness Hearing	6.8(b)
Final Closing Net Working Capital	3.6(d)
Final [Country] Tax Amount	10.3(g)(ii)
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