**Exhibit 2.1**

EXECUTION VERSION

**AGREEMENT AND PLAN OF MERGER  
  
by and among  
  
STAMPS.COM INC.,**

**a Delaware corporation;**

**STREAM PARENT, LLC,**

**a Delaware limited liability company; and**

**STREAM MERGER SUB, INC.,**

**a Delaware corporation**

**Dated as of July 8, 2021**

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**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is made and entered into as of July 8, 2021 (the “**Agreement Date**”), by and among Stream Parent, LLC, a Delaware limited liability company (“**Parent**”), Stream Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“**Merger Sub**”), and Stamps.com Inc., a Delaware corporation (the “**Company**”). Each of Parent, Merger Sub and the Company are sometimes referred to as a “**Party**.” All capitalized terms that are used in this Agreement have the respective meanings given to them in Article I.

**RECITALS**

A. The Company Board has unanimously (i) determined that it is fair to and in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement providing for the merger of Merger Sub with and into the Company (collectively with the other transactions contemplated by this Agreement, the “**Merger**”) in accordance with the General Corporation Law of the State of Delaware (the “**DGCL**”) upon the terms and subject to the conditions set forth herein; (ii) approved, adopted and declared advisable this Agreement and the execution and delivery thereof by the Company, the performance by the Company of its covenants, obligations and other agreements hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein; (iii) directed that this Agreement and the Merger be submitted for approval and adoption by the stockholders of the Company; and (iv) resolved to recommend that the stockholders of the Company adopt this Agreement and approve the Merger in accordance with the DGCL.

B. The board of managers of Parent has (i) declared it advisable to enter into this Agreement; and (ii) approved the execution and delivery of this Agreement, the performance of Parent’s covenants, obligations and other agreements hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein.

C. The board of directors of Merger Sub has (i) approved, adopted and declared advisable this Agreement and the execution and delivery thereof by Merger Sub, the performance by Merger Sub of its covenants, obligations and other agreements hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein; (ii) directed that this Agreement and the Merger be submitted for approval and adoption by Parent, in its capacity as sole stockholder of Merger Sub; and (iii) resolved to recommend that Parent, in its capacity as sole stockholder of Merger Sub, adopt this Agreement and approve the Merger in accordance with the DGCL.

D. Concurrently with the execution of this Agreement, the Company’s non-independent (for stock exchange purposes) directors and executive officers have entered into voting agreements in the form attached hereto as Exhibit A (collectively, the “**Voting Agreements**”), dated as of the Agreement Date, with Parent and the Company, pursuant to which, among other things, such individuals have agreed to vote such individuals’ shares of Company Common Stock in favor of the approval of this Agreement.

E. Concurrently with the execution of this Agreement, and as a condition and inducement to the Company’s willingness to enter into this Agreement, Parent and Merger Sub have delivered (i) a limited guaranty (the “**Guaranty**”) from Thoma Bravo Fund XIV, L.P., a Delaware limited partnership (the “**Guarantor**”), in favor of the Company and pursuant to which, subject to the terms and conditions contained therein, the Guarantor is guaranteeing certain obligations of Parent and Merger Sub in connection with this Agreement, (ii) a commitment letter between Parent and the Guarantor, pursuant to which the Guarantor has committed, subject to the terms and conditions thereof, to invest in Parent, directly or indirectly, the cash amounts set forth therein (together with any related exhibits, schedules, annexes and supplements, the “**Equity Commitment Letter**”), (iii) a commitment letter among Parent, Merger Sub and the Financing Sources party thereto, pursuant to which the Financing Sources have committed, subject to the terms and conditions thereof, to lend the amounts set forth therein for the purpose of funding a portion of the transactions contemplated hereby (together with any related exhibits, schedules, annexes, supplements, term sheets and other agreements, the “**Debt Commitment Letter**”) and (iv) any fee letter (which may be redacted solely with respect to the fee amounts and other economic terms set forth therein, in each case, which do not affect the conditionality, enforceability, termination or aggregate principal amount of the Debt Financing) in connection with the Debt Commitment Letter (any such letter, a “**Fee Letter**”, together with the Debt Commitment Letter, the “**Debt Financing Letters**” and together with the Equity Commitment Letter, collectively, the “**Financing Letters**”).

F. Parent, Merger Sub and the Company desire to (i) make certain representations, warranties, covenants, obligations and agreements in connection with this Agreement and the Merger; and (ii) prescribe certain conditions with respect to the consummation of the Merger.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants, obligations and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, Parent, Merger Sub and the Company agree as follows:

**ARTICLE I****DEFINITIONS & INTERPRETATIONS**

1.1 *Certain Definitions.* For all purposes of and pursuant to this Agreement, the following capitalized terms have the following respective meanings:

“**Acceptable Confidentiality Agreement**” means an agreement with the Company that is either (a) in effect as of the Agreement Date; or (b) executed, delivered and effective after the Agreement Date, in either case containing provisions that require any counterparty thereto (and any of its Affiliates and representatives named therein) that receive non-public information of or with respect to the Company to keep such information confidential (subject to customary exceptions); *provided, however,* that, with respect to such agreements executed and delivered following the Agreement Date, the provisions contained therein are not materially less favorable, in the aggregate, to the Company than the terms of the Confidentiality Agreement (it being understood that such agreement need not contain any “standstill” or similar provisions or otherwise prohibit the making of any Acquisition Proposal). For the avoidance of doubt, a joinder to an Acceptable Confidentiality Agreement pursuant to which a third party agrees to be bound by the confidentiality and use provisions of an Acceptable Confidentiality Agreement shall be an Acceptable Confidentiality Agreement.

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“**Acquisition Proposal**” means any offer, proposal or indication of interest by a Third Person to engage in an Acquisition Transaction.

“**Acquisition Transaction**” means any transaction or series of related transactions (other than the Merger) involving:

(a) any direct or indirect purchase or other acquisition by any Third Person or “group” (as defined pursuant to Section 13(d) of the Exchange Act) of Persons, whether from the Company or any other Person(s), of securities representing more than twenty percent (20%) of the total outstanding voting power of the Company after giving effect to the consummation of such purchase or other acquisition, including pursuant to a tender offer or exchange offer by any Person or “group” of Persons that, if consummated in accordance with its terms, would result in such Person or “group” of Persons beneficially owning more than twenty percent (20%) of the total outstanding voting power of the Company after giving effect to the consummation of such tender or exchange offer;

(b) any direct or indirect purchase, exclusive license or other acquisition by any Third Person or “group” (as defined pursuant to Section 13(d) of the Exchange Act) of Persons of assets constituting or accounting for more than twenty percent (20%) of the consolidated assets, revenue or net income of the Company Group, taken as a whole (measured by the fair market value thereof as of the date of such purchase or acquisition); or

(c) any merger, consolidation, business combination, recapitalization, amalgamation, share exchange, reorganization, liquidation, dissolution or other transaction involving the Company pursuant to which any Third Person or “group” (as defined pursuant to Section 13(d) of the Exchange Act) of Persons would hold Equity Interests representing more than twenty percent (20%) of the total outstanding voting power of the Company outstanding after giving effect to the consummation of such transaction.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by Contract or otherwise.

“**Affiliated Group**” means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated, unitary or similar group under state, local or non-U.S. law).

“**Annual Bonus Plan**” means any Employee Plan that is an annual bonus plan.

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“**Anti-Corruption Laws**” means the Foreign Corrupt Practices Act of 1977, as amended, the Anti-Kickback Act of 1986, as amended, the UK Bribery Act of 2012, and the Anti-Bribery Laws of the People’s Republic of China or any applicable Laws of similar effect, and the related regulations and published interpretations under such Laws.

“**Antitrust Laws**” means the Sherman Antitrust Act, the Clayton Antitrust Act, the HSR Act, the Federal Trade Commission Act, the Austrian Cartel Act 2005 and all other applicable federal, state and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other Laws issued by a Governmental Authority, that are designed or intended to preserve or protect competition, prohibit and restrict agreements in restraint of trade or monopolization, attempted monopolization, restraints of trade and abuse of a dominant position, or to prevent acquisitions, mergers or other business combinations and similar transactions, the effect of which may be to lessen or impede competition or to tend to create or strengthen a dominant position or to create a monopoly.

“**Audited Company Balance Sheet**” means the consolidated balance sheet (and the notes thereto) of the Company and its Subsidiaries as of December 31, 2020 set forth in the Company’s Annual Report on Form 10-K filed by the Company with the SEC for the fiscal year ended December 31, 2020.

“**Business Day**” means each day that is not a Saturday, Sunday or other day on which banks in the Cities of Los Angeles or San Francisco, California are authorized or required by Laws to be closed.

“**Business IP**” means all (a) Intellectual Property used in or necessary for the operation of the Company Group Members’ respective businesses as currently conducted and (b) Company Intellectual Property.

“**Bylaws**” means those certain Amended and Restated Bylaws of the Company, dated as of November 7, 2018, as they may be further amended, modified or amended and restated from time to time.

“**Charter**” means that certain Amended and Restated Certificate of Incorporation of the Company filed with the State of Delaware Secretary of State Division of Corporations on June 25, 1999, as amended by (a) that certain Certificate of Amendment of Amended and Restated Certificate of Incorporation filed with the State of Delaware Secretary of State Division of Corporations on May 6, 2004 and (b) that certain Certificate of Amendment of Amended and Restated Certificate of Incorporation filed with the State of Delaware Secretary of State Division of Corporations on May 23, 2008, as it may be further amended, modified or amended and restated from time to time.

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

“**Company Board**” means the Board of Directors of the Company.

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

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“**Company Equity Plans**” means (a) the equity plans set forth in Section 1.1 of the Company Disclosure Letter and (b) any other plans that provide for the issuance of any options or restricted stock unit awards (such options and awards, collectively, the “**Company Equity Awards**”), including any related sub-plans, addenda and agreements entered into and awards issued under such plans.

“**Company Fundamental Representations**” means the representations and warranties contained in Section 3.1, Section 3.2, Section 3.3, Section 3.4, clause (a) of Section 3.5, Section 3.7(d) and Section 3.25.

“**Company Group**” means, collectively, the Company and its Subsidiaries.

“**Company Group Member**” means the Company or any of its Subsidiaries.

“**Company Intellectual Property**” means any Intellectual Property that is owned by any Company Group Member.

“**Company Material Adverse Effect**” means any change, event, violation, effect, occurrence, development, circumstance or other matter (each, an “**Effect**”) that (x) had, individually or in the aggregate, a material adverse effect on the business, assets or financial condition of the Company Group, taken as a whole, or (y) would reasonably be expected to prevent, materially impair or materially delay the consummation by the Company of the Merger prior to the Termination Date. Notwithstanding the foregoing, solely with respect to the preceding clause (x), none of the following, or any Effects related thereto or arising therefrom, shall be deemed in and of themselves (and subject to the limitations expressly set forth below with respect thereto), either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there is, or would reasonably be expected to have, a Company Material Adverse Effect on the Company Group:

(a) any change in the economy generally or other general business, financial, political or market conditions, including any suspension of trading in securities generally on any securities exchange or over-the-counter market operated in the United States or any other country or region of the world;

(b) any changes in conditions in the financial markets, credit markets, capital markets or international trade, including (i) changes in interest rates or credit ratings; (ii) changes in exchange rates for the currencies of any country; or (iii) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market;

(c) any changes in conditions in the industries (including, for the avoidance of doubt, each of the software and shipping industries) in which the Company Group operates;

(d) any changes in any regulatory, legislative or political conditions in the United States or any other country or region in the world, including changes to United States Postal Service regulations or commercial programs, in each case after the Agreement Date;

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(e) any act of terrorism, war (whether or not declared), geopolitical conditions, outbreaks of hostilities, cyber-attacks, national or international calamity, earthquakes, hurricanes, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions or other force majeure events (including epidemics, pandemics or disease outbreaks, including COVID-19, or COVID-19 Measures or any change in COVID-19 Measures or interpretations thereof) anywhere in the world;

(f) resulting from the execution, announcement or pendency, or the performance, of this Agreement or the Transactions (including the Merger), including any impact thereof on relationships, contractual or otherwise, of the Company Group with, or any actions taken or threatened to be taken by any, employees, suppliers, customers, business partners, vendors or any other third Person (including Governmental Authorities);

(g) any Legal Proceedings made or brought by any of the current or former stockholders of the Company (on their own behalf or on behalf of the Company) against the Company arising out of the Merger or in connection with the Transactions (including any Transaction Litigation);

(h) any change or prospective change in GAAP, or any compliance with or action taken for the purpose of complying with, any Law or GAAP (or interpretations of any Law or GAAP, in each case, after the Agreement Date (and including any action taken or not taken as required by any Law, Governmental Authority or otherwise to respond to the impact, presence, outbreak or spread of any pandemic (including COVID-19)));

(i) any change in the market price or trading volume of the Company’s stock (including the Company Common Stock) (it being understood that any cause of such change may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred);

(j) the failure of the Company to meet internal or analysts’ expectations or projections or the results of operations of the Company for any period (including (i) any public estimates or expectations of the Company’s revenue, earnings or other financial performance or results of operations for any period; or (ii) any internal budgets, plans, projections or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred, except to the extent otherwise excluded in the definition of Company Material Adverse Effect));

(k) any action taken (or refrained from being taken) by the Company at the express direction of (including if requested or approved in writing by) Parent or any action expressly required to be taken by Parent, Merger Sub or the Company pursuant to the terms of this Agreement, or the failure of the Company to take any action that the Company is prohibited by the terms of this Agreement from taking to the extent Parent fails to give its consent to such action after a written request therefor pursuant to Section 5.2 (including, for the avoidance of doubt, with respect to any of the matters set forth on Section 5.2(k) of the Company Disclosure Letter);

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(l) the identity of, or any facts or circumstances relating to, Parent, Merger Sub, or the respective Affiliates of the foregoing, the respective financing sources of or investors in the foregoing; or

(m) the availability or cost of equity, debt or other financing (including the Debt Financing or any Alternate Debt Financing) to Parent or Merger Sub;

except, in each case of the preceding clauses (a), (b), (c), (d), (e) and (h), to the extent that such Effect has had a disproportionate adverse effect on the Company relative to other companies operating in the industries in which the Company Group conducts business, in which case only the incremental disproportionate adverse impact may be taken into account in determining whether a Company Material Adverse Effect has occurred.

“**Company Options**” means any options to purchase shares of Company Common Stock granted under any of the Company Equity Plans.

“**Company Registered Intellectual Property**” means all of the Registered Intellectual Property owned by, or filed in the name of, any Company Group Member.

“**Company RSU Awards**” means any restricted stock units granted under any of the Company Equity Plans.

“**Company Stockholders**” means the holders of shares of Company Common Stock.

“**Continuing Employees**” means each individual who is an employee of the Company immediately prior to the Effective Time and continues to be an employee of Parent or one of its Subsidiaries (including the Surviving Corporation) immediately following the Effective Time.

“**Contract**” means any contract, subcontract, note, bond, mortgage, indenture, lease, license, sublicense or other legally binding agreement.

“**COVID-19**” means SARS-CoV-2 or COVID-19 and any evolutions or mutations thereof or related or associated epidemics, pandemics or disease outbreaks.

“**COVID-19 Measures**” means any quarantine, “shelter in place”, “stay at home”, social distancing, shut down, closure, sequester, return to work, employment or human resources Law, safety or similar Law, directive, guideline or recommendation promulgated by any applicable industry group or Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19.

“**Credit Facility**” means the Amended and Restated Credit Agreement, dated as of June 29, 2020, by and among the Company, Wells Fargo Bank, National Association, Wells Fargo Securities, LLC, BOFA Securities, Inc., JPMorgan Chase Bank, N.A. and the other parties thereto, as the same may from time to time be amended, modified, supplemented or restated.

“**DOJ**” means the United States Department of Justice or any successor thereto.

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“**Environmental Law**” means any applicable Law or order relating to pollution, the protection of the environment (including ambient air, surface water, groundwater or land) or exposure of any Person with respect to Hazardous Substances or otherwise relating to the production, use, storage, treatment, transportation, recycling, disposal, discharge, release or other handling of any Hazardous Substances, or the investigation, clean-up or remediation thereof.

“**Equity Interests**” means with respect to any Person, any of its capital stock, partnership interests (general or limited), limited liability company interests, trust interests or other securities or other equity or equity-linked interests which entitle the holder thereof to receive dividends or distributions on liquidation, winding up or dissolution of such Person, or to vote for the election of directors or other management of such Person, or to exercise other rights generally afforded to stockholders of a corporation (including the ability to exert control over such Person)

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

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Excluded Party**” means any Third Person (or if a group, includes any Third Person, so long as such Third Person, together with all other members of such group, if any, who were members of such group or another group that included such Person immediately prior to the No-Shop Period Start Date, represent at least fifty percent (50%) of the equity financing of such group at all times following the No-Shop Period Start Date and prior to the closing of the transactions contemplated by the applicable Acquisition Proposal) (a) who submits a written *bona fide* Acquisition Proposal to the Company or any of its Representatives after the Agreement Date and prior to the No-Shop Period Start Date, (b) whose Acquisition Proposal is determined by the Company Board, in good faith (after consultation with its outside counsel and its financial advisor), to be, or would reasonably be expected to lead to, a Superior Proposal and (c) who did not submit an Acquisition Proposal in writing to the Company Group, the Company Board or their respective Representatives within six (6) months prior to the Agreement Date (it being understood that with respect to a group, each member of such group must meet the criteria set forth in this clause (c) at all times (including following any termination of this Agreement) prior to the closing of the transactions contemplated by the applicable Acquisition Proposal) in order for such group to qualify as an Excluded Party; *provided, however,* that a Third Person shall immediately cease to be an Excluded Party (and the provisions of this Agreement applicable to Excluded Parties shall cease to apply with respect to such Person) if such Acquisition Proposal is withdrawn by such Third Person (or group, if applicable) after the Agreement Date; it being understood that a modification of an Acquisition Proposal submitted by a Third Person (or group) shall not be deemed a withdrawal or termination of an Acquisition Proposal by such Third Person (or group).

“**FCPA**” means the Foreign Corrupt Practices Act of 1977.

“**Financing Sources**” means the Third Persons that have committed to provide the Debt Financing in connection with the Merger, including the parties to the Debt Commitment Letter and parties to any Alternate Debt Financing, and any joinder agreements or credit agreements or any other loan documents entered into pursuant thereto or relating thereto, together with their Affiliates and their and their Affiliates’ current, former and future officers, directors, general or limited partners, shareholders, members, controlling persons, employees, agents and representatives involved in the Debt Financing and the successors and assigns of each of the foregoing.

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“**FTC**” means the United States Federal Trade Commission or any successor thereto.

“**GAAP**” means generally accepted accounting principles, consistently applied, in the United States.

“**Government Contract**” means any material Contract that is between the Company or any of its Subsidiaries, on the one hand, and a Governmental Authority, on the other hand.

“**Governmental Authority**” means any government, government-sponsored entity, governmental or regulatory entity or body, department, commission, board, agency or instrumentality, and any court, tribunal, arbitrator or arbitral body (public or private) or judicial body, in each case, whether federal, state, county or provincial, and whether local or foreign.

“**Hazardous Substance**” means any substance, material or waste that is listed or regulated by a Governmental Authority pursuant to any Environmental Law as “hazardous,” “pollutant,” “contaminant,” “toxic” or “radioactive”, including petroleum and petroleum products, per- and polyfluoroalkyl substances, polychlorinated biphenyls and friable asbestos.

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

“**Indebtedness**” means any of the following monetary liabilities or obligations: (a) indebtedness for borrowed money (including any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith); (b) liabilities evidenced by bonds, debentures, notes or other similar instruments or debt securities; (c) liabilities pursuant to or in connection with letters of credit or banker’s acceptances or similar items (in each case whether or not drawn, contingent or otherwise); (d) liabilities pursuant to leases required to be capitalized under GAAP; (e) liabilities arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates; (f) deferred purchase price liabilities related to past acquisitions; (g) payment obligations arising in connection with earnouts or other contingent payment obligations under Contracts (other than contingent indemnification obligations that have not matured and as to which no claims have been made, or to the Knowledge of the Company, threatened); and (h) indebtedness for borrowed money of others guaranteed by the Company or secured by any Lien or security interest on the assets of the Company (other than, in any case, (i) accounts payable to trade creditors and accrued expenses, in each case arising in the ordinary course of business and (ii) liabilities or obligations solely between the Company and any wholly owned Subsidiary or solely between any wholly owned Subsidiaries). For the avoidance of doubt, neither (A) Taxes nor (B) monetary amounts held by any Company Group Member related to product account balances on behalf of any customer of the Company Group, in each case, shall constitute “Indebtedness”.

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“**Intellectual Property**” means the rights associated with the following: (a) all United States and foreign patents and applications therefor (“**Patents**”); (b) all copyrights, copyright registrations and applications therefor and all other rights corresponding thereto throughout the world (“**Copyrights**”); (c) trademarks, service marks, trade dress rights and internet domain names (collectively, “**Marks**”), social media accounts and similar designation of origin and rights therein; (d) all rights in mask works, and all mask work registrations and applications therefor; (e) rights in trade secrets and confidential information; and (f) any other intellectual property or proprietary rights.

“**Intervening Event**” means any material change, event, effect or circumstance or material change in circumstances or facts (including any change in probability or magnitude of circumstances) that (a) was not known to or reasonably foreseeable by the Company Board on the Agreement Date (or if known by the Company Board, the consequences of which were not known to or reasonably foreseeable by the Company Board as of the Agreement Date) and becomes known to the Company Board prior to the receipt of the Requisite Stockholder Approval and (b) does not relate to (i) any Acquisition Proposal or (ii) the mere fact, in and of itself, that the Company meets or exceeds any internal or published projections, forecasts, estimates or predictions of revenue, earnings, or other financial or operating metrics for any period ending on or after the Agreement Date, or changes after the Agreement Date in the market price or trading volume of the Company Common Stock or the credit rating of the Company (it being understood that the underlying cause of any of the foregoing in this clause (ii) may be considered and taken into account).

“**IRS**” means the United States Internal Revenue Service or any successor thereto.

“**Knowledge**” of the Company, with respect to any matter in question, means the actual knowledge of the Company’s Chief Executive Officer; Chief Financial Officer and Chief Legal Officer.

“**Law**” means any law, common law, rule, regulation, judgment, injunction, order, decree or other restriction of any court or Governmental Authority.

“**Legal Proceeding**” means any claim, action, charge, lawsuit, litigation, audit, investigation (to the Knowledge of the Company, as used in relation to the Company Group) or other similarly formal legal proceeding brought by or pending before any Governmental Authority, arbitrator, mediator or other tribunal.

“**Lien**” means any mortgage, pledge, lien, encumbrance, charge or other security interest.

“**Material Contract**” means any of the following Contracts that is currently in effect and to which any Company Group Member is bound by or is a party:

(a) any “material contract” (as defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC, other than those agreements and arrangements described in Item 601(b)(10)(iii) of Regulation S-K) with respect to the Company Group, taken as a whole;

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(b) any employment, management, severance, retention, transaction bonus, change in control compensation, individual consulting, relocation, repatriation or expatriation Contract (i) not terminable at will by a Company Group Member, pursuant to which a Company Group Member has continuing or contingent obligations as of the Agreement Date with any executive officer or other employee at the vice president level or above, or any member of the Company Board, (ii) containing obligations that could be triggered solely by the consummation of the Transactions without any further action by any Company Group Member, Parent or any of their respective Affiliates (excluding, for the avoidance of doubt, any “double trigger” arrangements) or (iii) for any other agreement not terminable at will by a Company Group Member, with an officer, director or employee which provides for cash compensation of $250,000 or more per year, but not including (A) items already described by the Company in its filings made with the SEC or (B) offer letters on a standard form that do not provide for severance benefits or a fixed period of employment;

(c) [Reserved];

(d) any Contract that is material to the business of the Company Group, taken as a whole, under which any Company Group Member receives a license to use material Intellectual Property from a third party or under which any Company Group Member grants any third party a license to use material Company Intellectual Property, in each case, other than (i) non-disclosure agreements entered into in the ordinary course of business, (ii) nonexclusive, “off-the-shelf” software licenses, (iii) Contracts for Open Source Software, (iv) maintenance and support and professional services Contracts by the Company in the ordinary course of business, (v) non-exclusive licenses to customers and/or other third party commercial counterparties in the ordinary course of business and (vi) agreements with employees and contractors in the ordinary course of business that assign Intellectual Property created by the employee or contractor to a Company Group Member;

(e) any Contract containing any covenant or obligation (i) limiting the right of any Company Group Member to engage in any line of business or to compete with any Person in any line of business; or (ii) containing and limiting the right of any Company Group Member pursuant to any “most favored nation” or “exclusivity” provisions, in each case of the above, other than any such Contracts that (A) may be cancelled without material liability to any Company Group Member upon notice of ninety (90) days or less, (B) are not material to the Company Group, taken as a whole, or (C) customary non-solicitation or non-hire clauses with respect to the customers or service providers of a third party;

(f) any Contract entered into in the last three (3) years (i) relating to the disposition or acquisition of assets by any Company Group Member with a value greater than $5,000,000 after the Agreement Date, other than the disposition of assets in the ordinary course of business; or (ii) pursuant to which the Company Group acquired or will acquire any material ownership interest in any other Person or other business enterprise other than any Subsidiary of the Company;

(g) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts relating to the borrowing of money or extension of credit by any Company Group Member, in each case in excess of $2,000,000 other than (i) accounts receivables and payables in the ordinary course of business; (ii) obligations incurred pursuant to business credit cards in the ordinary course of business and (iii) extensions of credit of less than $100,000 to customers which are made in the ordinary course of business;

(h) any Contract that is an agreement in settlement of a dispute that imposes material obligations on any Company Group Member involving (i) a payment in excess of $1,000,000 or (ii) any material ongoing requirements or restrictions on the Company Group, in each case, after the Agreement Date;

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(i) any Contract that is a Collective Bargaining Agreement;

(j) any Contract that involves any interest of any Company Group Member in a material joint venture entity, limited liability company or legal partnership (excluding, for avoidance of doubt, reseller agreements and other commercial agreements that do not involve the formation of an entity with any third Person), other than any such Contract solely between the Company and any of its direct or indirect Subsidiaries or among members of the Company Group;

(k) any Contract or agreement with any Governmental Authority under which the Company or any of its Subsidiaries received payments in excess of $1,000,000 during the twelve (12)-month period ending December 31, 2020, other than non-exclusive licenses to customers in the ordinary course of business;

(l) any Contract that prohibits (i) the payment of dividends or distributions in respect of the capital stock of the Company or any of its Subsidiaries, (ii) the pledging of the capital stock of the Company or any of its Subsidiaries, or (iii) the issuance of guarantees or similar obligations by the Company or any of its Subsidiaries; and

(m) each Contract set forth under subclause (m) on Section 3.13(a) of the Company Disclosure Letter.

“**NASDAQ**” means the NASDAQ Global Select Market.

“**Open Source Software**” means any software (in source or object code form) that is subject to (a) a license or other agreement commonly referred to as an open source, free software, copyleft or community source code license (including any code or library licensed under the GNU General Public License, GNU Lesser General Public License, BSD License, Apache Software License, or any other public source code license arrangement), or (b) any other license or other agreement that requires, as a condition of the use, modification or distribution of software subject to such license or agreement, that such software or other software linked with, called by, combined or distributed with such software be (i) disclosed, distributed, made available, offered, licensed or delivered in source code form, (ii) licensed for the purpose of making derivative works, (iii) licensed under terms that allow reverse engineering, reverse assembly, or disassembly of any kind, or (iv) redistributable at no charge, including any license defined as an open source license by the Open Source Initiative as set forth on www.opensource.org.

“**Parent Fundamental Representations**” means, collectively: (a) Section 4.1(a), (b) Section 4.1(b), (c) Section 4.2, (d) clause (a) of Section 4.3, (e) Section 4.7 and (f) Section 4.9.

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“**Permitted Liens**” means any of the following: (a) Liens for Taxes, assessments and governmental charges or levies either (i) not yet delinquent or (ii) that are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (b) mechanics, carriers’, workmen’s, warehouseman’s, repairmen’s, materialmen’s or other Liens or security interests granted or which arise in the ordinary course of business; (c) leases and subleases (other than capital leases and leases underlying sale and leaseback transactions); (d) Liens imposed by applicable Law (other than Tax law); (e) pledges or deposits to secure obligations pursuant to workers’ compensation laws or similar legislation or to secure public or statutory obligations; (f) pledges and deposits to secure the performance of bids, trade contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business; (g) defects, imperfections or irregularities in title, easements, covenants and rights of way (unrecorded and of record) and other similar Liens (or other encumbrances of any type), and zoning, building and other similar codes or restrictions, in each case, that do not adversely affect in any material respect the current use or value of the applicable property owned, leased, used or held for use by the Company Group; (h) Liens the existence of which are disclosed in the notes to the consolidated financial statements of the Company included in the Company SEC Reports filed as of the Agreement Date; (i) non-exclusive licenses to Intellectual Property granted by a Company Group Member to customers, vendors, contractors or other partners and entered into in the ordinary course of business; (j) statutory, common Law or contractual Liens (or other encumbrances of any type) of landlords or Liens against the interests of the landlord or owner of any Leased Real Property unless caused by the Company Group; (k) Liens (or other encumbrances of any type) that do not materially and adversely affect the use or operation of the property subject thereto; (l) Liens to be released at or prior to Closing; (m) Liens securing obligations under the Credit Facility or any related loan document; and (n) any other Liens that would not, individually or in the aggregate, have a Company Material Adverse Effect.

“**Person**” means any individual, corporation (including any non-profit corporation), limited liability company, joint stock company, general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, firm, Governmental Authority or other enterprise, association, organization or entity.

“**Redacted Fee Letter**” means a fee letter from a Financing Source redacted in a customary manner removing only the fees, pricing caps, and economic terms (including economic flex terms), which redacted information does not adversely affect the amount, availability, or conditionality of the funding of the Debt Financing.

“**Registered Intellectual Property**” means all United States, international and foreign (a) Patents and Patent applications (including provisional applications); (b) registered Marks and applications to register Marks (including intent-to-use applications); and (c) registered Copyrights and applications for Copyright registration.

“**Sanctioned Country**” means a country or territory which is currently or has in the last five (5) years been itself the subject of or target of any Sanctions and Export Control Laws (for the purposes of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan, and Syria).

“**Sanctioned Person**” means a Person (a) listed on any Sanctions and Export Control Laws-related list of designated Persons maintained by a Governmental Authority, (b) located, organized, or resident in a Sanctioned Country, or (c) greater than fifty percent (50%) owned or controlled by one (1) or more Persons described in clause (a) or (b) above.

“**Sanctions and Export Control Laws**” means all U.S. and non-U.S. laws, regulations, rules, statutes and orders relating to (a) economic or trade sanctions, including the laws, regulations, rules, statutes and orders administered and enforced by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State), the United Nations Security Council, and the European Union and (b) export, reexport, transfer, and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations, the customs and import laws and orders administered by the U.S. Customs and Border Protection, and the EU Dual Use Regulation.

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“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002.

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

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Specified Company Fundamental Representations**” means, collectively, the representations and warranties contained in Section 3.7(a), the first sentence of Section 3.7(b) and Section 3.7(c).

“**Subsidiary**” of any Person means (a) a corporation more than fifty percent (50%) of the combined voting power of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one (1) or more other Subsidiaries of such Person or by such Person and one (1) or more other Subsidiaries of such Person; (b) a partnership of which such Person or one (1) or more other Subsidiaries of such Person or such Person and one (1) or more other Subsidiaries thereof, directly or indirectly, is the general partner and has the power to direct the policies, management and affairs of such partnership; (c) a limited liability company of which such Person or one (1) or more other Subsidiaries of such Person or such Person and one (1) or more other Subsidiaries of such Person, directly or indirectly, is the managing member and has the power to direct the policies, management and affairs of such company; or (d) any other Person (other than a corporation, partnership or limited liability company) in which such Person or one (1) or more other Subsidiaries of such Person or such Person and one (1) or more other Subsidiaries of such Person, directly or indirectly, has at least a majority ownership and the power to direct the policies, management and affairs thereof.

“**Superior Proposal**” means any *bona fide* written Acquisition Proposal for an Acquisition Transaction that is on terms that the Company Board (or a committee thereof) determines, in its good faith judgment, after consultation with its financial advisor and outside legal counsel, is reasonably likely to be consummated in accordance with its terms, taking into account all legal, regulatory and financing aspects (including certainty of closing) of such Acquisition Proposal and the identity of the Person making such Acquisition Proposal and other aspects of the Acquisition Proposal that the Company Board (or a committee thereof) deems relevant, and if consummated, would result in a transaction more favorable to the Company Stockholders (solely in their capacity as such) than the Merger (taking into account (a) any revisions to this Agreement made or proposed in writing by Parent prior to the time of such determination and (b) all legal, regulatory, financial (including any termination fee amounts and conditions), timing, financing and other aspects of such Acquisition Proposal), except that for purposes of the definition of “Superior Proposal”, the references to “twenty percent (20%)” in the definition of “Acquisition Transaction” shall be deemed to be references to “eighty percent (80%).”

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“**Tax**” means any United States federal, state, local and non-United States taxes, assessments and similar governmental charges and impositions in the nature of taxes (including gross receipts, income, profits, sales, use, goods, occupation, value added, ad valorem, transfer, franchise, withholding, payroll, social security (or similar), pension, employment, excise, estimated, stamp, custom, duty, license, and property taxes, however denominated, together with all interest, penalties, fines, and additions imposed with respect to such amounts, whether disputed or not).

“**Tax Returns**” means any return, statement, report, tax filing or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) filed or required to be filed with respect to Taxes, and any amendments thereto.

“**Third Person**” means any Person or “group” (within the meaning of Section 13(d) of the Exchange Act), other than (a) the Company or any of its controlled Affiliates or (b) Parent, Merger Sub, Guarantor or any of their respective Affiliates or any “group” including Parent, Merger Sub, Guarantor or any of their respective Affiliates.

“**Transaction Litigation**” means any Legal Proceeding commenced or threatened in writing against a Party or any of its Subsidiaries or Affiliates or otherwise relating to, involving or affecting such Party or any of its Subsidiaries or Affiliates, in each case in connection with, arising from or otherwise relating to or regarding the Transactions, including any Legal Proceeding alleging or asserting any misrepresentation or omission in the Proxy Statement, any Other Required Company Filing or any other communications to the Company Stockholders, other than any Legal Proceedings among the Parties or with the Financing Sources related to this Agreement, the Guaranty or the Equity Commitment Letter; *provided* that, for the avoidance of doubt, any Legal Proceeding involving or arising under any Antitrust Law shall not be considered Transaction Litigation.

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

“**Willful Breach**” means a breach that is a consequence of an intentional act or intentional failure to act undertaken by the breaching party with actual knowledge that such party’s act or failure to act would, or would reasonably be expected to, cause, result in or constitute a breach.

1.2 *Additional Definitions.* The following capitalized terms have the respective meanings given to them in the respective Sections of this Agreement set forth opposite each of the capitalized terms below:

|  |  |  |
| --- | --- | --- |
| **Term** |  | **Section Reference** |
| Advisor |  | 3.3(b) |
| Agreement |  | Preamble |
| Agreement Date |  | Preamble |
| Alternate Debt Financing |  | 6.5(c) |
| Alternative Acquisition Agreement |  | 5.3(b) |

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| --- | --- | --- |
| Capitalization Date |  | 3.7(a) |
| Certificate of Merger |  | 2.2 |
| Certificates |  | 2.9(c) |
| Chosen Courts |  | 9.10(a) |
| Closing |  | 2.3 |
| Closing Date |  | 2.3 |
| Closing Payments |  | 4.12(a) |
| Collective Bargaining Agreement |  | 3.19(a) |
| Company |  | Preamble |
| Company Board Recommendation |  | 3.3(a) |
| Company Board Recommendation Change |  | 5.3(d)(i) |
| Company Breach Notice Period |  | 8.1(e) |
| Company Disclosure Letter |  | Article III |
| Company Equity Awards |  | 1.1 |
| Company Liability Limitation |  | 8.3(f)(ii) |
| Company Related Parties |  | 8.3(f)(i) |
| Company SEC Reports |  | 3.9 |
| Company Securities |  | 3.7(c) |
| Company Stockholder Meeting |  | 6.4(a) |
| Company Termination Fee |  | 8.3(b)(i) |
| Confidentiality Agreement |  | 0 |
| Consent |  | 3.6 |
| Copyrights |  | 1.1 |
| D&O Insurance |  | 6.10(c) |
| Debt Commitment Letter |  | Recitals |
| Debt Documents |  | 6.6(a)(xii) |
| Debt Financing |  | 4.12(b) |
| DGCL |  | Recitals |
| Dissenting Company Shares |  | 2.7(c)(i) |
| DTC |  | 2.9(d) |
| DTC Payment |  | 2.9(d) |
| Effect |  | 1.1 |
| Effective Time |  | 2.2 |
| Electronic Delivery |  | 9.13 |
| Employee Plans |  | 3.18(a) |
| Enforceability Limitations |  | 3.2 |
| Enforcement Expenses |  | 8.3(e) |
| Equity Commitment Letter |  | Recitals |
| Equity Financing |  | 4.12(a) |
| ERISA Affiliate |  | 3.18(a) |
| ESPP |  | 2.8(e) |
| Event Notice Period |  | 5.3(e)(i)(1) |
| Exchange Fund |  | 2.9(b) |
| Fee Letter |  | Recitals |
| Financing |  | 4.12(b) |
| Financing Letters |  | Recitals |

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| --- | --- | --- |
| Go-Shop Period |  | 5.3(a) |
| Guarantor |  | Recitals |
| Guaranty |  | Recitals |
| Indemnified Persons |  | 6.10(a) |
| Interim Period |  | 5.1 |
| International Employee Plans |  | 3.18(a) |
| Lease |  | 3.14(b) |
| Leased Real Property |  | 3.14(b) |
| Marks |  | 1.1 |
| Material Revision |  | 5.3(e)(ii)(3) |
| Maximum Annual Premium |  | 6.10(c) |
| Merger |  | Recitals |
| Merger Consideration |  | 4.12(a) |
| Merger Sub |  | Preamble |
| New Debt Commitment Letters |  | 6.5(c) |
| New Plans |  | 6.11(d) |
| No-Shop Period Start Date |  | 5.3(a) |
| Old Plans |  | 6.11(d) |
| Option Consideration |  | 2.8(b)(i) |
| Other Required Company Filing |  | 6.3(b) |
| Other Required Parent Filing |  | 6.3(c) |
| Owned Company Shares |  | 2.7(a)(iii) |
| Owned Real Property |  | 3.14(a) |
| Parent |  | Preamble |
| Parent Breach Notice Period |  | 8.1(g) |
| Parent Disclosure Letter |  | Article IV |
| Parent Liability Limitation |  | 8.3(f)(i) |
| Parent Reimbursement Obligations |  | 6.6(f) |
| Parent Related Parties |  | 8.3(f)(i) |
| Parent Termination Fee |  | 8.3(c) |
| Party |  | Preamble |
| Patents |  | 1.1 |
| Payment Agent |  | 2.9(a) |
| Per Share Price |  | 2.7(a)(ii) |
| Permits |  | 3.20 |
| Privacy Laws |  | 3.16(h) |
| Proposal Notice Period |  | 5.3(e)(ii)(3) |
| Protected Information |  | 3.16(h) |
| Proxy Statement |  | 6.3(a) |
| Representatives |  | 5.3(a) |
| Required Amount |  | 4.12(d) |
| Requisite Stockholder Approval |  | 3.4 |
| RSU Consideration |  | 2.8(a)(i) |
| SEC Clearance Date |  | 6.3(g) |
| Specified Acquisition |  | 5.4 |
| Sublease |  | 3.14(c) |

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| --- | --- | --- |
| Surviving Corporation |  | 2.1 |
| Tax Proceeding |  | 3.17(c) |
| Termination Date |  | 8.1(c) |
| Trade Control Laws |  | 3.26(a)(i) |
| Uncertificated Shares |  | 2.9(c) |
| VDR |  | 1.3(s) |

1.3 *Certain Interpretations.*

(a) When a reference is made in this Agreement to an Article or a Section, such reference is to an Article or a Section of this Agreement unless otherwise indicated. When a reference is made in this Agreement to a Schedule or Exhibit, such reference is to a Schedule or Exhibit to this Agreement, as applicable, unless otherwise indicated.

(b) When used herein, (i) the words “hereof,” “herein” and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and (ii) the words “include,” “includes” and “including” will be deemed in each case to be followed by the words “without limitation.”

(c) Unless the context otherwise requires, “neither,” “nor,” “any,” “either” and “or” are not exclusive.

(d) The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and does not simply mean “if”.

(e) When used in this Agreement, references to “$” or “Dollars” are references to U.S. dollars.

(f) The meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders. Where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning.

(g) When reference is made to any party to this Agreement or any other agreement or document, such reference includes such Party’s successors and permitted assigns. References to any Person include the successors and permitted assigns of that Person.

(h) Unless the context otherwise requires, all references in this Agreement to the Subsidiaries of a Person will be deemed to include all direct and indirect Subsidiaries of such entity.

(i) A reference to any specific legislation or to any provision of any legislation includes any amendment to, and any modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto, except that, for purposes of any representations and warranties in this Agreement that are made as a specific date, references to any specific legislation will be deemed to refer to such legislation or provision (and all rules, regulations and statutory instruments issued thereunder or pursuant thereto) as of such date. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time.

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(j) All accounting terms used herein will be interpreted, and all accounting determinations hereunder will be made, in accordance with GAAP.

(k) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and will not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(l) The measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date. If no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one (1) month following May 18 is June 18 and one (1) month following May 31 is July 1).

(m) The Parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and therefore waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

(n) No summary of this Agreement or any Exhibit or Schedule delivered herewith prepared by or on behalf of any Party will affect the meaning or interpretation of this Agreement or such Exhibit or Schedule.

(o) The information contained in this Agreement and in the Company Disclosure Letter is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third Person of any matter whatsoever, including (i) any violation of Law or breach of contract; or (ii) that such information is material or that such information is required to be referred to or disclosed under this Agreement.

(p) The representations and warranties in this Agreement are the product of negotiations among the Parties and are for the sole benefit of the Parties. Any inaccuracies in such representations and warranties are subject to waiver by the Parties in accordance with Section 8.5 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the Parties of risks associated with particular matters regardless of the knowledge of any of the Parties. Consequently, Persons other than the Parties may not rely on the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the Agreement Date or as of any other date.

(q) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(r) References herein to a Person in a particular capacity or capacities shall exclude such Person in any other capacity; and, unless the context of this Agreement otherwise requires, references to a Person include the successors and permitted assigns of that Person.

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(s) Documents or other information or materials will be deemed to have been “made available”, “provided” or words of similar import by the Company if such documents, information or materials have been (i) publicly filed with the SEC, (ii) posted to the virtual data room hosted by Datasite managed by the Company (the “**VDR**”), in each case, prior to 10:00 a.m., Pacific Time, on the Agreement Date and/or (iii) sent via email by representatives of the Company or Proskauer Rose LLP, on the one hand, to representatives of Kirkland & Ellis LLP, on the other hand, on the Agreement Date prior to 1:00 p.m. Pacific Time.

(t) When used herein, references to “ordinary course” or “ordinary course of business” will be construed to mean “ordinary course of business, reasonably consistent with past practices, including with respect to timing, frequency and magnitude.”

**ARTICLE II****THE MERGER**

2.1 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the DGCL, on the Closing Date, (a) Merger Sub will be merged with and into the Company; (b) the separate corporate existence of Merger Sub will thereupon cease; and (c) the Company will continue as the surviving corporation of the Merger. The Company, as the surviving corporation of the Merger, is sometimes referred to herein as the “**Surviving Corporation**.”

2.2 *The Effective Time.* Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Parent, Merger Sub and the Company will cause the Merger to be consummated pursuant to the DGCL by filing a certificate of merger in customary form and substance (the “**Certificate of Merger**”) with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL (the time of such filing and acceptance for record by the Secretary of State of the State of Delaware, or such later time as may be agreed in writing by Parent, Merger Sub and the Company and specified in the Certificate of Merger, being referred to herein as the “**Effective Time**”).

2.3 *The Closing.* The consummation of the Merger will take place at a closing (the “**Closing**”) to occur at (a) 9:00 a.m., Pacific Time via the electronic exchange of documents and signature pages, on a date to be agreed upon by Parent, Merger Sub and the Company that is no later than the second (2nd) Business Day after the satisfaction or waiver (to the extent permitted hereunder) of the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted hereunder) of such conditions); or (b) such other time, location and date as Parent, Merger Sub and the Company mutually agree in writing. The date on which the Closing actually occurs is referred to as the “**Closing Date**.”

2.4 *Effect of the Merger.* At the Effective Time, the effect of the Merger will be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all (a) of the property, rights, privileges, powers and franchises of the Company and Merger Sub will vest in the Surviving Corporation; and (b) debts, liabilities and duties of the Company and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

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2.5 *Certificate of Incorporation and Bylaws*.

(a) *Certificate of Incorporation.* At the Effective Time, subject to the provisions of Section 6.10(a), the Charter will be amended and restated in its entirety to read substantially identically to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, and such amended and restated certificate of incorporation will become the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL and such certificate of incorporation; *provided, however,* that at the Effective Time the certificate of incorporation of the Surviving Corporation will be amended so that the name of the Surviving Corporation will be “Stamps.com Inc.”.

(b) *Bylaws.* At the Effective Time, subject to the provisions of Section 6.10(a), the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, will become the bylaws of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL, the certificate of incorporation of the Surviving Corporation and such bylaws.

2.6 *Directors and Officers.*

(a) *Directors.* At the Effective Time, the initial directors of the Surviving Corporation will be the directors of Merger Sub as of immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified in accordance therewith.

(b) *Officers.* At the Effective Time, the initial officers of the Surviving Corporation will be the officers of the Company as of immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly appointed in accordance therewith.

2.7 *Effect on Capital Stock.*

(a) *Capital Stock.* Unless otherwise mutually agreed by the Parties or by Parent and the applicable holder, upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following Equity Interests, the following will occur:

(i) each share of common stock, par value $0.01 per share, of Merger Sub that is outstanding as of immediately prior to the Effective Time will be converted into one (1) validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation, and thereupon each certificate representing ownership of such share of common stock of Merger Sub will thereafter represent ownership of a share of common stock of the Surviving Corporation;

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(ii) each share of Company Common Stock that is outstanding as of immediately prior to the Effective Time (other than Owned Company Shares or Dissenting Company Shares) will be cancelled and extinguished and automatically converted into the right to receive cash in an amount equal to $330.00, without interest thereon, subject to any required withholding of Taxes (the “**Per Share Price**”), in accordance with the provisions of Section 2.9 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in accordance with the provisions of Section 2.11); and

(iii) each share of Company Common Stock that is (A) held by the Company as treasury stock; (B) owned by Parent or Merger Sub; or (C) owned by any direct or indirect wholly owned Subsidiary of Parent or Merger Sub as of immediately prior to the Effective Time (collectively, the “**Owned Company Shares**”) will be cancelled and extinguished without any conversion thereof or consideration paid therefor.

(b) *Adjustment to the Per Share Price.* The Per Share Price will be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or other distribution of securities convertible into Company Common Stock), consolidation of shares, reorganization, recapitalization, reclassification, combination, subdivision, exchange of shares or other similar change with respect to the Company Common Stock and the Company Equity Awards occurring on or after the Agreement Date and prior to the Effective Time.

(c) *Statutory Rights of Appraisal*.

(i) Notwithstanding anything to the contrary set forth in this Agreement, all shares of Company Common Stock that are issued and outstanding as of immediately prior to the Effective Time and held by Company Stockholders who shall have neither voted in favor of the Merger nor consented thereto in writing and who shall have properly and validly exercised their statutory rights of appraisal in respect of such shares of Company Common Stock in accordance with Section 262 of the DGCL (collectively, the “**Dissenting Company Shares**”) will not be converted into, or represent the right to receive, the Per Share Price for each such Dissenting Company Share pursuant to this Section 2.7. Such Company Stockholders will be entitled to receive payment of the appraised value of such Dissenting Company Shares in accordance with the provisions of Section 262 of the DGCL subject to any required withholding of Taxes, except that all Dissenting Company Shares held by Company Stockholders who shall have failed to perfect or who shall have effectively withdrawn, waived or lost their rights to appraisal of such Dissenting Company Shares pursuant to Section 262 of the DGCL will thereupon be deemed to have been converted into, and to have become cancelled and exchanged for, as of the Effective Time, the right to receive the Per Share Price, without interest thereon, subject to any required withholding of Taxes, upon surrender of the Certificates or Uncertificated Shares that formerly evidenced such shares of Company Common Stock in the manner provided in Section 2.9.

(ii) The Company will give Parent (A) reasonably prompt notice of any demands for appraisal received by the Company, withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company in respect of Dissenting Company Shares; and (B) the opportunity to participate in all negotiations and Legal Proceedings with respect to demands for appraisal pursuant to the DGCL in respect of Dissenting Company Shares. The Company may not, except with the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), make any payment with respect to any demands for appraisal or settle or offer to settle any such demands for payment in respect of Dissenting Company Shares. For purposes of this Section 2.7(c)(ii), “participate” means that Parent will be kept apprised of proposed material strategy and other material decisions with respect to demands for appraisal pursuant to the DGCL in respect of Dissenting Company Shares (to the extent that the attorney-client privilege between the Company and its counsel is not (or could not reasonably be expected to be) undermined or otherwise affected in any respect), and Parent may offer comments or suggestions with respect to such demands (which may be rejected in the sole discretion of the Company) but will not be afforded any decision-making power or other authority over such demands except for the payment, settlement or compromise consent set forth above.

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2.8 *Equity Awards.*

(a) *Company RSU Awards.* At the Effective Time, by virtue of the Merger, the Company RSU Awards that are unexpired, unsettled, and outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) *RSU Consideration*. Each Company RSU Award (whether vested or unvested) that is outstanding as of immediately prior to the Effective Time shall accelerate and become fully vested effective immediately prior to, and contingent upon, the Effective Time, and shall be cancelled and automatically converted into the right to receive an amount in cash, without interest, equal to the product of (A) the aggregate number of shares of Company Common Stock subject to the Company RSU Award *multiplied* *by* (B) the Per Share Price, subject to any required withholding of Taxes (the “**RSU Consideration**”).

(b) *Company Options.* At the Effective Time, by virtue of the Merger, the Company Options that are unexpired, unexercised, and outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) *Option Consideration.* Each Company Option (whether vested or unvested) that is outstanding as of immediately prior to the Effective Time shall accelerate and become fully vested and exercisable effective immediately prior to, and contingent upon, the Effective Time, and shall be cancelled and automatically converted into the right to receive an amount in cash, without interest, equal to the product of (A) the aggregate number of shares of Company Common Stock subject to such Company Option, *multiplied* *by* (B) the excess, if any, of the Per Share Price over the applicable per share exercise price under such Company Option, subject to any required withholding of Taxes, (the “**Option Consideration**”).

(ii) *Treatment of Certain Company Options.* Notwithstanding the foregoing, if the per share exercise price of any Company Option that is unexpired, unexercised, and outstanding as of immediately prior to the Effective Time, is equal to or greater than the Per Share Price, such Company Option shall be cancelled immediately upon the Effective Time pursuant to this Section 2.8(b)(ii) without payment or consideration.

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(c) *Payment Procedures.* The Surviving Corporation shall pay on the first (1st) payroll date that occurs on or after the Closing Date the aggregate RSU Consideration and Option Consideration, as applicable, net of any applicable withholding Taxes, payable with respect to each of the Company RSU Awards and Company Options through, to the extent applicable, the Surviving Corporation’s payroll (subject to any required tax withholdings) to the applicable holders of such Company RSU Award and Company Options. Notwithstanding the foregoing, if any payment owed to a holder of Company RSU Award or Company Options pursuant to Section 2.8(a)(i) or Section 2.8(b)(i), as applicable, cannot be made through the Surviving Corporation’s payroll system or payroll provider, then the Surviving Corporation will issue a check for such payment to such holder, net of any applicable withholding Taxes, promptly following the Closing Date (but in no event later than five (5) Business Days after the Closing Date).

(d) *Further Actions.* As of immediately prior to the Effective Time, the Company will take all action necessary to effect the cancellation and exchange, as applicable, of Company Equity Awards upon the Effective Time and to give effect to this Section 2.8 (including the satisfaction of the requirements of Rule 16b-3(e) promulgated under the Exchange Act). All Company Equity Plans will terminate as of the Effective Time, and the provisions in any other Employee Plan or Contract providing for the issuance or grant of any other interest in respect of the capital stock of the Company will be cancelled as of the Effective Time, and the Company will take all action necessary to effect the foregoing. The Company will use reasonable best efforts to ensure that following the Effective Time no participant in any Company Equity Plan or other Employee Plan will have any right thereunder to acquire any equity securities of the Company, the Surviving Corporation or any of their respective Subsidiaries. The Company shall provide to Parent or its counsel for review and approval drafts of any documentation prepared by the Company or its counsel to effectuate the foregoing and shall consider in good faith Parent’s comments thereto.

(e) *Treatment of Employee Stock Purchase Plan.* With respect to the Company’s 1999 Employee Stock Purchase Plan (as amended through October 24, 2018) (the “**ESPP**”), as soon as practicable following the Agreement Date, the Company Board will adopt resolutions or take all other actions as may reasonably be required to provide that (i) no new participants will commence participation in the ESPP as of the Agreement Date or as soon as administratively practicable thereafter; (ii) except to the extent necessary to maintain the status of the ESPP as an “employee stock purchase plan” within the meaning of Section 423 of the Code and the Treasury Regulations thereunder, each individual participating in a Purchase Interval (as defined in the ESPP) in progress on the Agreement Date will not be permitted to (A) increase his or her payroll contribution rate pursuant to the ESPP from the rate in effect as of the Agreement Date; or (B) make separate non-payroll contributions to the ESPP on or following the Agreement Date, except as may be required by applicable Law; and (iii) no new Purchase Interval will commence or be extended pursuant to the ESPP, in each case, after the Agreement Date. If the Effective Time is expected to occur prior to the end of the current Purchase Interval, (I) the Company shall take all actions reasonably necessary to provide that the automatic exercise of each outstanding purchase right under the ESPP shall occur in accordance with the terms of the ESPP, as of immediately prior to the Effective Time, by applying the accrued payroll deductions of each ESPP participant for such Purchase Interval to the purchase of whole shares of Company Common Stock at a purchase price equal to eighty-five percent (85%) of the lower of (x) the Fair Market Value (as defined in the ESPP) per share of Company Common Stock on the participant’s Entry Date (as defined in the ESPP) into the then-current offering period and (y) the Fair Market Value (as defined in the ESPP) per share of Company Common Stock as of immediately prior to the Effective Time, and (II) the Company shall provide written notice to each ESPP participant, as required under the ESPP, at least ten (10) days prior to the Effective Time, under which the ESPP participant may elect to terminate such ESPP participant’s purchase right under the ESPP until as of immediately prior to the Effective Time. The ESPP will terminate, in accordance with its terms, no later than immediately prior to and effective as of the Effective Time (but subject to the consummation of the Merger), and each share of Company Common Stock purchased thereunder immediately prior to the Effective Time shall be canceled at the Effective Time and converted into the right to receive the Per Share Price in accordance with Section 2.7(a)(ii), subject to withholding of any applicable withholding Taxes. Any accumulated contributions of each participant under the ESPP as of immediately prior to the Effective Time shall, to the extent not used to purchase shares in accordance with the terms and conditions of the ESPP, be refunded to such participant as promptly as practicable following the Effective Time (without interest).

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2.9 *Exchange of Certificates.*

(a) *Payment Agent.* Prior to the Closing, Parent will (i) designate the Company’s transfer agent or such other bank or trust company, reasonably acceptable to the Company, to act as the payment agent for the Merger (the “**Payment Agent**”); and (ii) enter into a payment agent agreement, in form and substance reasonably acceptable to the Company, with such Payment Agent.

(b) *Exchange Fund.* At or prior to the Closing, Parent will deposit (or cause to be deposited) with the Payment Agent, by wire transfer of immediately available funds, for payment to the holders of shares of Company Common Stock pursuant to Section 2.7, an amount of cash equal to the aggregate consideration to which such holders of Company Common Stock become entitled pursuant to Section 2.7. Until disbursed in accordance with the terms and conditions of this Agreement, such cash will be invested by the Payment Agent, as directed by Parent or the Surviving Corporation, in (i) obligations of or fully guaranteed by the United States or any agency or instrumentality thereof and backed by the full faith and credit of the United States with a maturity of no more than thirty (30) days; (ii) commercial paper obligations rated A-1 or P-1 or better by Moody’s Investors Service, Inc. or Standard & Poor’s Corporation, respectively; or (iii) certificates of deposit, bank repurchase agreements or banker’s acceptances of commercial banks with capital exceeding $1,000,000,000 (based on the most recent financial statements of such bank that are then publicly available) (such cash and any proceeds thereon, the “**Exchange Fund**”), none of which, in each case, shall have a maturity exceeding three (3) months. To the extent that (A) there are any losses with respect to any investments of the Exchange Fund; (B) the Exchange Fund diminishes for any reason below the level required for the Payment Agent to promptly pay the cash amounts contemplated by Section 2.7; or (C) all or any portion of the Exchange Fund is unavailable for Parent (or the Payment Agent on behalf of Parent) to promptly pay the cash amounts contemplated by Section 2.7 for any reason, none of the foregoing shall modify or otherwise affect the Per Share Price and Parent will, or will cause the Surviving Corporation to, promptly deposit, replace or restore the amount of cash in the Exchange Fund by wire transfer of immediately available funds so as to ensure that the Exchange Fund is at all times fully available for distribution and maintained at a level sufficient for the Payment Agent to make all payments contemplated by Section 2.7. Subject to the preceding sentence, any income from investment of the Exchange Fund will be payable to Parent or the Surviving Corporation, as Parent directs.

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(c) *Payment Procedures.* Promptly following the Effective Time (and in any event within five (5) Business Days), Parent and the Surviving Corporation will cause the Payment Agent to mail to each holder of record (as of immediately prior to the Effective Time) of (i) a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (other than Dissenting Company Shares and Owned Company Shares) (collectively, the “**Certificates**”); and (ii) subject to the last sentence of this Section 2.8(c), uncertificated shares of Company Common Stock that represented outstanding shares of Company Common Stock (other than Dissenting Company Shares and Owned Company Shares) (collectively, the “**Uncertificated Shares**”) (A) a letter of transmittal in customary form (which will specify that delivery will be effected, and risk of loss and title to the Certificates will pass, only upon delivery of the Certificates to the Payment Agent (or effective affidavits of loss in lieu of such Certificates as set forth in Section 2.11)); and (B) instructions for use in effecting the surrender of the Certificates and Uncertificated Shares in exchange for the Per Share Price payable in respect thereof pursuant to Section 2.7. Upon surrender of Certificates for cancellation to the Payment Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holders of such Certificates (or effective affidavits of loss in lieu of such Certificates as set forth in Section 2.11) will be entitled to receive in exchange therefor an amount in cash equal to the product obtained by *multiplying* (I) the aggregate number of shares of Company Common Stock represented by such Certificate (or effective affidavit of loss in lieu of such Certificates as set forth in Section 2.11) *by* (II) the Per Share Price (*less* any applicable withholding Taxes payable in respect thereof), and the Certificates (or effective affidavits of loss in lieu of such Certificates as set forth in Section 2.11) so surrendered will forthwith be cancelled. Upon receipt of an “agent’s message” by the Payment Agent (or such other evidence, if any, of transfer as the Payment Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, the holders of such Uncertificated Shares will be entitled to receive in exchange therefor an amount in cash equal to the product obtained by *multiplying* (x) the aggregate number of shares of Company Common Stock represented by such holder’s transferred Uncertificated Shares; *by* (y) the Per Share Price (*less* any applicable withholding Taxes payable in respect thereof), and the transferred Uncertificated Shares so surrendered will be cancelled. The Payment Agent will accept such Certificates and transferred Uncertificated Shares upon compliance with such reasonable and customary terms and conditions as the Payment Agent may impose to cause an orderly exchange thereof in accordance with normal exchange practices. No interest will be paid or accrued for the benefit of holders of the Certificates (or effective affidavit of loss in lieu of such Certificates as set forth in Section 2.11) and Uncertificated Shares on the Per Share Price payable upon the surrender of such Certificates (or effective affidavit of loss in lieu of such Certificates as set forth in Section 2.11) and Uncertificated Shares pursuant to this Section 2.9(c). Until so surrendered, outstanding Certificates and Uncertificated Shares will be deemed from and after the Effective Time to evidence only the right to receive the Per Share Price, without interest thereon, payable in respect thereof pursuant to Section 2.7. Notwithstanding anything to the contrary in this Agreement, no holder of Uncertificated Shares will be required to provide a Certificate or an executed letter of transmittal to the Payment Agent in order to receive the payment that such holder is entitled to receive pursuant to Section 2.7.

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(d) *DTC Payment.* Prior to the Effective Time, Parent and the Company will cooperate to establish procedures with the Payment Agent and the Depository Trust Company (“**DTC**”) with the objective that (i) if the Closing occurs at or prior to 11:30 a.m., Pacific Time, on the Closing Date, then the Payment Agent will transmit to DTC or its nominees on the Closing Date an amount in cash, by wire transfer of immediately available funds, equal to (A) the number of shares of Company Common Stock (other than Owned Company Shares and Dissenting Company Shares) held of record by DTC or such nominee immediately prior to the Effective Time; *multiplied* *by* (B) the Per Share Price (such amount, the “**DTC Payment**”); and (ii) if the Closing occurs after 11:30 a.m., Pacific Time, on the Closing Date, then the Payment Agent will transmit the DTC Payment to DTC or its nominees on the first (1st) Business Day after the Closing Date.

(e) *Transfers of Ownership.* If a transfer of ownership of shares of Company Common Stock is not registered in the stock transfer books or ledger of the Company, or if the Per Share Price is to be paid in a name other than that in which the Certificates surrendered or transferred in exchange therefor are registered in the stock transfer books or ledger of the Company, the Per Share Price may be paid to a Person other than the Person in whose name the Certificate so surrendered or transferred is registered in the stock transfer books or ledger of the Company only if such Certificate is properly endorsed and otherwise in proper form for surrender and transfer and the Person requesting such payment has paid to Parent (or any agent designated by Parent) any transfer Taxes required by reason of the payment of the Per Share Price to a Person other than the registered holder of such Certificate, or established to the satisfaction of Parent (or any agent designated by Parent) that such transfer Taxes have been paid or are otherwise not payable. Payment of the applicable Per Share Price with respect to Uncertificated Shares will only be made to the Person in whose name such Uncertificated Shares are registered.

(f) *No Liability.* Notwithstanding anything to the contrary set forth in this Agreement, none of the Payment Agent, Parent, the Surviving Corporation or any other Party will be liable to a holder of shares of Company Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) *Distribution of Exchange Fund to Parent.* Any portion of the Exchange Fund that remains undistributed to the holders of the Certificates or Uncertificated Shares on the date that is one (1) year after the Effective Time will be delivered to Parent upon demand, and any holders of shares of Company Common Stock that were issued and outstanding immediately prior to the Merger who have not theretofore surrendered or transferred their Certificates or Uncertificated Shares representing such shares of Company Common Stock for exchange pursuant to this Section 2.9 will thereafter look for payment of the Per Share Price payable in respect of the shares of Company Common Stock represented by such Certificates or Uncertificated Shares solely to Parent (subject to abandoned property, escheat or similar Laws), solely as general creditors thereof, for any claim to the Per Share Price to which such holders may be entitled pursuant to Section 2.7. To the extent permitted by applicable Laws, any amounts remaining unclaimed by such holders with respect to such Certificates or Uncertificated Shares two (2) years after the Effective Time, or at such earlier date as is immediately prior to the time at which such amounts would otherwise escheat to or become property of any Governmental Authority, shall become the property of the Surviving Corporation free and clear of any claims or interest of any such holders (and their successors, assigns or personal representatives) previously entitled thereto.

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2.10 *No Further Ownership Rights in Company Common Stock.* From and after the Effective Time, (a) all shares of Company Common Stock will no longer be outstanding and will automatically be cancelled, retired and cease to exist; and (b) each holder of a Certificate (or effective affidavit of loss in lieu of such Certificates as set forth in Section 2.11) or Uncertificated Shares theretofore representing any shares of Company Common Stock will cease to have any rights with respect thereto, except the right to receive the Per Share Price payable therefor in accordance with Section 2.7, or in the case of Dissenting Company Shares, the rights pursuant to Section 2.7(c). The Per Share Price paid in accordance with the terms of this Article II will be deemed to have been paid in full satisfaction of all rights pertaining to such shares of Company Common Stock. From and after the Effective Time, there will be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock that were issued and outstanding 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 effective affidavit of loss in lieu of such Certificates as set forth in Section 2.11) or Uncertificated Shares are presented to the Surviving Corporation for any reason, they will (subject to compliance with the exchange procedures of Section 2.9(c)) be cancelled and exchanged as provided in this Article II.

2.11 *Lost, Stolen or Destroyed Certificates.* In the event that any Certificates have been lost, stolen or destroyed, the Payment Agent will issue in exchange therefor, upon the making of an affidavit of loss regarding that fact by the holder thereof (in customary form and substance reasonably acceptable to Parent), the Per Share Price payable in respect thereof pursuant to Section 2.7. Parent or the Payment Agent may, in its reasonable discretion and as a condition precedent to the payment of such Per Share Price, require the owners of such lost, stolen or destroyed Certificates to deliver a bond in a reasonable and customary amount (but in any event not to exceed the aggregate amount equal to the Per Share Price *multiplied* *by* the number of shares of Company Common Stock which are the subject of the applicable affidavit made pursuant to this Section 2.11) as it may direct as indemnity against any claim that may be made against Parent, the Surviving Corporation or the Payment Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.12 *Required Withholding.* Notwithstanding anything herein to the contrary, each of the Payment Agent, Parent, the Company, the Surviving Corporation, and their Affiliates will be entitled to deduct and withhold from any amounts payable pursuant to this Agreement to any holder or former holder of shares of Company Common Stock or Company Equity Awards, or any other applicable Person, such amounts as are required to be deducted or withheld therefrom pursuant to any Tax laws. Each of the Payment Agent, Parent, the Company, the Surviving Corporation, and their respective Affiliates, as applicable, shall take all action that may be necessary to ensure that any such amounts so withheld are promptly and properly remitted to the appropriate Governmental Authority. To the extent that such amounts are so deducted or withheld and paid over to the appropriate Governmental Authority, such amounts will be treated for all purposes of this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

2.13 *No Dividends or Distributions.* No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date on or after the Effective Time will be paid to the holder of any unsurrendered Certificates or Uncertificated Shares.

2.14 *Necessary Further Actions.* If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, then the directors and officers of the Surviving Corporation and Parent shall be fully authorized (in the name of the Company and otherwise) to take such action.

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

With respect to any Section of this Article III, except (a) as disclosed in the reports, statements and other documents filed by the Company with the SEC or furnished by the Company to the SEC, in each case pursuant to the Exchange Act on or after January 1, 2017 and prior to the Agreement Date (other than any disclosures contained or referenced therein under the captions “Risk Factors”, “Special Note Regarding Forward-Looking Statements” or “Quantitative and Qualitative Disclosures About Market Risk”, solely to the extent such disclosures are general and predictive, cautionary or forward-looking in nature (and not, for the avoidance of doubt, with regard to statements of historical fact)); or (b) subject to the terms of Section 9.12, as set forth in the disclosure letter delivered by the Company to Parent and Merger Sub on the Agreement Date (the “**Company Disclosure Letter**”), the Company hereby represents and warrants to Parent and Merger Sub as follows:

3.1 *Organization; Good Standing.* The Company (a) is a corporation duly incorporated, validly existing and in good standing pursuant to the DGCL; and (b) has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets. The Company is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent that the concept of “good standing” is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not have a Company Material Adverse Effect. The Company has made available to Parent true, correct and complete copies of the Charter and the Bylaws, each as amended as of the Agreement Date. The Company is not in violation of the Charter or the Bylaws in any material respect.

3.2 *Corporate Power; Enforceability.* The Company has the requisite corporate power and authority to (a) execute and deliver this Agreement; (b) perform its covenants and obligations hereunder; and (c) subject to receiving the Requisite Stockholder Approval, consummate the Merger. The execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and obligations hereunder, and the consummation of the Merger have been duly authorized by all necessary corporate action on the part of the Company and no additional corporate actions on the part of the Company are necessary to authorize (i) the execution and delivery of this Agreement by the Company; (ii) the performance by the Company of its covenants and obligations hereunder; or (iii) subject to the receipt of the Requisite Stockholder Approval, the consummation of the Merger. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors’ rights generally; and (B) is subject to general principles of equity (collectively, the “**Enforceability Limitations**”).

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3.3 *Company Board Approval; Fairness Opinion; Anti-Takeover Laws.*

(a) *Company Board Approval.* The Company Board has unanimously (i) determined that it is fair to and in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement providing for the Merger in accordance with the DGCL upon the terms and subject to the conditions set forth herein; (ii) approved, adopted and declared advisable this Agreement and the execution and delivery thereof by the Company, the performance by the Company of its covenants, obligations and other agreements hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein; (iii) directed that this Agreement and the Merger be submitted for approval and adoption by the stockholders of the Company; and (iv) resolved to recommend that the stockholders of the Company adopt this Agreement and approve the Merger in accordance with the DGCL (collectively, the “**Company Board Recommendation**”), which Company Board Recommendation has not been withdrawn, rescinded or modified in any way as of the Agreement Date.

(b) *Fairness Opinion.* The Company Board has received the written opinion (or an oral opinion to be confirmed in writing) of its financial advisor, J.P. Morgan Securities LLC (the “**Advisor**”), to the effect that, as of the date of such opinion and based upon and subject to the various factors, qualifications, limitations and assumptions set forth therein, the Per Share Price to be paid to holders of Company Common Stock (other than holders of Owned Company Shares or Dissenting Company Shares) in connection with the Merger is fair, from a financial point of view, to such holders (it being understood and agreed that such written opinion is for the benefit of the Company Board and may not be relied upon by Parent or Merger Sub).

(c) *Anti-Takeover Laws.* Assuming that the representations of Parent and Merger Sub set forth in Section 4.6 are true and correct, the Company Board has taken all necessary actions so that the restrictions on business combinations set forth in Section 203 of the DGCL and any other similar applicable “anti-takeover” Law will not be applicable to the Merger.

3.4 *Requisite Stockholder Approval.* The affirmative vote of the holders of a majority of the voting power of the outstanding shares of Company Common Stock entitled to vote on the Merger (the “**Requisite Stockholder Approval**”) is the only vote of the holders of any class or series of Equity Interests of the Company that is necessary pursuant to applicable law, the Charter or the Bylaws to adopt this Agreement and consummate the Merger.

3.5 *Non-Contravention.* Except as set forth in Section 3.5 of the Company Disclosure Letter, the execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and obligations hereunder, and the consummation of the Merger do not (a) violate or conflict with any provision of the Charter or the Bylaws; (b) violate, conflict with, result in the breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) pursuant to, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration pursuant to any Material Contract; or (c) assuming compliance with the matters referred to in Section 3.6 and, in the case of the consummation of the Merger, subject to obtaining the Requisite Stockholder Approval, violate or conflict with any Law or order applicable to the Company Group or by which any of its properties or assets are bound, except in the case of each of clauses (b) and (c) for such violations, conflicts, breaches, defaults, terminations or accelerations that would not have a Company Material Adverse Effect.

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3.6 *Requisite Governmental Approvals.* No consent, approval, order or authorization of, filing or registration with, or notification to (any of the foregoing, a “**Consent**”) any Governmental Authority that has jurisdiction over the Transactions is required on the part of the Company (a) in connection with the execution and delivery of this Agreement by the Company; (b) the performance by the Company of its covenants and obligations pursuant to this Agreement; or (c) the consummation of the Merger, except (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and such filings with Governmental Authorities to satisfy the applicable laws of states in which the Company Group is qualified to do business; (ii) such filings and approvals as may be required by any federal or state securities laws, including compliance with any applicable requirements of the Exchange Act, as well as the rules and regulations of the NASDAQ; (iii) compliance with any applicable requirements of the HSR Act, the Austrian Cartel Act 2005 and any other applicable Antitrust Laws set forth on Section 3.6 of the Company Disclosure Letter; and (iv) such other Consents the failure of which to obtain would not have a Company Material Adverse Effect.

3.7 *Company Capitalization.*

(a) *Capital Stock.* The authorized capital stock of the Company consists of 50,000,000, consisting of 47,500,000 shares of Company Common Stock, par value $0.001 per share, and 2,500,000 shares of preferred stock, par value $0.001 per share. As of 5:00 p.m., Pacific Time, on June 30, 2021 (such time and date, the “**Capitalization Date**”), 34,971,738 shares of Company Common Stock were issued and outstanding (which excludes the shares of Company Common Stock relating to the Company Equity Awards referred to in Section 3.7(b)), 16,726,055 of which shares of Company Common Stock were held by the Company as treasury shares as of such time, and no shares of preferred stock were outstanding. All outstanding shares of Company Common Stock are validly issued, fully paid, nonassessable and free of any preemptive rights. From the Capitalization Date to the Agreement Date the Company has not issued or granted any Company Securities other than pursuant to the exercise of Company Equity Awards granted prior to the Agreement Date and which are reflected in the Company Equity Award numbers as set forth in Section 3.7(b).

(b) *Stock Reservation.* (i) As of the Capitalization Date, 2,730,039 shares of Company Common Stock were reserved for issuance pursuant to outstanding Company Options, (ii) as of the Capitalization Date, 10,767 shares of Company Common Stock were reserved for issuance pursuant to outstanding unsettled Company RSU Awards, and (iii) the Company’s good faith estimate as of the Agreement Date is that as of July 30, 2021, 12,262 shares of Company Common Stock will be reserved for issuance pursuant to the ESPP and aggregate contributions of $2,895,613.00 will have been received by the Company for the current offering period pursuant to the ESPP. The Company has made available or otherwise delivered to Parent a true, correct and complete list of all Company Equity Awards as of the Capitalization Date with the number of shares of Company Common Stock underlying the Company Equity Award, current vesting status, and exercise or strike price underlying each Company Equity Award (as applicable).

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(c) *Company Securities.* Except as set forth in this Section 3.7 or Section 3.7(c) of the Company Disclosure Letter, as of the Capitalization Date, there were (i) other than the Company Common Stock, no outstanding shares of capital stock of, or other equity or voting interest in, the Company; (ii) no outstanding securities of the Company convertible into or exchangeable or exercisable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iii) no outstanding options, warrants, calls, puts or other rights or binding arrangements to acquire from the Company, or that obligate the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible, exchangeable or exercisable security, or other similar Contract relating to any capital stock of, or other equity or voting interest (including any voting debt) in, the Company; (v) no outstanding shares of restricted stock, restricted stock units, stock appreciation rights, performance shares, contingent value rights, “phantom” stock or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock of, or other securities or ownership interests in, the Company (the items in the preceding clauses (i) through (v), together with the Company Common Stock, collectively the “**Company Securities**”); (vi) no voting trusts, proxies or similar arrangements or understandings to which the Company is a party or by which the Company is bound with respect to the voting of any shares of capital stock of, or other equity or voting interest in, the Company; and (vii) no obligations or binding commitments of any character restricting the transfer of any shares of capital stock of, or other equity or voting interest in, the Company to which the Company is a party or by which it is bound. The Company is not a party to any Contract that obligates it to repurchase, redeem or otherwise acquire any Company Securities. There are no accrued and unpaid dividends with respect to any outstanding shares of Company Common Stock. The Company does not have a stockholder rights plan in effect.

(d) *Other Rights.* Other than the Voting Agreements, the Company is not a party to any Contract relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or other similar rights with respect to any Company Securities.

3.8 *Subsidiaries.*

(a) *Subsidiaries.* Section 3.8(a) of the Company Disclosure Letter contains a true, correct and complete list of the name, jurisdiction of organization, and schedule of stockholders of each Subsidiary of the Company. Each Subsidiary of the Company (i) is duly organized, validly existing and in good standing pursuant to the laws of its jurisdiction of organization (to the extent that the concept of “good standing” is applicable in the case of any jurisdiction outside the United States); and (ii) has the requisite corporate power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets, except where the failure to be in good standing would not have a Company Material Adverse Effect. Each Subsidiary of the Company is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent that the concept of “good standing” is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not have a Company Material Adverse Effect. The Company has made available to Parent true, correct and complete copies of the certificates of incorporation, bylaws and other similar organizational documents of each “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X promulgated by the SEC) of the Company, each as amended as of the Agreement Date. No Subsidiary of the Company is in violation of its charter, bylaws or other similar organizational documents, except where such violation would not have a Company Material Adverse Effect.

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(b) *Capital Stock of Subsidiaries.* All of the outstanding capital stock of, or other equity or voting interest in, each Subsidiary of the Company (i) has been duly authorized, validly issued and is fully paid and nonassessable; and (ii) except for director’s qualifying or similar shares, is owned, directly or indirectly, by the Company, free and clear of all Liens (other than Permitted Liens).

(c) *Other Securities of Subsidiaries.* There are no outstanding (i) securities convertible into or exchangeable or exercisable for shares of capital stock of, or other equity or voting interest in, any Subsidiary of the Company; (ii) options, warrants or other rights or arrangements obligating the Company Group to acquire from any Subsidiary of the Company, or that obligate any Subsidiary of the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for, shares of capital stock of, or other equity or voting interest (including any voting debt) in, any Subsidiary of the Company; or (iii) obligations of any Subsidiary of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security, or other similar Contract relating to any capital stock of, or other equity or voting interest (including any voting debt) in, such Subsidiary to any Person other than the Company or one of its Subsidiaries.

(d) *Other Investments.* Other than marketable securities held in the ordinary course of business for cash management purposes and except as set forth on Section 3.8(d) of the Company Disclosure Letter, the Company does not own or hold the right to acquire any equity securities, ownership interests or voting interests (including voting debt) of, or securities exchangeable or exercisable therefor, or investments in, any other Person (other than a Company Group Member).

3.9 *Company SEC Reports.* Since January 1, 2019, the Company has filed all forms, reports and documents with the SEC that have been required to be filed by it pursuant to applicable laws prior to the Agreement Date (collectively, the “**Company SEC Reports**”). Each Company SEC Report complied, as of its filing date and giving effect to any amendments or supplements thereto filed prior to the Agreement Date, in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date that such Company SEC Report was filed. As of its filing date (or, if amended or superseded by a filing prior to the Agreement Date, on the date of such amended or superseded filing), each Company SEC Report did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No Subsidiary of the Company is required to file any forms, reports or documents with the SEC.

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3.10 *Company Financial Statements; Internal Controls.*

(a) *Company Financial Statements.* The consolidated financial statements (including any related notes and schedules) of the Company Group filed with the Company SEC Reports (i) were prepared in all material respects in accordance with GAAP (except as may be indicated in the notes thereto or as otherwise permitted by Form 10-Q with respect to any financial statements filed on Form 10-Q); and (ii) fairly present, in all material respects, the consolidated financial position of the Company Group as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended (subject, in the case of the unaudited financial statements, to normal and recurring year-end adjustments and to any other adjustment described therein). Except as have been described in the Company SEC Reports, there are no unconsolidated Subsidiaries of the Company or any off-balance sheet arrangements of the type required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated by the SEC.

(b) *Disclosure Controls and Procedures.* The Company has established and maintains, and has at all times since January 1, 2019 maintained, “disclosure controls and procedures” and “internal control over financial reporting” (in each case, as defined pursuant to Rule 13a-15 and Rule 15d-15 promulgated under the Exchange Act). The Company’s disclosure controls and procedures are reasonably designed to ensure that all (i) material information required to be disclosed by the Company in the reports and other documents that it files or furnishes pursuant to the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC; and (ii) such material information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. The Company’s management has completed an assessment of the effectiveness of the Company’s internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2020, and such assessment concluded that such system was effective as of such time. Since January 1, 2019, the principal executive officer and principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act (including Section 302 and 906 thereof). Neither the Company nor its principal executive officer or principal financial officer has received written notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications.

(c) Internal Controls. The Company has established and maintains, and at all times since January 1, 2019 has maintained, a system of internal accounting controls that are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company Group; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and that receipts and expenditures of the Company Group are being made only in accordance with appropriate authorizations of the Company’s management and the Company Board; and (iii) provide assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company Group. In the last three (3) years, neither the Company nor, to the Knowledge of the Company, the Company’s independent registered public accounting firm has identified or been made aware of (A) in connection with the applicable evaluation of internal controls over financial reporting prior to the Agreement Date, any significant deficiency or material weakness in the system of internal control over financial reporting utilized by the Company Group that has not been subsequently remediated; or (B) any fraud, whether or not material, that involves the Company’s management or other employees who have a role in the preparation of financial statements or the internal control over financial reporting utilized by the Company Group. As of the Agreement Date, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Reports.

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(d) *Indebtedness.* Section 3.10(d) of the Company Disclosure Letter contains a true, correct and complete list of all indebtedness for borrowed money (including any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith) of the Company Group in an amount in excess of $10,000,000, individually, as of the Agreement Date, other than Indebtedness reflected in the Audited Company Balance Sheet or otherwise included with specificity in the Company SEC Reports.

3.11 *No Undisclosed Liabilities.* The Company Group has no liabilities of a nature required to be reflected or reserved against on a balance sheet (or the notes thereto) prepared in accordance with GAAP, other than liabilities (a) disclosed, reflected or otherwise reserved against in the Audited Company Balance Sheet or in the consolidated financial statements of the Company Group (including the notes thereto) included in the Company SEC Reports filed prior to the Agreement Date; (b) arising pursuant to this Agreement or incurred in connection with the Merger (including any Transaction Litigation); (c) liabilities for performance of obligations of the Company Group under Contracts binding upon the applicable Company Group Member (other than resulting from any breach, termination or acceleration of such Contracts) either delivered or made available to Parent or Parent’s Representatives prior to the Agreement Date or entered into in the ordinary course of business following the Agreement Date; (d) incurred in the ordinary course of business on or after March 31, 2021; or (e) that would not have, or would not reasonably be expected to have, a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any “off balance sheet arrangement” within the meaning of Item 303 of Regulation S-K promulgated under the Securities Act.

3.12 *Absence of Certain Changes.*

(a) *No Company Material Adverse Effect*. (i) Since March 31, 2021 through the Agreement Date, except as a result of the Company’s sale process, including the Transactions (as well as the execution, delivery and performance of this Agreement and the discussions, negotiations and transactions related to the sale process conducted by the Company in connection with this Agreement), and any actions taken in good faith to respond to COVID-19 Measures, the business of the Company Group has been conducted, in all material respects, in the ordinary course of business and (ii) since March 31, 2021 through the Agreement Date, there has not occurred a Company Material Adverse Effect.

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3.13 *Material Contracts.*

(a) *List of Material Contracts.* Section 3.13(a) of the Company Disclosure Letter contains a true, correct and complete list of all Material Contracts to or by which the Company Group is a party or is bound as of the Agreement Date (other than (i) any Material Contracts contemplated by clause (a) of the definition of “Material Contract” and (ii) any Material Contracts which have otherwise been made publicly available pursuant to the Company SEC Reports as listed in Section 3.18(a) of the Company Disclosure Letter), and, a true, correct and complete copy of each Material Contract has been made available to Parent, or has been publicly made available in the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database of the SEC.

(b) *Validity.* Each Material Contract is valid and binding on the applicable Company Group Member that is party thereto and is in full force and effect (except as limited by the Enforceability Limitations), and neither any Company Group Member that is party thereto nor, to the Knowledge of the Company, any other party thereto is in breach of or default pursuant to any such Material Contract, except for such failures to be in full force and effect that would not have a Company Material Adverse Effect. No event has occurred that, with notice or lapse of time or both, would constitute such a breach or default pursuant to any Material Contract by the Company Group, or, to the Knowledge of the Company, any other party thereto, except for such breaches and defaults that would not have a Company Material Adverse Effect.

(c) Government Contracts.

(i) Except where such breach, suspension, debarment, audit, investigation, disclosure, default, termination, failure to perform or other action would not have a Company Material Adverse Effect, neither the Company nor its Subsidiaries have (A) breached any Government Contract; (B) been suspended or debarred from government contracts by a Governmental Authority; (C) conducted or initiated any internal investigation or made any disclosure with respect to any irregularity, misstatement or omission arising under or relating to a Government Contract; (D) received from any Governmental Authority any written notice of default with respect to any Government Contract; or (E) had any Government Contract terminated by any Governmental Authority for default or failure to perform.

(ii) Except in the case of each of the following as would not have a Company Material Adverse Effect, with respect to each Government Contract (A) all transactions have been properly recorded and credited to the Government as applicable; (B) there are no outstanding claims or disputes; and (C) to the Knowledge of the Company, there are no outstanding or unsettled allegations of fraud or false claims.

3.14 *Real Property.*

(a) *Owned Real Property.* Section 3.14(a) of the Company Disclosure Letter sets for all real property owned by the Company Group as of the Agreement Date (each such property, the “**Owned Real Property**”). With respect to each Owned Real Property: (i) the Company or one (1) of its Subsidiaries (as the case may be) has good, valid and marketable fee simple title to such Owned Real Property free and clear of all Liens (other than Permitted Liens), and (ii) neither the Company nor any of its Subsidiaries has leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof.

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(b) *Leased Real Property.* Section 3.14(b) of the Company Disclosure Letter contains a true, correct and complete list, as of the Agreement Date, of all of the existing leases, subleases, licenses or other Contracts pursuant to which the Company Group uses or occupies, or has the right to use or occupy, now or in the future, any real property that provide for payments by the Company in excess of $1,000,000 per annum, excluding any Contract for the use of real property that is terminable by any party thereto without penalty on ninety (90) days’ or less notice (such property, the “**Leased Real Property,**” and each such lease, sublease, license or other agreement, a “**Lease**”). The Company has made available to Parent true, correct and complete copies of all Leases (including all material modifications, amendments and supplements thereto), and in the case of any oral Lease, a written summary of the material terms of such Lease. With respect to each Lease and except as would not have a Company Material Adverse Effect, (i) to the Knowledge of the Company, there are no disputes with respect to such Lease; (ii) no Company Group Member has collaterally assigned or granted any other security interest in such Lease or any interest therein; and (iii) there are no Liens (other than Permitted Liens) on the estate or interest created by such Lease. Except as would not have a Company Material Adverse Effect, the Company or its Subsidiaries has valid leasehold estates in the Leased Real Property, free and clear of all Liens (other than Permitted Liens). Neither the Company Group, nor to the Knowledge of the Company, any other party to the Lease is in material breach of or default pursuant to any Lease. Except as set forth in Section 3.14(b) of the Company Disclosure Letter or as would otherwise not have a Company Material Adverse Effect, with respect to each of the Leases: (A) each Company Group Member’s possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed; (B) neither the Company Group nor any other party to the Lease is in breach or default under such Lease, and, to the Knowledge of the Company, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease; and (C) the other party to such Lease is not an Affiliate of, and otherwise does not have any economic interest in, the Company Group.

(c) *Subleases.* Section 3.14(c) of the Company Disclosure Letter contains a true, correct and complete list of all of the existing material subleases, licenses or similar agreements (each, a “**Sublease**”) granting to any Person, other than the Company Group, any right to use or occupy, now or in the future, the Leased Real Property. With respect to each of the Subleases, to the Knowledge of the Company, (i) there are no material disputes with respect to such Sublease; (ii) the other party to such Sublease is not an Affiliate of, and otherwise does not have any economic interest in, the Company Group; and (iii) there are no Liens (other than Permitted Liens) on the estate or interest created by such Sublease.

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3.15 *Environmental Matters.* Except as would not have a Company Material Adverse Effect, none of the members of the Company Group (a) has received any written notice alleging that the Company or any Subsidiary thereof has violated, or has any liability under, any applicable Environmental Law; (b) has transported, produced, processed, manufactured, generated, used, treated, handled, stored, released or disposed, or arranged for the disposal, of any Hazardous Substances in violation of any applicable Environmental Law; (c) to the Knowledge of the Company, has exposed any employee or other Person to Hazardous Substances in violation of or in a manner giving rise to liability to the Company or any Subsidiary thereof under any applicable Environmental Law; (d) is a party to or is the subject of any pending or, to the Knowledge of the Company, threatened (in writing) Legal Proceeding (i) alleging the noncompliance by the Company Group with any Environmental Law; or (ii) seeking to impose any financial responsibility for any investigation, cleanup, removal or remediation pursuant to any Environmental Law; (e) has failed or is failing to comply with any Environmental Law; or (f) to the Company’s Knowledge, owns or operates any property or facility contaminated by any Hazardous Substance which would reasonably be expected to result in liability to the Company Group under Environmental Law.

3.16 *Intellectual Property.*

(a) *Registered Intellectual Property; Proceedings.* The Company has provided or made available a true, correct and complete list, as of the Agreement Date, of all (i) material Company Registered Intellectual Property, specifying, where applicable, the jurisdictions in which each such item of Company Registered Intellectual Property has been applied for, issued or registered; and (ii) currently pending material Legal Proceedings before any Governmental Authority (other than actions related to the ordinary course prosecution of Company Registered Intellectual Property before the United States Patent and Trademark Office or similar authorities anywhere in the world) to which the Company is a party that are related to any material items of Company Registered Intellectual Property. None of the material Company Intellectual Property is jointly owned with any third Person.

(b) *No Order.* Except as set forth in Section 3.16(b) of the Company Disclosure Letter and except as would not constitute a Company Material Adverse Effect, no material Company Intellectual Property is subject to any outstanding order by a Governmental Authority to which any Company Group Member is a named party with respect to the Company Group restricting in any manner the use, transfer or licensing thereof by any Company Group Member of such Company Intellectual Property or any of the Company Group’s products.

(c) *Absence of Liens.* Except as would not constitute a Company Material Adverse Effect, a Company Group Member owns and has good and valid legal and equitable title to each item of material Company Intellectual Property and has sufficient rights to all other material Business IP, in each case, free and clear of any Liens (other than Permitted Liens); *provided, however*, that the representation and warranty in this Section 3.16(c) shall not constitute or be deemed or construed as any representation or warranty of non-infringement or other non-violation of any Intellectual Property or other rights of any third Person, which is addressed in Section 3.16(d).

(d) *No Infringement.* Except as would not be material to the Company Group, to the Knowledge of the Company, the operation of the business of the Company Group as such business currently is conducted (including the sale of the Company Group’s products) does not infringe, misappropriate or otherwise violate the Intellectual Property of any third Person.

(e) *No Notice of Infringement.* Except as would not be material to the Company Group, since January 1, 2019 through the Agreement Date, to the Knowledge of the Company, no Company Group Member has (i) received written notice from any third Person, or (ii) been involved in any Legal Proceeding, alleging that the operation of the business of any Company Group Member infringes, misappropriates or otherwise violates the Intellectual Property of any third Person.

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(f) *No Third Person Infringement.* Except as set forth in Section 3.16(f) of the Company Disclosure Letter, since January 1, 2019 through the Agreement Date, no Company Group Member has provided any third Person with written notice claiming that such third Person is infringing, misappropriating or otherwise violating any material items of Company Intellectual Property, and, to the Knowledge of the Company, no such activity is occurring as of the Agreement Date, except, in each case, as would not constitute a Company Material Adverse Effect.

(g) *Proprietary Information.* Except as would not constitute a Company Material Adverse Effect, each member of the Company Group has taken commercially reasonable steps to protect and preserve the rights of the Company Group in their confidential information and trade secrets that they reasonably wish to protect and preserve.

(h) *Data Security Requirements and Privacy.* Except as set forth in Section 3.16(h) of the Company Disclosure Letter or as would not constitute a Company Material Adverse Effect, the Company Group (i) maintains commercially reasonable policies and procedures designed to protect the security, integrity and privacy of personally identifiable information, personal information, or personal data as defined under applicable law related to data privacy and data security, and financial information (“**Privacy Laws**”) collected or otherwise processed by any Company Group Member from the Company Group’s customers (“**Protected Information**”); and (ii) is in compliance, in all material respects, with any requirement set forth in the Company Group’s Contracts concerning data privacy and data security, the Company Group’s external privacy policies and all applicable Privacy Laws. To the Knowledge of the Company, since January 1, 2019 through the Agreement Date and the Closing, there has been no data breach or other security incident that resulted in material unauthorized access to, or material unauthorized use, processing, disclosure, loss or theft of the Company Group’s material proprietary source code or any Protected Information in the possession, custody or under the control of any Company Group Member and that required, under applicable Privacy Laws, any Company Group Member to notify any Governmental Authority or individual of such data breach or security incident.

(i) *Products and Source Code.* Except as would not constitute a Company Material Adverse Effect, the Company Group Members utilize commercially reasonable monitoring tools to identify and remediate viruses, worms, Trojan horses or similar disabling codes or programs in the systems or proprietary software products of the Company Group, and, to the Knowledge of the Company, there are currently no such viruses, worms, Trojan horses, or such code or programs in such systems or products. Except as would not have a Company Material Adverse Effect, as of the Agreement Date, (i) the Company Group Members possess all source code and other materials that embody material Company Intellectual Property used by any Company Group Member in the development and maintenance of the proprietary software products of the Company Group (excluding, for clarity, any Open Source Software), and (ii) no member of the Company Group has any duty or obligation (whether present, contingent, or otherwise, and including as a result of the manner in which any Company Group Member uses Open Source Software) to disclose, deliver, license, or otherwise make available, any proprietary source code (excluding, for clarity, any Open Source Software that is not Company Intellectual Property) that embodies Company Intellectual Property, including for any software product of the Company Group, to any Person, and no Company Group Member has done the same.

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3.17 *Tax Matters.* Except as would not constitute a Company Material Adverse Effect:

(a) *Tax Returns.* The Company and each of its Subsidiaries has (i) timely filed all Tax Returns required to be filed by the Company or such Subsidiary, and all Tax Returns filed by the Company and each of its Subsidiaries are true, correct, and complete in all respects and were prepared in all respects in compliance with applicable law; and (ii) timely paid all Taxes (whether or not shown on a Tax Return as due and owing) by each Company Group Member. No Company Group Member has requested or executed any waiver of any statute of limitations on, or extended the period for the assessment or collection of, any Tax, in each case, that has not since expired (other than pursuant to customary extensions of the due date to file a Tax Return obtained in the ordinary course of business), nor is any written request for any such extension or waiver outstanding from any taxing authority.

(b) *Taxes Paid.* Each Company Group Member has timely paid or withheld with respect to its Affiliates, employees and third Persons (and paid over any amounts withheld to the appropriate Tax authority or is holding for future payment) all Taxes required to be paid or withheld.

(c) *No Audits.* No audits, actions, investigations, proceedings, arbitrations, suits, or other examinations with respect to Taxes or any Tax Return of the Company Group (each, a “**Tax Proceeding**”) are presently in progress, nor has any Tax Proceeding been threatened in writing. No Company Group Member has been notified in writing by any Governmental Authority regarding any proposed, asserted or assessed deficiency for any Tax imposed on the Company Group which was not finally settled or paid in full. No written claim has been received by the Company Group since January 1, 2019 from a Governmental Authority in a jurisdiction where the Company or one (1) of its Subsidiaries does not file Tax Returns that the Company or one (1) of its Subsidiaries is or may be subject to Tax in that jurisdiction.

(d) *Spin-offs and Other Distributions.* Since January 1, 2019, no Company Group Member has (i) constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock intended to qualify for tax-free treatment pursuant to Section 355 of the Code, or (ii) distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 361 of the Code.

(e) *No Listed Transaction.* No Company Group Member has engaged in a “listed transaction” as set forth in Treasury Regulation § 1.6011-4(b)(2) (or any corresponding or similar provision of state, local or foreign Laws).

(f) *Liens on Assets.* There are no Liens for Taxes on any assets of any Company Group Member, other than Liens for Taxes not yet delinquent.

(g) *Tax Classification.* Section 3.17(g) of the Company Disclosure Letter sets forth the U.S. federal income tax classification of each Company Group Member.

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(h) *Tax Agreements.* No Company Group Member (i) is a party to or bound by, any Tax sharing, allocation or indemnification agreement or obligation, other than any such agreement or obligation entered into in the ordinary course of business the primary purpose of which is unrelated to Taxes; (ii) has been a member of an Affiliated Group filing a combined, consolidated, unitary or other similar Tax Return (other than an Affiliated Group the common parent of which is the Company); or (iii) has any liability for the Taxes of any Person other than the Company Group pursuant to Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-United States law), as a transferee or successor, or otherwise by operation of law.

3.18 *Employee Plans.*

(a) *Employee Plans.* Section 3.18(a) of the Company Disclosure Letter sets forth a true, correct and complete list of all material Employee Plans. For purposes of this Agreement, “Employee Plans” means (i) “employee benefit plans” (as defined in Section 3(3) of ERISA, whether or not subject to ERISA); and (ii) other employment, consulting, bonus, stock option, phantom stock, stock appreciation, stock purchase or other equity-based, benefit, incentive compensation, commission, profit sharing, savings, retirement, disability, insurance, vacation, paid time off, deferred compensation, severance, termination, post-employment, retention, change in control compensation and other fringe, welfare or other compensation or benefit plans, programs, agreement, contracts, policies or arrangements (whether or not in writing) sponsored, maintained or contributed to (or required to be contributed) by the Company Group or any other trade or business (whether or not incorporated) that would be treated as a single employer with any Company Group Member pursuant to Section 414 of the Code (an “**ERISA Affiliate**”), to which any Company Group Member is a party, or with respect to which any Company Group Member has or would reasonably expect to have any liability or obligation, contingent or otherwise, in each case, other than any such plans, policies or arrangements if and to the extent required to be provided, maintained or contributed to under applicable Law. With respect to each material Employee Plan, to the extent applicable, the Company has made available to Parent true, correct and complete copies of (A) the most recent annual report on Form 5500 required to have been filed under ERISA or the Code, if any, for each Employee Plan, including all schedules thereto; (B) the most recent determination or opinion letter, if any, from the IRS for any Employee Plan that is intended to qualify pursuant to Section 401(a) of the Code; (C) the plan documents and summary plan descriptions; (D) any related trust agreements, insurance contracts, insurance policies or other Contracts of any funding arrangements; (E) any notices to or from the IRS or any office or representative of the United States Department of Labor or any similar Governmental Authority relating to any material compliance issues in respect of any such Employee Plan since January 1, 2019; and (F) with respect to each material Employee Plan that is maintained in any non-United States jurisdiction primarily for the benefit of any employee or individual service provider of any Company Group Member whose principal work location is outside of the United States (collectively, without regard to materiality, the “**International Employee Plans**”), to the extent applicable, (1) the most recent annual report or similar compliance documents required to be filed with any Governmental Authority with respect to such plan; and (2) any document comparable to the determination letter referenced pursuant to clause (B) above issued by a Governmental Authority relating to the satisfaction of Law necessary to obtain the most favorable Tax treatment.

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(b) *Absence of Certain Plans.* Except as set forth on Section 3.18(b) of the Company Disclosure Letter, no Employee Plan is, and neither the Company nor any of its ERISA Affiliates has previously maintained, sponsored or contributed to or currently maintains, sponsors or participates in, or contributes to, or has any liability or obligation with respect to, (i) a “multiemployer plan” (as defined in Section 3(37) of ERISA); (ii) a “multiple employer plan” (as defined in Section 4063 or Section 4064 of ERISA); or (iii) a defined benefit pension plan or a plan subject to Section 302 of Title I of ERISA, Section 412 of the Code or Title IV of ERISA.

(c) *Compliance.* Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Employee Plan is and has been established, maintained, funded, operated and administered in accordance with its terms and with all applicable law, including the applicable provisions of ERISA and the Code. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, all required contributions or payments to or in respect of the Employee Plans have been timely and accurately made or paid, and no Employee Plan has any unfunded liabilities that have not been fully accrued. Each Employee Plan that is or was intended to meet the requirements of a “qualified plan” under Section 401(a) of the Code has received a determination from the IRS that such Employee Plan is so qualified, and to the Knowledge of the Company, nothing has occurred since the date of such determination that could reasonably be expected to adversely affect the qualification of such Employee Plan.

(d) *Employee Plan Legal Proceedings.* There are no material Legal Proceedings pending or, to the Knowledge of the Company, threatened on behalf of, against or involving any Employee Plan, the assets of any trust pursuant to any Employee Plan, or the plan sponsor, plan administrator or any fiduciary of any Employee Plan, including with respect to the administration or operation of such plans, other than routine claims for benefits that have been or are being handled through an administrative claims procedure.

(e) *No Prohibited Transactions.* Neither the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of their respective directors, officers, employees or agents has, with respect to any Employee Plan, engaged in or been a party to any breach of fiduciary duty (as determined under ERISA) or non-exempt “prohibited transaction” (as defined in Section 4975 of the Code or Section 406 or 407 of ERISA) that could reasonably be expected to 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, in each case applicable to the Company Group or any Employee Plan, or for which the Company Group has any indemnification obligation.

(f) *No Post-Termination Welfare Benefit Plan.* Except as set forth on Section 3.18(f) of the Company Disclosure Letter, no Employee Plan provides post-termination or retiree life insurance, health or other welfare benefits to any person, except as may be required by Section 4980B of the Code or any similar law, and no Company Group Member has an obligation to provide such benefits.

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(g) *No Additional Rights.* Except as set forth on Section 3.18(g) of the Company Disclosure Letter, none of the execution and delivery of this Agreement or the consummation of the Merger will, either alone or in conjunction with any other event (whether contingent or otherwise), (i) result in, or accelerate the time of payment or vesting of, any payment or benefit (including severance, change in control, stay or retention bonus or otherwise) becoming due under any Employee Plan; (ii) materially increase any compensation or benefits otherwise payable under any Employee Plan; (iii) result in the acceleration of the time of payment or vesting of any such benefits under any Employee Plan; (iv) result in the forfeiture of compensation or benefits under any Employee Plan; (v) trigger any other material obligation under, or result in the breach or violation of, any Employee Plan; or (vi) limit or restrict the right of Parent to merge, amend or terminate any Employee Plan on or after the Effective Time (other than ordinary notice and administration requirements and expenses or routine claims for benefits).

(h) *Section 280G.* No payment or benefit or acceleration thereof that could be made by the Company or any ERISA Affiliate (either alone or together with any other event) could be characterized as an “excess parachute payment” within the meaning of Section 280G(b)(1) of the Code, and no Company Group Member has any obligation to gross-up, reimburse or indemnify any individual with respect to any Tax under Section 4999 of the Code.

(i) *Section 409A.* Each Employee Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A(d)(1) of the Code) has been maintained, in documentary and operational compliance, in all material respects, with Section 409A of the Code, and no amount under any such Employee Plan is or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the Code. The Company Group has no obligation to gross-up or indemnify any individual with respect to any Tax under Sections 409A or 4999 of the Code.

(j) *International Employee Plans.* Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each International Employee Plan has been established, maintained and administered in compliance with its terms and conditions and with the requirements prescribed by any applicable laws. Furthermore, no International Employee Plan has material unfunded liabilities that as of the Effective Time will not be offset by insurance or fully accrued. Except as required by applicable law, to the Knowledge of the Company, no condition exists that would prevent the Company Group from terminating or amending any International Employee Plan at any time for any reason without material liability to the Company Group (other than ordinary notice and administration requirements and expenses or routine claims for benefits). Each International Employee Plan required to be registered has been registered and has been maintained in good standing in all material respects with applicable regulatory authorities, and each International Employee Plan intended to receive favorable Tax treatment under applicable Tax laws has been qualified or similarly determined to satisfy the requirements of such laws.

(k) *No New Employee Plans.* The Company has no plan or commitment to amend any material Employee Plan or establish any material new employee benefit plan or to materially increase any benefits pursuant to any material Employee Plan.

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3.19 *Labor Matters.*

(a) *Union Activities.* The Company Group is not a party to or bound by any collective bargaining agreement, labor union contract, works council agreement or trade union agreement (each, a “**Collective Bargaining Agreement**”). No employees of the Company Group are represented by a labor union, works council, or other labor organization. To the Knowledge of the Company, there are no activities or proceedings to organize any employees of the Company Group with regard to their employment with the Company Group, and no such activities or proceedings have occurred since January 1, 2019. No Collective Bargaining Agreement is being negotiated by the Company. There is no strike, lockout, slowdown, work stoppage or other material labor dispute against the Company Group pending or, to the Knowledge of the Company, threatened against the Company Group, and no such labor disputes have occurred since January 1, 2019. With respect to the Transactions, the Company Group has satisfied all material notice, consultation, bargaining, and consent obligations owed to its employees and their representatives under applicable law, orders, labor Contract or the rules of any works council or labor organization.

(b) *Employment Law Compliance.* Since January 1, 2019, the Company Group has complied, in all material respects with applicable Laws and orders with respect to employment (including applicable laws, rules and regulations regarding wage and hour requirements, employee independent contractors and worker classification, immigration status, discrimination in employment, employee health and safety, and collective bargaining).

(c) *Other Compliance.* Except as would not be material to the Company Group, taken as a whole, the Company Group has fully and timely paid and is not liable for any arrears of wages or any related penalty. None of the Company Group is liable for any material payment to any trust or other fund or to any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits for employees (other than routine payments to be made in the ordinary course of business).

3.20 *Permits.* Except as would not constitute a Company Material Adverse Effect, the Company Group holds, to the extent legally required, all permits, licenses, variances, clearances, consents, commissions, franchises, exemptions, orders and approvals from Governmental Authorities (“**Permits**”) that are required for the operation of the business of the Company Group as currently conducted. The Company Group complies with the terms of all Permits, and no suspension or cancellation of any of the Permits is pending or, to the Knowledge of the Company, threatened (in writing), except for such noncompliance, suspensions or cancellations that would not have a Company Material Adverse Effect.

3.21 *Compliance with Laws.* Except as would not have a Company Material Adverse Effect, the Company Group is currently in compliance with all laws, rules, regulations, requirements, written guidance and orders of any relevant Governmental Authority that are applicable to the Company Group or to the products, conduct of the business or operations of the Company Group. No representation or warranty is made in this Section 3.21 with respect to (a) compliance with the Exchange Act, which is exclusively addressed by Section 3.9 and Section 3.10; (b) compliance with Environmental Laws, which is exclusively addressed by Section 3.15; (c) compliance with applicable Tax laws, which is exclusively addressed by Section 3.17 and Section 3.18; (d) compliance with ERISA and other applicable Laws relating to employee benefits, which is exclusively addressed by Section 3.18; (e) compliance with labor Law matters, which is exclusively addressed by Section 3.19; or (f) compliance with Trade Control Laws and the FCPA, which is exclusively addressed by Section 3.26. Since January 1, 2019, the Company has not breached or violated, and has been in compliance in all material respects with, any applicable law, certification, representation, clause, provision or requirement pertaining to or contained in any Material Contract with any Governmental Authority, except for such breaches, violations or failures that would not have a Company Material Adverse Effect.

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3.22 *Legal Proceedings; Orders.*

(a) *No Legal Proceedings.* Except as would not have a Company Material Adverse Effect, there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened by or against any Company Group Member or by or against any present or former officer or director of any Company Group Member in such individual’s capacity as such. Except as would not have a Company Material Adverse Effect, no examination of the Company Group by any Governmental Authority has resulted in materially negative outstanding findings, requests or orders that have not been addressed.

(b) *No Orders.* The Company Group is not subject to any material order of any kind or nature that would prevent or materially impair the consummation of the Merger or the ability of the Company to perform, in all material respects, its covenants and obligations pursuant to this Agreement.

3.23 *Insurance.* Except as would not constitute a Company Material Adverse Effect, as of the Agreement Date, the Company Group has all policies of insurance covering the Company Group and any of its employees, properties or assets, including policies of life, property, fire, workers’ compensation, products liability, directors’ and officers’ liability and other casualty and liability insurance, that is customarily carried by Persons conducting business similar to that of the Company Group. As of the Agreement Date, all such insurance policies are in full force and effect, no notice of cancellation has been received and there is no existing default or event that, with notice or lapse of time or both, would constitute a default by any insured thereunder, except for such defaults that would not have a Company Material Adverse Effect.

3.24 *Related Person Transactions.* Except as set forth in Section 3.24 of the Company Disclosure Letter and except for indemnification, advancement of expenses, compensation or other employment arrangements entered into, modified or waived in the ordinary course of business, there are no Contracts, transactions, arrangements or understandings between any Company Group Member, on the one hand, and any Affiliate (including any director or officer) thereof, but not including any wholly owned Subsidiary of the Company, on the other hand, that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC in the Company’s Form 10-K or proxy statement pertaining to an annual meeting of stockholders.

3.25 *Brokers.* Except for the Advisor, there is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of the Company Group who is entitled to any financial advisor’s, investment banking, brokerage, finder’s or other fee or commission in connection with the Merger.

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3.26 *Trade Controls; Anti-Corruption.*

(a) *Trade Controls. Trade Controls.* Except as would not constitute a Company Material Adverse Effect,

(i) no Company Group Member nor any of its or their officers, directors or employees or, to the Knowledge of the Company, any other Person acting on its or their behalf is currently or has in the last five (5) years been: (A) a Sanctioned Person; (B) operating in, organized in, conducting business with or otherwise engaging in dealings with or for the benefit of any Sanctioned Person or in any Sanctioned Country; or (C) otherwise in violation of any Sanctions and Export Control Laws or U.S. antiboycott requirements (collectively, “**Trade Control Laws**”);

(ii) for the past five (5) years, the Company Group has implemented and maintained in effect written policies, procedures and internal controls reasonably designed to prevent, deter and detect violations of applicable Trade Control Laws;

(iii) within the past five (5) years, no Company Group Member is or has been the subject of any investigation, inquiry or enforcement proceedings by any Governmental Authority regarding any violation or alleged violation of any of the Trade Control Laws or Anti-Corruption Laws that are applicable to the Company Group (including by virtue of having made any disclosure relating to any violation or alleged violation), and no such investigation, inquiry or proceedings have been threatened (in writing or, to the Knowledge of the Company, orally) or is pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings; and

(iv) as of the Agreement Date, no licenses or approvals pursuant to the Trade Control Laws are necessary for the transfer of any export licenses or other export approvals to Parent or the Surviving Corporation in connection with the consummation of the Merger.

(b) *Anti-Corruption.* Except as would not constitute a Company Material Adverse Effect, in the last five (5) years, no Company Group Member nor any of its or their respective officers, directors or employees or, to the Knowledge of the Company, any other Person acting on its or their behalf, has, directly or indirectly, (i) taken any action that would cause them to be in violation of any provision of the FCPA or other applicable Anti-Corruption Laws in other countries in which the Company Group conducts business; (ii) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (iii) made, offered or authorized any unlawful payment, or other thing of value, to foreign or domestic government officials or employees; or (iv) made, offered or authorized any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment in violation of the FCPA or other applicable Anti-Corruption Laws.

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3.27 *Non-Reliance; Exclusivity of Representations and Warranties.*

(a) The Company is not relying on, or has not relied on, any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, in each case, except for the representations and warranties set forth in Article IV and in the closing certificate delivered pursuant to Section 7.3(c). Such representations and warranties by Parent and Merger Sub constitute the sole and exclusive representations and warranties of Parent and Merger Sub in connection with the Transactions. The Company understands, acknowledges and agrees that it has not relied upon, and Parent and Merger Sub specifically disclaim, all other representations and warranties and information of any kind or nature whether express, implied or statutory.

(b) Except for the representations and warranties expressly set forth in this Article III (as qualified by the Company Disclosure Letter and the Company SEC Reports as contemplated herein), none of the Company, any of its Affiliates or any other Person on behalf of the Company makes any express or implied representation or warranty (and there is and has been no reliance by Parent and Merger Sub or any of their respective Affiliates or Representatives on any such representation or warranty) with respect to the Company, its Subsidiaries or its and their respective businesses or with respect to any other information provided, or made available, to Parent and Merger Sub or their respective Affiliates or Representatives in connection with the Transactions, including the accuracy or completeness thereof. Except for the representations and warranties expressly set forth in this Article III (as qualified by the Company Disclosure Letter and the Company SEC Reports to the extent provided herein), neither the Company nor any other Person makes any other express or implied representation or warranty on behalf of the Company or any of its Affiliates, and for the avoidance of doubt, neither the Company nor any of its Affiliates makes any express or implied representation or warranty with respect to the Evaluation Materials (as defined in the Confidentiality Agreement) or any information, documents, projections, forecasts or other material made available to Parent, Merger Sub or their respective Affiliates or Representatives, including any information made available in the VDR, teasers, marketing materials, consulting reports or materials, confidential information memoranda, management presentations, functional “break-out” discussions, responses to questions submitted on behalf of Parent, Merger Sub or their respective Affiliates or Representatives or in any other form in connection with the Transactions.

**ARTICLE IV****REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Except as set forth in the disclosure letter delivered by Parent and Merger Sub to the Company on the Agreement Date (the “**Parent Disclosure Letter**”), Parent and Merger Sub hereby represent and warrant to the Company as follows:

4.1 *Organization; Good Standing.*

(a) *Parent.* Parent (i) is duly organized, validly existing and in good standing pursuant to the laws of its jurisdiction of organization and (ii) has the requisite power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets.

(b) *Merger Sub.* Merger Sub (i) is a corporation duly organized, validly existing and in good standing pursuant to the DGCL; and (ii) has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets.

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(c) *Organizational Documents.* Parent has made available to the Company true, correct and complete copies of the certificate of incorporation, bylaws and other similar organizational documents of Parent and Merger Sub, each as amended to date. Neither Parent nor Merger Sub is in violation of its certificate of incorporation, bylaws or other similar organizational documents.

4.2 *Power; Enforceability.* Each of Parent and Merger Sub has the requisite power and authority to (a) execute and deliver this Agreement; (b) perform its covenants and obligations hereunder; and (c) consummate the Merger. The execution and delivery of this Agreement by each of Parent and Merger Sub, the performance by each of Parent and Merger Sub of its covenants and obligations hereunder and the consummation of the Merger have been duly authorized by all necessary action on the part of each of Parent and Merger Sub and, subject only to the approval and adoption of this Agreement by Parent in its capacity as sole stockholder of Merger Sub, no additional actions on the part of Parent or Merger Sub are necessary to authorize (i) the execution and delivery of this Agreement by each of Parent and Merger Sub; (ii) the performance by each of Parent and Merger Sub of its covenants and obligations hereunder; or (iii) the consummation of the Merger. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Enforceability Limitations. Immediately following the execution and delivery of this Agreement, this Agreement will be adopted by the sole stockholder of Merger Sub.

4.3 *Non-Contravention.* The execution and delivery of this Agreement by each of Parent and Merger Sub, the performance by each of Parent and Merger Sub of their respective covenants and obligations hereunder, and the consummation of the Merger do not (a) violate or conflict with any provision of the certificate of incorporation, bylaws or other similar organizational documents of Parent or Merger Sub; (b) violate, conflict with, result in the breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) pursuant to, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration pursuant to any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Parent or Merger Sub is a party or by which Parent, Merger Sub or any of their respective properties or assets may be bound; (c) assuming the consents, approvals and authorizations referred to in Section 4.4 have been obtained, violate or conflict with any Law or order applicable to Parent or Merger Sub or by which any of their properties or assets are bound; or (d) result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of Parent or Merger Sub, except in the case of each of clauses (b) and (d) for such violations, conflicts, breaches, defaults, terminations, accelerations or Liens that would not, individually or in the aggregate, prevent or materially delay, impair or hinder the consummation of the Merger or the ability of Parent and Merger Sub to perform their respective covenants and obligations in all material respects pursuant to this Agreement.

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4.4 *Requisite Governmental Approvals.* No Consent of any Governmental Authority is required on the part of Parent, Merger Sub or any of their Affiliates (a) in connection with the execution and delivery of this Agreement by each of Parent and Merger Sub; (b) the performance by each of Parent and Merger Sub of their respective covenants and obligations pursuant to this Agreement; or (c) the consummation of the Merger, except (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and such filings with Governmental Authorities to satisfy the applicable laws of states in which the Company is qualified to do business; (ii) such filings and approvals as may be required by any federal or state securities laws, including compliance with any applicable requirements of the Exchange Act; (iii) compliance with any applicable requirements of the HSR Act, the Austrian Cartel Act 2005 and any other applicable Antitrust Laws set forth on Section 4.4 of the Parent Disclosure Letter; and (iv) such other Consents the failure of which to obtain would not, individually or in the aggregate, prevent or materially delay, impair or hinder the consummation of the Merger or the ability of Parent and Merger Sub to perform their respective covenants and obligations pursuant to this Agreement.

*4.5* *Legal Proceedings; Orders.*

(a) *No Legal Proceedings.* There are no Legal Proceedings (other than any Transaction Litigation) pending or, to the knowledge of Parent or any of its Affiliates, threatened against Parent or Merger Sub that would, individually or in the aggregate, prevent or materially delay, impair or hinder the consummation of the Merger or the ability of Parent and Merger Sub to perform their respective covenants and obligations in all material respects pursuant to this Agreement.

(b) *No Orders.* Neither Parent nor Merger Sub is subject to any order of any kind or nature that would prevent or materially delay, impair or hinder the consummation of the Merger or the ability of Parent and Merger Sub to perform their respective covenants and obligations pursuant to this Agreement.

4.6 *Ownership of Company Group Equity Interests.* None of Guarantor, Parent, Merger Sub or any of their respective directors, officers, general partners or Affiliates or, to the knowledge of Parent or any of its Affiliates, any employees of Parent, Merger Sub or any of their respective Affiliates (a) has owned any Equity Interests of any Company Group Member (including shares of Company Common Stock); or (b) has been an “interested stockholder” (as defined in Section 203 of the DGCL) of the Company, in each case during the two (2) years prior to the Agreement Date.

4.7 *Brokers.* There is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of Parent, Merger Sub or any of their respective Affiliates who is entitled to any financial advisor’s, investment banking, brokerage, finder’s or other fee or commission in connection with the Merger.

4.8 *Operations of Parent and Merger Sub.* Each of Parent and Merger Sub has been formed solely for the purpose of engaging in the Merger, and, prior to the Effective Time, neither Parent nor Merger Sub will have engaged in any other business activities and will have incurred no liabilities or obligations other than as contemplated by the Financing Letters, the Guaranty and this Agreement. Parent owns beneficially and of record all of the outstanding capital stock, and other voting interest and/or Equity Interests in, Merger Sub free and clear of all Liens.

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4.9 *No Parent Vote or Approval Required.* No vote or consent of the holders of any capital stock of, or other voting interest and/or Equity Interests in, Parent is necessary to approve this Agreement and the Transactions (including the Merger). The vote or consent of Parent, as the sole stockholder of Merger Sub, is the only vote or consent of the capital stock of, or other voting interest and/or Equity Interests in, Merger Sub necessary to approve this Agreement and the Transactions (including the Merger).

4.10 *Parent and Merger Sub Information.* The information supplied or to be supplied by Parent or Merger Sub for inclusion in the Proxy Statement will not, at the time the Proxy Statement is first disseminated to the Company Stockholders nor at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

4.11 *Guaranty.* Concurrently with the execution of this Agreement, the Guarantor has delivered to the Company its duly executed Guaranty. As of the Agreement Date and as of the Closing Date (unless actions taken by the Company, its Affiliates, Subsidiaries or any of the Company’s or its Subsidiaries’ Representatives as set forth in the last sentence of Section 6 of the Guaranty have resulted in the termination thereof in accordance with the terms of such sentence), (a) the Guaranty has not been amended, modified, withdrawn or rescinded in any respect and is in full force and effect and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, subject to the Enforceability Limitations, and (b) no event has occurred that, with notice or lapse of time or both, would, or would reasonably be expected to, constitute a default or breach on the part of the Guarantor pursuant to the Guaranty.

4.12 *Financing.*

(a) *Equity Commitment Letter.* Parent has delivered to the Company a true, correct and complete copy of the executed Equity Commitment Letter, dated as of the Agreement Date, pursuant to which the Guarantor has committed, subject only to the terms and conditions thereof, to invest in Parent, directly or indirectly, the cash amounts set forth therein (such financing, the “**Equity Financing**”) solely for the purpose of funding the amounts required to be paid by Parent (or its Affiliates) at the Closing, including (i) the aggregate consideration to which the holders of Company Common Stock become entitled pursuant to Section 2.7, (ii) the RSU Consideration and (iii) the Option Consideration (together with such amounts in the preceding clauses (i) and (ii), collectively, the “**Merger Consideration**”), (iv) the repayment or refinancing of Indebtedness of the Company Group outstanding under the Credit Facility and (v) to pay related costs, fees and expenses of Parent or Merger Sub or Parent’s other Affiliates, in each case to the extent payable or otherwise required to be paid prior to, at (or in connection with) the Closing pursuant to, and in accordance with, this Agreement and/or the Financing Letters (together with such payments in the preceding clause (iv) and the Merger Consideration, collectively, the “**Closing Payments**”). The Equity Commitment Letter provides that (A) the Company is a limited, express third party beneficiary thereof, and entitled to specifically enforce performance of the Guarantors’ obligations to fund the Equity Financing in connection with the Company’s exercise of its rights under Section 9.8(b) and (B) subject in all respects to Section 9.8(b), Parent and the Guarantor each waive any defenses to the enforceability thereof, subject to the Enforceability Limitations, and will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that there is adequate remedy at law in connection with the exercise of such third party beneficiary rights.

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(b) *Debt Commitment Letter.* Parent has delivered to the Company a true, correct and complete copy of the executed Debt Commitment Letter and Redacted Fee Letter, dated as of the Agreement Date, pursuant to which the Financing Sources have committed, subject to the terms and conditions thereof, to lend to the Company the amounts set forth therein (such financing, the “**Debt Financing**”, and, together with the Equity Financing, collectively, the “**Financing**”) solely for the purpose of funding a portion of the Closing Payments.

(c) *No Amendments.* As of the Agreement Date, (i) the Financing Letters and the terms of the Financing have not been amended or modified; (ii) no such amendment or modification is contemplated (other than amendments to the Debt Commitment Letter and/or Redacted Fee Letter to add additional commitment parties thereto as contemplated by the Debt Commitment Letter and effected in accordance with Section 6.5) and provided that the existence or exercise of the “market flex” provisions contained in any Redacted Fee Letter in connection with the Debt Financing shall not constitute an amendment, supplement or modification of the Debt Financing Letters, and the financing commitments thereunder have not been withdrawn, terminated or rescinded in any respect (other than amendments to the Debt Commitment Letter and/or Redacted Fee Letter to add additional commitment parties thereto as contemplated by the Debt Commitment Letter and effected in accordance with Section 6.5); and (iii) the respective commitments contained therein have not been withdrawn, terminated or rescinded in any respect, and, to the knowledge of Parent, no such withdrawal, termination or rescission is contemplated (other than amendments to the Debt Commitment Letter and/or Redacted Fee Letter to add additional commitment parties thereto as contemplated by the Debt Commitment Letter and effected in accordance with Section 6.5). There are no other Contracts, agreements, side letters or arrangements to which Parent or Merger Sub is a party relating to the funding or investing, as applicable, of the full amount of the Financing, other than as expressly set forth in the Financing Letters. Other than as set forth in the Financing Letters, there are no conditions precedent related to the funding or investing, as applicable, of the full amount of the Financing.

(d) *Sufficiency of Proceeds.* Assuming the Financing is funded in accordance with the Financing Letters and assuming the satisfaction of the conditions set forth in Article VII (after netting out applicable fees, expenses, original issue discount and similar premiums and charges and after giving effect to the maximum amount of flex (including original issue discount flex) provided under the Debt Commitment Letter), the net proceeds of the Financing will be, in the aggregate, sufficient to (i) make the payment of the Merger Consideration required to be paid on the Closing Date and (ii) along with the cash on hand at the Company at Closing, pay all other Closing Payments and costs, fees and expenses required to be paid at the Closing by the Company, Parent or Merger Sub in connection with the Merger and the Financing in accordance with the terms of this Agreement(the “**Required Amount**”).

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(e) *Validity.* As of the Agreement Date, each Financing Letter (in the form delivered by Parent to the Company) is in full force and effect and constitutes the legal, valid and binding obligations of Parent, Merger Sub and the Guarantor, as applicable, enforceable against Parent, Merger Sub and the Guarantor, as applicable, in accordance with its terms, subject to the Enforceability Limitations. Other than as expressly set forth in the Financing Letters, there are no conditions precedent or other contingencies related to the funding of the full proceeds of the Financing pursuant to any agreement relating to the Financing to which the Guarantor, Parent or Merger Sub, or any of their respective Affiliates, is a party. Each of Parent and Merger Sub has no reasonable basis to believe that it or any other party to the Financing Letters will be unable to satisfy on a timely basis any term or condition therein. As of the Agreement Date, no event has occurred that, with notice or lapse of time or both, would, or would reasonably be expected to, constitute a default or breach on the part of Parent, Merger Sub or the Guarantor pursuant to any Financing Letter (it being understood that Parent and Merger Sub are not making any representation or warranty regarding the effect of any inaccuracy of the representations and warranties in Article III or the Company’s compliance hereunder). As of the Agreement Date, Parent has no reason to believe that (i) it will be unable to satisfy on a timely basis any term or condition of the Financing to be satisfied by it, whether or not such term or condition is contained in the Financing Letters (it being understood that Parent and Merger Sub are not making any representation or warranty regarding the effect of any inaccuracy of the representations and warranties in Article III or the Company’s compliance hereunder) or (ii) the Financing contemplated by the Financing Letters will not be available to Parent on the Closing Date. As of the Agreement Date, Parent and Merger Sub have fully paid, or caused to be fully paid, all commitment or other fees that are due and payable on or prior to the Agreement Date, in each case pursuant to and in accordance with the terms of the Financing Letters. As of the Agreement Date, there are no side letters or other agreements, arrangements or understandings to which Parent or any Affiliate thereof is a party related to the Financing, other than as expressly contained in the Financing Letters and delivered to the Company prior to the Agreement Date.

(f) *No Exclusive Arrangements.* As of the Agreement Date, none of the Guarantor, Parent, Merger Sub or any of their respective Affiliates has entered into any Contract, arrangement or understanding awarding any agent, broker, investment banker or financial advisor any financial advisory role on an exclusive basis in connection with the Merger. None of the Guarantor, Parent, Merger Sub or any of their respective Affiliates has entered into any Contract, arrangement or understanding expressly prohibiting any bank, investment bank or other potential provider of debt financing from providing or seeking to provide debt financing or financial advisory services to any Person in connection with a transaction relating to the Company in connection with the Merger (excluding customary “tree” arrangements).

4.13 *Stockholder and Management Arrangements.* As of the Agreement Date and except for the Voting Agreements, neither Parent or Merger Sub nor any of their respective Affiliates is a party to any Contract, or has authorized, made or entered into, or committed or agreed to enter into, any formal or informal arrangements or other understandings (whether or not binding) with any stockholder (other than any existing limited partner of the Guarantor or any of its Affiliates), director, officer, employee or other Affiliate of the Company Group (a) relating to (i) this Agreement or the Transactions (including the Merger); or (ii) the Surviving Corporation or any of its Subsidiaries, businesses or operations (including as to continuing employment) from and after the Effective Time; or (b) pursuant to which any (i) such stockholder would be entitled to receive consideration of a different amount or nature than the Per Share Price in respect of such stockholder’s shares of Company Common Stock; (ii) such holder of Company Common Stock has agreed to approve this Agreement or vote against any Superior Proposal; or (iii) such stockholder, director, officer, employee or other Affiliate of the Company other than the Guarantor has agreed to provide, directly or indirectly, an equity investment to Parent, Merger Sub or the Company to finance any portion of the Merger.

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4.14 *Solvency.* As of the Effective Time and immediately after giving effect to the Merger (including the payment of the Required Amount), the other Transactions (including the refinancing of or repayment of debt contemplated by this Agreement or the Financing Letters) and, assuming the accuracy of the representations and warranties set forth in Article III, (a) the amount of the “fair saleable value” of the assets (on a going concern basis) of the Surviving Corporation and its Subsidiaries, on a consolidated basis, taken as a whole, will exceed (i) the value of all liabilities of the Surviving Corporation and such Subsidiaries, including contingent and other liabilities; and (ii) the amount that will be required to pay the probable liabilities of each of the Surviving Corporation and its Subsidiaries on their existing debts (including contingent liabilities) as such debts become absolute and matured; (b) the Surviving Corporation and its Subsidiaries, on a consolidated basis, taken as a whole, will not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged; and (c) the Surviving Corporation and its Subsidiaries, on a consolidated basis, taken as a whole, will be able to pay its liabilities, including contingent and other liabilities, as they mature. For purposes of the foregoing, “not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged” and “able to pay its liabilities, including contingent and other liabilities, as they mature” means that such Person will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due. Neither Parent nor Merger Sub is entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors of itself (or of the Surviving Corporation or any of its Subsidiaries).

4.15 *Competing Businesses.* As of the Agreement Date, none of Parent, Merger Sub or their respective Affiliates owns more than ten percent (10%) of the voting Equity Interests of (or instruments convertible into voting Equity Interests of), or controls or operates, any business engaged in, or that otherwise competes in any material respect with, any of the material lines of business (including the sale of products and provision of services) in which any Company Group Member is engaged.

4.16 *Non-Reliance; Acknowledgement by Parent and Merger Sub.*

(a) Neither Parent nor Merger Sub is relying on, or has relied on, any of the information, materials or data referred to in Section 4.16(b) or any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, in each case, except for the representations and warranties set forth in Article III and in the closing certificate delivered pursuant to Section 7.2(c). Such representations and warranties by the Company constitute the sole and exclusive representations and warranties of the Company (including with respect to the business and operations of the Company Group) in connection with the Transactions. Each of Parent and Merger Sub understands, acknowledges and agrees that it has not relied upon, and the Company specifically disclaims, all other representations and warranties and information of any kind or nature whether express, implied or statutory.

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(b) Without limiting Parent’s and Merger Sub’s reliance on the representations and warranties set forth in Article III or in the closing certificate delivered pursuant to Section 7.2(c) as expressly set forth in (and permitted by) this Agreement, (i) in entering into this Agreement, each of Parent and Merger Sub have relied solely upon its own investigation and analysis, (ii) Parent and Merger Sub have been given access to and an opportunity to examine such documents, materials and information concerning the Company Group as Parent and Merger Sub have deemed necessary or advisable in order to reach an informed decision as to the decision to enter into this Agreement and consummate the Transactions, (iii) in connection with such due diligence investigation of the Company Group by Parent and Merger Sub and their respective Affiliates, stockholders and Representatives, Parent and Merger Sub and their respective Affiliates, stockholders and Representatives have received or been provided access to and may continue to receive or be provided access to (including in the VDR) after the Agreement Date from the Company, the other Company Group Members, and their respective Affiliates, stockholders and Representatives, certain estimates, projections, forecasts and other forward-looking information, as well as certain business and strategic plan information, regarding the Company Group Members and their respective businesses and operations, (iv) Parent and Merger Sub hereby acknowledge that there are uncertainties inherent in attempting to make such estimates, projections, forecasts, and other forward-looking statements, as well as in such business and strategic plans, with which Parent and Merger Sub are familiar, that Parent and Merger Sub are taking full responsibility for making their own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, and other forward-looking information, as well as such business and strategic plans, so furnished to them (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information, or business and strategic plans), and that Parent and Merger Sub have not relied on such information and will have no claim against any Company Group Member, or any of their respective Representatives, with respect thereto or any rights hereunder with respect thereto, unless, and subject to the express terms of this Agreement, any such information is expressly included in a representation or warranty contained in Article III, and (v) neither the Company Group Members nor any of their respective Affiliates, stockholders or Representatives, nor any other Person, has made or is making any express or implied representation or warranty with respect to such estimates, projections, forecasts, forward-looking statements or business plans unless any such information is expressly included in a representation or warranty contained in Article III.

4.17 *Exclusivity of Representations and Warranties.* Except for the representations and warranties expressly set forth in this Article IV (as qualified by the Parent Disclosure Letter as contemplated herein) and/or the Guaranty, none of Parent, Merger Sub, any of their respective Affiliates or any other Person on behalf of Parent or Merger Sub makes any express or implied representation or warranty (and there is and has been no reliance by the Company or any of its Affiliates or Representatives on any such representation or warranty) with respect to Parent or Merger Sub. Except for the representations and warranties expressly set forth in this Article IV (as qualified by the Parent Disclosure Letter) and/or the Guaranty, none of Parent, Merger Sub or any other Person makes any other express or implied representation or warranty on behalf of Parent or Merger Sub.

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**ARTICLE V**   
**INTERIM OPERATIONS OF THE COMPANY**

5.1 *Affirmative Obligations.* Except (a) as expressly contemplated by this Agreement; (b) as set forth in Section 5.1 or Section 5.2 of the Company Disclosure Letter; (c) as expressly prohibited by Section 5.2; (d) as required by applicable Law or required, or in the Company’s reasonable, good faith discretion, advisable in connection with any COVID-19 Measures, or (e) as approved in writing in advance by Parent (which approval will not be unreasonably withheld, conditioned or delayed (*provided*, that Parent shall be deemed to have approved in writing if it provides no written response within five (5) Business Days after a written request by the Company for such approval)), at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time (the “**Interim Period**”), the Company will, and will cause each of its Subsidiaries to (i) maintain its existence in good standing pursuant to applicable law (to the extent that the concept of “good standing” is applicable in the case of any jurisdiction outside the United States); (ii) subject to the restrictions and exceptions set forth in Section 5.2 or elsewhere in this Agreement, conduct its business and operations in the ordinary course of business; and (iii) use its commercially reasonable efforts to (A) preserve intact its material assets, properties, Contracts or other legally binding understandings, licenses and business organizations; (B) keep available the services of its current officers and senior management-level employees; and (C) preserve the current relationships with its material third party business relations; *provided*, that notwithstanding anything in this Section 5.1 to the contrary, no action by or failure to act of any Company Group Member in order to comply with the express requirements of any subsection of Section 5.2 shall in and of itself be deemed a breach of this Section 5.1 or any other subsection of Section 5.2.

5.2 *Forbearance Covenants of the Company.* Except (I) as set forth in Section 5.2 of the Company Disclosure Letter; (II) as approved in writing in advance by Parent (which approval will not be unreasonably withheld, conditioned or delayed (*provided*, that Parent shall be deemed to have approved in writing if it provides no written response within five (5) Business Days after a written request by the Company for such approval)); (III) to the extent necessary to comply with the express obligations set forth in any Material Contract in effect on the Agreement Date (*provided* that this clause (III) shall not circumvent or supersede the express restrictions set forth in clauses (a) through (v) below); (IV) as required by applicable Law or required or, in the Company’s reasonable, good faith discretion, advisable in connection with any COVID-19 Measures; or (V) as expressly contemplated by the terms of this Agreement, at all times during the Interim Period, the Company will not directly or indirectly, including through any Subsidiary:

(a) amend the Charter, the Bylaws or any other similar organizational document of any Company Group Member;

(b) propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, other than the Merger and other than any mergers, consolidations, restructurings, recapitalizations or other reorganizations solely between the Company and any of its direct or indirect Subsidiaries or solely among the Company’s Subsidiaries;

(c) issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any Company Securities, except (i) for the issuance pursuant to Company Equity Awards outstanding as of the Capitalization Date and reflected in the numbers and totals set forth in Section 3.7, (ii) pursuant to the ESPP in accordance with its terms, including with respect to the satisfaction of Tax withholding and, with respect to the Company Options, the payment of the exercise price, or (iii) as described in Section 5.2(c) of the Company Disclosure Letter;

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(d) directly or indirectly acquire, repurchase or redeem any of the securities of a Company Group Member, except (i) for repurchases, withholdings, or cancellations of Company Securities pursuant to the terms and conditions of Company Equity Awards outstanding as of the Agreement Date in accordance with their terms as of the Agreement Date, (ii) transactions between the Company and any of its direct or indirect Subsidiaries or (iii) purchases in accordance with the Company’s existing 10b5-1 stock repurchase plan;

(e) (i) adjust, split, combine or reclassify any shares of capital stock, or issue or authorize or propose the issuance of any other Company Securities in respect of, in lieu of or in substitution for, shares of its capital stock or other equity or voting interest; (ii) declare, set aside or pay any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of capital stock or other equity or voting interest, except for cash dividends made by any direct or indirect wholly owned Subsidiary of the Company to the Company or one (1) of its other wholly owned Subsidiaries; or (iii) pledge or encumber any shares of its capital stock or other equity or voting interest (except for Permitted Liens);

(f) (i) incur, assume or suffer any indebtedness for borrowed money (including any long-term or short-term debt) or issue any debt securities, except (A) for trade payables incurred in the ordinary course of business; (B) obligations incurred pursuant to business credit cards in the ordinary course of business (C) intercompany loans or advances between or among the Company and/or its direct or indirect wholly-owned Subsidiaries and/or (D) other borrowings of not more than $5,000,000 in the aggregate; or (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except in any such case, indebtedness which may be borrowed, incurred or arise, in each case, in the ordinary course of business, under the Credit Facility in accordance with its terms as of the Agreement Date;

(g) mortgage or pledge any of its assets, tangible or intangible, or create or suffer to exist any Lien thereupon (other than Permitted Liens), other than in connection with financing transactions permitted by Section 5.2(f);

(h) make any loans, advances or capital contributions to, or investments in, any other Person, except for (i) extensions of credit to customers in the ordinary course of business; (ii) advances to directors, officers and other employees for travel and other business-related expenses, in each case, in the ordinary course of business and in compliance in all material respects with the Company’s policies related thereto; (iii) loans, advances or capital contributions to, or investments in, direct or indirect wholly-owned Subsidiaries of the Company; and (iv) advancement or indemnification of expenses and losses incurred by current or former directors or officers of the Company and its Subsidiaries;

(i) acquire, lease, license, sell, abandon, transfer, assign, guarantee, or exchange any assets, tangible or intangible (including any Company Intellectual Property), in each case, in excess of $2,000,000 individually or $5,000,000 in the aggregate or constituting material Company Intellectual Property other than (i) the sale, lease or non-exclusive licensing of products or services of the Company Group or other materials embodying Company Intellectual Property in the ordinary course of business; (ii) the acquisition, assignment or abandonment of Company Intellectual Property in connection with the exercise of the reasonable business judgment of the Company in the ordinary course of business; (iii) the abandonment of trade secrets or Company Intellectual Property in the ordinary course of business and to the extent not economically desirable to maintain for the conduct of the business of the Company Group; (iv) acquisitions of inventory, raw materials and other property or services in the ordinary course of business; (v) any capital expenditures permitted by (or consented to by Parent) under Section 5.2(n) or (vi) subleases of real property;

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(j) (i) enter into, adopt, amend (including accelerating the vesting, payment or funding), modify or terminate any Employee Plan; (ii) materially increase the compensation or benefits payable to any director, officer, employee, individual consultant or other individual service provider of the Company Group or pay any compensation or benefit not required by (or accelerate the time of payment or vesting of any payment becoming due under) any existing Employee Plan as in effect as of the Agreement Date, except in the case of each of clauses (i) and (ii), (I) as may be required by applicable Law or the terms of the applicable Employee Plan or any change in control, severance or similar agreement or any retention or similar agreement with any officer, employee, director, individual independent contractor, individual consultant, or other individual service provider of the Company Group, in each such case, which is set forth on Section 3.18(a) of the Company Disclosure Letter and in effect as of the Agreement Date; or (II) making Employee Plans available to any new hires of employees of the Company, or any employees of the Company who are newly eligible for any such Employee Plan as a result of a promotion, each in the ordinary course of business and consistent with past practice; (III) renewing existing Employee Plans that are required or advisable to be renewed in the ordinary course; or (IV) for increases in or payment of compensation, bonus, retention, or severance arrangements for employees of the Company at the vice president level or below in the ordinary course of business and consistent with past practice; *provided*, that these exceptions in the foregoing clauses (I), (II) and (III) will not apply to any actions otherwise prohibited by Section 5.2(c) (including with respect to the grant or the issuance of Company Securities) or the following sub-clause (iii); or (iii) enter into any change in control, severance or similar agreement or any retention, transaction or similar agreement with any officer, employee, director, individual independent contractor, individual consultant, or other individual service provider of the Company Group (except such agreements entered into in the ordinary course of business with any such individual service provider of the Company at the vice president level or below); *provided* that, in each case of clauses (i) through (iii), the Company Group (x) may change the title of its employees, provided such changes in title do not involve material increases in the applicable employee’s compensation or benefits, acceleration of vesting or acceleration of payment of the applicable employee’s benefits or compensation, other than as provided for in accordance with this Section 5.2(j), and (y) may make annual or quarterly bonus, sales or commission payments or accruals in the ordinary course of business as required or permitted by the terms of any Employee Plans;

(k) settle, release, waive or compromise any pending or threatened Legal Proceeding or other claim, except for the settlement of any Legal Proceedings or other claim that is (i) reflected or reserved against in the Audited Company Balance Sheet; (ii) for solely monetary payments of no more than $5,000,000 individually and $10,000,000 in the aggregate; or (iii) settled in compliance with Section 6.14 (it being understood that any action taken or order to comply with Section 6.14 shall be deemed consented to by Parent whether or not they would otherwise be prohibited by this Section 5.2, Section 6.14 or any other provision of this Agreement);

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(l) except as required by applicable Law (including Regulation S-X promulgated under the Exchange Act or other applicable rules and regulations of the SEC) or GAAP, (i) revalue in any material respect any of its properties or assets, including writing-off notes or accounts receivable, other than in the ordinary course of business; or (ii) make any change in any of its accounting principles or practices;

(m) except as would not constitute a Company Material Adverse Effect: (A) make or change any income or other material Tax election; (B) settle or compromise any Tax claim or assessment in respect of a material amount of Taxes; (C) request or consent to any extension or waiver of any limitation period with respect to any Tax claim or assessment in respect of income or other material Taxes (other than pursuant to customary extensions of the due date to file a Tax Return obtained in the ordinary course of business); (D) file an amended income or other material Tax Return that could materially increase the Taxes payable by Parent or the Company Group; (E) surrender any right to claim a refund of a material amount Taxes; (F) fail to pay any income or other material Tax that becomes due and payable; or (G) enter into a closing agreement with any Governmental Authority regarding any income or other material Tax; or (H) incur a material amount of Taxes outside of the ordinary course of business, other than in connection with the Transactions;

(n) incur or commit to incur any capital expenditure (excluding, for the avoidance of doubt, internal and external capitalized labor costs) other than (i) consistent with the capital expenditure budget set forth in Section 5.2(n) of the Company Disclosure Letter or (ii) to the extent that such capital expenditures do not exceed $10,000,000 in the aggregate;

(o) enter into, modify in any material respect, amend in any material respect or terminate (excluding, for the avoidance of doubt, any termination as a result of nonrenewal or otherwise due to expiration of the applicable term thereof) any (i) Contract (other than any Material Contract set forth in the following clause (ii)) that if so entered into, modified, amended or terminated would have a Company Material Adverse Effect; or (ii) Material Contract set forth in subclause (m) on Section 3.13(a) of the Company Disclosure Letter;

(p) [Reserved];

(q) engage in any transaction with, or enter into any agreement, arrangement or understanding with, any Affiliate of the Company or other Person covered by Item 404 of Regulation S-K promulgated by the SEC that would be required to be disclosed pursuant to Item 404;

(r) effectuate a “plant closing,” “mass layoff” (each as defined in WARN) or other employee layoff event affecting in whole or in part any site of employment, facility, operating unit or employee;

(s) hire, engage, terminate (without cause), furlough, or temporarily layoff any employee or independent contractor with annual base compensation in excess of $350,000;

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(t) acquire (by merger, consolidation or acquisition of stock or assets) any other Person or any material equity interest therein or enter into any joint venture, legal partnership (excluding, for avoidance of doubt, strategic relationships, alliances, reseller agreements and similar commercial relationships), limited liability corporation or similar arrangement with any third Person, in each case, other than (i) investment in equity securities held in the ordinary course of business for cash management purposes or (ii) acquisitions or investments in which the Company Group is obligated to pay aggregate consideration of less than $5,000,000, individually, or $10,000,000, in the aggregate, in connection with the consummation of such acquisition or investment;

(u) (i) negotiate, modify, extend, or enter into any Collective Bargaining Agreement or agreement to form a work council or other Contract with any labor organization or works council (except to the extent required by applicable Law) or (ii) recognize or certify any labor union, labor organization, works council, or group of employees as the bargaining representative for any employees of the Company Group; or

(v) enter into, authorize any of, or agree or commit to enter into a Contract to take any of the actions prohibited by this Section 5.2.

Notwithstanding the foregoing, nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the operations of any Company Group Member prior to the Effective Time. Prior to the Effective Time, without limiting or modifying the restrictions set forth in this Section 5.2, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over the operations of the Company Group.

5.3 *No Solicitation.*

(a) *Go-Shop Period.* Notwithstanding anything to the contrary set forth in this Agreement, during the period (the “**Go-Shop Period**”) beginning on the Agreement Date and continuing until 11:59 p.m., Pacific Time, on August 17, 2021 (the “**No-Shop Period Start Date**”), the Company and its Affiliates and their respective directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, consultants, agents, representatives and advisors or any investment banker, financial advisor, attorney, accountant, consultant, agent, representative or advisor retained by any of them (collectively, the “**Representatives**”) shall have the right, directly or indirectly, to: (i) solicit, initiate, propose or induce the making, submission or announcement of, or knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, could constitute or could reasonably expected to lead to, an Acquisition Proposal; (ii) subject to the entry into, and solely in accordance with, an Acceptable Confidentiality Agreement, furnish to any Third Person (and its Representatives, prospective debt and equity financing sources and/or their respective Representatives), any information (including non-public information and data) relating to the Company Group and/or afford to any such Third Person (and its Representatives, prospective debt and equity financing sources and/or their respective Representatives) access to the business, properties, assets, books, records or other information (including non-public information and data), or to any personnel, of the Company Group, in any such case with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal or any inquiries or the making of any proposal or inquiry that could constitute or could reasonably be expected to lead to an Acquisition Proposal; *provided*, *however*, that (A) the Company will promptly (and in any event within twenty-four (24) hours) provide to Parent, or provide Parent access to, any such non-public information concerning the Company Group that is provided to any such Third Person or its Representatives that was not previously provided to Parent or its Representatives and (B) the Company Group shall not provide (and shall not permit any of their respective Representatives to provide) any competitively sensitive non-public information to any Third Person who is or whose Affiliates are a competitor of any Company Group Member in connection with the actions permitted by this Section 5.3(a), except in accordance with customary “clean room” or other similar procedures; and (iii) continue, enter into, maintain, participate or engage in discussions or negotiations with any Third Person (and its Representatives, prospective debt and equity financing sources and/or their respective Representatives) with respect to any proposal or inquiry that constitutes, could constitute or could reasonably be expected to lead to, an Acquisition Proposal and cooperate with, assist or participate in, or facilitate in any way, such proposals or inquiries or any effort or attempt to make any proposal or inquiry that constitutes, could constitute or could reasonably be expected to lead to, an Acquisition Proposal, including by granting any waiver, amendment or release under any “standstill provision” or similar obligation of any Person with respect to any Company Group Member to allow such Third Person to submit or amend an Acquisition Proposal on a confidential basis to the Company Board (or any committee thereof).

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(b) *No Solicitation or Negotiation.* Subject to the terms of this Section 5.3, from the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will, and will cause its Subsidiaries and its and their respective Representatives (other than with respect to, in each case, any Excluded Party, which has reaffirmed its Acquisition Proposal to the Company Board within twenty-four (24) hours of the No-Shop Period Start Date, but only for so long as such Person is and remains an Excluded Party) to cease and cause to be terminated any discussions or negotiations with any Person and its Representatives that would be prohibited by this Section 5.3(b), request the prompt return or destruction of all non-public information concerning the Company Group theretofore furnished to any such Person with whom a confidentiality agreement was entered into in connection with its consideration of making an Acquisition Proposal within the twelve (12) month period immediately preceding the No-Shop Period Start Date and will (i) cease providing any further information with respect to the Company or any Acquisition Proposal to any such Person or its Representatives; and (ii) terminate all access granted to any such Person and its Representatives to any physical data room the VDR or any other diligence access to non-public information regarding the Company Group made available in connection with an Acquisition Proposal. Subject to the terms of Section 5.3(c), from the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company and its Subsidiaries will not instruct, authorize or knowingly permit any of their respective officers and directors or any of their other Representatives to, directly or indirectly, (A) solicit, initiate, propose or induce the making, submission or announcement of, or knowingly encourage, facilitate or assist, any proposal that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal; (B) other than with respect to any Excluded Party which has reaffirmed its Acquisition Proposal to the Company Board within twenty-four (24) hours of the No-Ship Period Start Date, and its Representatives (but only for so long as the applicable Person is and remains an Excluded Party), furnish to any Person (other than to Parent, Merger Sub or any designees of Parent or Merger Sub) any non-public information relating to the Company Group or afford to any Person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company Group (other than Parent, Merger Sub or any designees of Parent or Merger Sub), in any such case with the specific intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist an Acquisition Proposal or the making of any proposal or offer that would reasonably be expected to lead to an Acquisition Proposal; (C) participate or engage in discussions, communications or negotiations with any Third Person with respect to an Acquisition Proposal (other than informing such Persons of the provisions contained in this Section 5.3); (D) approve, endorse or recommend any proposal that constitutes or would reasonably be expected to lead to, an Acquisition Proposal; or (E) enter into any letter of intent, agreement in principle, memorandum of understanding, merger agreement, acquisition agreement or other Contract relating to an Acquisition Transaction, other than an Acceptable Confidentiality Agreement (any such letter of intent, agreement in principle, memorandum of understanding, merger agreement, acquisition agreement or other Contract relating to an Acquisition Transaction, an “**Alternative Acquisition Agreement**”). From the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will not be required to enforce, and will be permitted to waive, terminate or modify, any provision of any standstill or confidentiality agreement that prohibits or purports to prohibit a proposal being made to the Company Board (or any committee thereof) if the Company Board has determined in good faith, after consultation with its outside counsel that failure to take such action would be inconsistent with its fiduciary duties under applicable Law.

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(c) *Superior Proposals.* Notwithstanding anything to contrary set forth in this Section 5.3, until the Company’s receipt of the Requisite Stockholder Approval, the Company and the Company Board (or a committee thereof) may, directly or indirectly, through one (1) or more of their respective Representatives (including the Advisor), participate or engage in discussions or negotiations with, furnish any information (including non-public information and data) relating to the Company Group to, or afford access to the business, properties, assets, books, records or other information (including non-public information and data), or to any personnel, of the Company Group pursuant to an Acceptable Confidentiality Agreement to any Person or its Representatives that has made or delivered to the Company a *bona fide* Acquisition Proposal, and otherwise facilitate such Acquisition Proposal or assist such Person (and its Representatives, prospective debt and equity financing sources and/or their respective Representatives) with such Acquisition Proposal (in each case, if requested by such Person), in each case, with respect to an Acquisition Proposal that was not the result of any material breach of Section 5.3(b); *provided*, that, the Company and its Representatives may contact any Third Person with respect to an Acquisition Proposal to clarify any ambiguous terms and conditions thereof which are necessary to determine whether the Acquisition Proposal constitutes or is reasonably likely to lead to a Superior Proposal (without the Company Board being required to make the determination in the following proviso), it being agreed that if the Company Board receives any clarifications from such Third Person, the Proposal Notice Period will not be deemed commenced until such clarifications are provided to Parent; *provided, however,* that, except as permitted by the immediately preceding proviso, the Company Board (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) that (i) such Acquisition Proposal either constitutes a Superior Proposal or is reasonably likely to lead to a Superior Proposal and (ii) the failure to take the actions contemplated by this Section 5.3(c) would be reasonably likely to be inconsistent with its fiduciary duties pursuant to applicable Law; *provided, further, however,* that the Company will provide to Parent and its Representatives any non-public information that is provided to any Person or its Representatives given such access that was not previously made available to Parent prior to or substantially concurrently (but in no event later than forty-eight (48) hours after) the time it is provided to such Person.

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(d) *No Change in Company Board Recommendation or Entry into an Alternative Acquisition Agreement.* Except as provided by Section 5.3(e), at no time after the Agreement Date (or in the case of clause (i)(C) immediately below, after the No-Shop Period Start Date) may the Company Board (or a committee thereof):

(i) (A) withhold, withdraw, amend, qualify or modify, or publicly propose to withhold, withdraw, amend, qualify or modify, the Company Board Recommendation, in each case, in a manner adverse to Parent in any material respect (it being understood that it shall be considered a modification adverse to Parent that is material if (I) any Acquisition Proposal structured as a tender or exchange offer is commenced and the Company Board fails to publicly recommend against acceptance of such tender or exchange offer by the Company Stockholders within ten (10) Business Days of commencement thereof pursuant to Rule 14d-2 of the Exchange Act or (II) any Acquisition Proposal is publicly announced (other than by the commencement of a tender or exchange offer) and the Company Board fails to issue a public press release within ten (10) Business Days of such public announcement providing that the Company Board reaffirms the Company Board Recommendation); (B) adopt, approve, endorse, recommend or otherwise publicly declare advisable to the Company Stockholders an Acquisition Proposal; (C) fail to publicly reaffirm the Company Board Recommendation within ten (10) Business Days after Parent so requests in writing (it being understood that the Company will have no obligation to make such reaffirmation on more than two (2) occasions); or (D) fail to include the Company Board Recommendation in the Proxy Statement (any action described in clauses (A) through (D), a “**Company Board Recommendation Change**”); *provided, however,* that, for the avoidance of doubt, none of (w) a “stop, look and listen” communication by the Company Board (or a committee thereof) to the Company Stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any substantially similar communication), (x) the factually accurate public disclosure by the Company of the receipt of an Acquisition Proposal, (y) the determination by the Company Board (or a committee thereof) that an Acquisition Proposal constitutes a Superior Proposal; or (z) the delivery by the Company to Parent of any notice contemplated by Section 5.3(e) will constitute a Company Board Recommendation Change; or

(ii) cause or permit the Company Group to enter into an Alternative Acquisition Agreement.

(e) *Company Board Recommendation Change; Entry into Alternative Acquisition Agreement.* Notwithstanding anything to the contrary set forth in this Agreement, at any time prior to obtaining the Requisite Stockholder Approval:

(i) the Company Board (or a committee thereof) may effect a Company Board Recommendation Change in response to any Intervening Event, if the Company Board (or a committee thereof) determines in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to do so would be reasonably likely to be inconsistent with its fiduciary duties pursuant to applicable Law; *provided*, that the Company Board shall not effect such a Company Board Recommendation Change unless:

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(1) the Company has provided prior written notice to Parent at least three (3) Business Days (the “**Event Notice Period**”) in advance to the effect that the Company Board (or a committee thereof) intends to effect a Company Board Recommendation Change pursuant to this Section 5.3(e)(i), which notice will specify the basis for such Company Board Recommendation Change, including a description of the Intervening Event in reasonable detail;

(2) prior to effecting such Company Board Recommendation Change, during such Event Notice Period, (A) the Company and its Representatives must have negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to allow Parent to offer such adjustments to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents to obviate the need to effect a Company Board Recommendation Change, in response to such Intervening Event; and (B) the Company Board shall have taken into account any adjustments to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents proposed by Parent and other information provided by Parent in response to the notice described in clause (1) of this Section 5.3(e)(i), in each case, that are offered in writing by Parent in a manner that would constitute a binding agreement between the parties if accepted by the Company, by no later than 11:59 p.m., Pacific Time, on the last day of the Event Notice Period; and

(3) following such Event Notice Period, the Company Board (or a committee thereof) (after consultation with its financial advisor and outside legal counsel and taking into account Parent’s proposed revisions to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents) shall have determined that the failure of the Company Board (or a committee thereof) to make such a Company Board Recommendation Change to terminate this Agreement would be reasonably likely to be inconsistent with its fiduciary duties pursuant to applicable Law; *provided*, that each time material modifications to the Intervening Event occur, the Company shall notify Parent of such modification and Event Notice Period shall recommence and be extended for two (2) Business Days from the day of such notification.

(ii) if the Company has received a *bona fide* Acquisition Proposal, whether during the Go-Shop Period or after the No-Shop Period Start Date that the Company Board (or a committee thereof) has concluded in good faith (after consultation with its financial advisor and outside legal counsel) is a Superior Proposal, then the Company Board may (A) effect a Company Board Recommendation Change with respect to such Superior Proposal; or (B) authorize the Company to terminate this Agreement pursuant to Section 8.1(h) to enter into an Alternative Acquisition Agreement with respect to such Superior Proposal substantially concurrently with the termination of this Agreement; *provided, however*, that the Company Board (or a committee thereof) shall not take any action described in the foregoing clause (A) or (B) unless:

(1) with respect to the actions described in the foregoing clauses (A) and (B), the Company Board (or a committee thereof) determines in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to do so would be reasonably likely to be inconsistent with its fiduciary duties pursuant to applicable Law;

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(2) the Company Group and its Representatives have complied in all material respects with their obligations pursuant to this Section 5.3 with respect to such Acquisition Proposal;

(3) (i) the Company has provided prior written notice to Parent at least two (2) Business Days in advance (the “**Proposal Notice Period**”) to the effect that the Company Board (or a committee thereof) has (A) received a *bona fide* Acquisition Proposal that has not been withdrawn; (B) concluded in good faith that such Acquisition Proposal constitutes a Superior Proposal; and (C) resolved to effect a Company Board Recommendation Change or to terminate this Agreement pursuant to this Section 5.3(e)(ii) absent any revision to the terms and conditions of this Agreement, which notice will include the identity of the Person or “group” of Persons making such Acquisition Proposal (unless such disclosure is prohibited pursuant to the terms of any confidentiality agreement with such Persons that is in effect on the Agreement Date), the material terms thereof and copies of all relevant documents relating to such Acquisition Proposal; and (ii) prior to effecting such Company Board Recommendation Change or termination, the Company and its Representatives, during the Proposal Notice Period, must have (I) negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to offer such adjustments to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents so that such Acquisition Proposal would cease to constitute a Superior Proposal; and (II) taken into account any adjustments to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents proposed by Parent and other information provided by Parent during the Proposal Notice Period, in each case, that are offered in writing by Parent in a manner that would constitute a binding agreement between the parties if accepted by the Company, by no later than 11:59 p.m., Pacific Time, on the last day of the Proposal Notice Period; *provided*, (x) that neither the Company, any of its Affiliates or any of their respective Representatives may disclose to any Person or “group” of Persons making an Acquisition Proposal the specific price per share of any offer of Parent pursuant to this Section 5.3(e)(ii)(3) unless and until a definitive agreement with respect to such offer is executed by the Company (*provided*, *however*, that, for the avoidance of doubt, this clause (x) shall not prevent or limit in any respect the Company, its Affiliates or their respective Representatives from notifying any such Person or “group” of Persons that its Acquisition Proposal fails to constitute a Superior Proposal (including the general basis for such failure)); and (y) that in the event of any material modifications to any Acquisition Proposal (it being understood that any change to the material financial terms of such proposal shall be deemed a material modification (a “**Material Revision**”)), the Company will be required to deliver a new written notice to Parent and to comply with the requirements of this Section 5.3(e)(ii)(3) (other than the requirements of a presentation as contemplated by clause (ii)(3) above) with respect to such new written notice (it being understood that the “Proposal Notice Period” in respect of such new written notice will be two (2) Business Days);

(4) following such Proposal Notice Period, including any subsequent Proposal Notice Period with respect to a Material Revision as provided in the final proviso of the foregoing Section 5.3(e)(ii)(3), the Company Board (or a committee thereof) (after consultation with its financial advisor and outside legal counsel and taking into account Parent’s proposed revisions to the terms and conditions of this Agreement, the Equity Commitment Letter, the Guaranty and/or the Debt Documents) shall have determined that the Acquisition Proposal continues to be a Superior Proposal, and in the case of a Company Board Recommendation Change, that the failure to effect such Company Board Recommendation Change would be reasonably likely to be inconsistent with its fiduciary duties pursuant to applicable Law; and

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(5) in the event of any termination of this Agreement in order to cause or permit the Company Group to enter into an Alternative Acquisition Agreement with respect to such Acquisition Proposal, the Company will have validly terminated this Agreement in accordance with Section 8.1(h), including paying the Company Termination Fee in accordance with Section 8.3(b)(iii).

*(f)* *Notice.*

(i) From the Agreement Date until the first (1st) to occur of the No-Shop Period Start Date and the termination of this Agreement pursuant to Article VIII, the Company shall as promptly as reasonably practicable (and, in any event, within forty-eight (48) hours) notify Parent in writing if the Company, any of its Subsidiaries or any of their respective Representatives receive any written or verbal Acquisition Proposal. Such notice must include (A) the identity of the Third Person making such offers or proposals (unless such disclosure is prohibited pursuant to the terms of any confidentiality agreement with such Third Person that is in effect on the Agreement Date); and (B) a summary of the material terms and conditions of such offers or proposals. The Company agrees that it shall not, and shall cause its Subsidiaries not to, enter into any confidentiality or other agreement subsequent to the Agreement Date which prohibits the Company from complying with this Section 5.3(f).

(ii) From the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will promptly (and, in any event, within forty-eight (48) hours) notify Parent if any inquiries, offers or proposals that constitute or would reasonably be expected to lead to an Acquisition Proposal are received by, any non-public information is requested from, or any discussions or negotiations are sought to be initiated or continued with, the Company or any of its Representatives. Such notice must include (A) the identity of the Third Person making such inquiries, offers or proposals; (B) a summary of the material terms and conditions of such inquiries, offers or proposals and (C) if available, copies of any written materials relating thereto provided to the Company or its Representatives (other than documentation related to the financing thereof). Thereafter, the Company must keep Parent reasonably informed, on a reasonably prompt basis, of the status and material developments relating to such Acquisition Proposal (including any material amendments thereto (including with respect to modifications to any material financial terms)).

(iii) Without any requirement to specifically identify such applicable Person, the Company shall notify Parent that it has entered into an Acceptable Confidentiality Agreement with any Person within forty-eight (48) hours after the execution thereof, but only if entry into such Acceptable Confidentiality Agreement would reasonably be expected to lead to an Acquisition Proposal.

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(g) *Certain Disclosures.* Notwithstanding anything contained herein to the contrary, nothing in this Agreement will prohibit the Company or the Company Board (or a committee thereof) from (i) taking and disclosing to the Company Stockholders a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or complying with Rule 14d-9 promulgated under the Exchange Act, including a “stop, look and listen” communication by the Company Board (or a committee thereof) to the Company Stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any substantially similar communication); (ii) complying with Item 1012(a) of Regulation M-A promulgated under the Exchange Act; (iii) informing any Person of the existence of the provisions contained in this Section 5.3; or (iv) making any disclosure to the Company Stockholders unrelated to an Acquisition Proposal (including regarding the business, financial condition or results of operations of the Company Group) that the Company Board (or a committee thereof) has determined to make in good faith in order to comply with applicable regulation or stock exchange rule or listing agreement or other applicable Law, it being understood that any such statement or disclosure made by the Company Board (or a committee thereof) pursuant to this Section 5.3(g) must be subject to the terms and conditions of this Agreement and will not limit or otherwise affect the obligations of the Company or the Company Board (or any committee thereof) and the rights of Parent under this Section 5.3, it being understood that nothing in the foregoing will be deemed to permit the Company or the Company Board (or a committee thereof) to effect a Company Board Recommendation Change other than in accordance with Section 5.3(e). In addition, it is understood and agreed that, for purposes of this Agreement, a factually accurate required public statement by the Company or the Company Board (or a committee thereof) that describes the Company’s receipt of an Acquisition Proposal, the identity of the Person making such Acquisition Proposal, the material terms of such Acquisition Proposal and the operation of this Agreement with respect thereto will not be deemed to be (A) a withholding, withdrawal, amendment, or modification, or proposal by the Company Board (or a committee thereof) to withhold, withdraw, amend or modify, the Company Board Recommendation; (B) an adoption, approval or recommendation with respect to such Acquisition Proposal; or (C) a Company Board Recommendation Change.

(h) *Breach by Representatives*. The Company agrees that any material breach of this Section 5.3 by any of its Representatives (acting as such and at the specific instruction of the Company) will be deemed to be a breach of this Agreement by the Company.

5.4 *Forbearance Covenants of Parent and Merger Sub.* During the Interim Period, Parent shall not, and shall not permit any of its Affiliates (including Merger Sub) to, (a) knowingly take any action that would prevent, materially delay or materially impede the consummation of the Equity Financing or the Debt Financing; (b) until such time as approval under each of the HSR Act and the Austrian Cartel Act 2005 has been received or the expiration of the waiting period thereunder (as applicable), but at all times subject to the following clause (c), acquire or agree to acquire by merging or consolidating with, or by purchasing a material portion of the assets of or equity in, any Person (a “**Specified Acquisition**”) or enter into any new line of business, if the entering into of a definitive agreement relating to or the consummation of such a Specified Acquisition or the entering into of such new line of business, as applicable, would reasonably be expected to (i) prevent, materially delay or materially impede the obtaining of, or adversely affect in any material respect the ability of Parent to procure, any authorizations, consents, orders, declarations or approvals of any Governmental Authority or the expiration or termination of any applicable waiting period necessary to consummate the Transactions or (ii) materially increase the risk of any Governmental Authority seeking or entering an order, ruling, judgment or injunction prohibiting the consummation of the Transactions; or (c) take any action that is intended to or would reasonably be expected to adversely affect or materially delay the ability of Parent or Merger Sub to otherwise perform its covenants, obligations and agreements under this Agreement or to consummate the Transactions (including the Merger).

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**ARTICLE VI**   
**ADDITIONAL COVENANTS**

6.1 *Required Action and Forbearance; Efforts.*

(a) *Reasonable Best Efforts.* Upon the terms and subject to the conditions set forth in this Agreement (including subject to Section 6.2(a)), Parent and Merger Sub, on the one hand, and the Company, on the other hand, will use their respective reasonable best efforts (I) to take (or cause to be taken) all actions; (II) do (or cause to be done) all things; and (III) assist and cooperate with the other Parties in doing (or causing to be done) all things, in each case, as are necessary, proper or advisable pursuant to applicable Law or otherwise to consummate and make effective, in the most expeditious manner practicable, the Merger, including by:

(i) causing the conditions to the Merger set forth in Article VII to be satisfied;

(ii) (A) obtaining all consents, waivers, approvals, orders and authorizations from Governmental Authorities; and (B) making all registrations, declarations and filings with Governmental Authorities, in each case, that are necessary or advisable to consummate the Merger;

(iii) obtaining all consents, waivers and approvals and delivering all notifications pursuant to any Material Contracts (to the extent set forth in Section 3.5 of the Company Disclosure Letter) in connection with this Agreement and the consummation of the Merger, except where the failure to obtain such consents, waivers or approvals or to deliver such notifications would not be materially adverse to Parent, the Surviving Corporation and their respective Subsidiaries, taken as a whole immediately after the Closing; and

(iv) executing and delivering any Contracts and other instruments that are reasonably necessary to consummate the Merger.

(b) *No Failure to Take Necessary Action.* In addition to the foregoing, subject to the terms and conditions of this Agreement (including subject to Section 6.2(a)), neither Parent or Merger Sub, on the one hand, nor the Company, on the other hand, will take any action, or fail to take any action, that is intended to or has (or would reasonably be expected to have) the effect of preventing, impairing, delaying or otherwise adversely affecting the ability of such Party to fully perform its obligations pursuant to this Agreement. For the avoidance of doubt, no action by the Company taken in compliance with Section 5.3 will be considered a violation of this Section 6.1.

(c) *No Consent Fee.* Notwithstanding anything to the contrary set forth in this Section 6.1 or elsewhere in this Agreement, no Company Group Member will be required to agree to the payment of a consent fee, “profit sharing” payment or other consideration (including increased or accelerated payments), or the provision of additional security (including a guaranty), in connection with the Merger, including in connection with obtaining any consent pursuant to any Material Contract.

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(d) *Antitrust Approvals.* This Section 6.1 shall not apply to filings under Antitrust Laws, which shall be governed by the obligations set forth in Section 6.2.

6.2 *Antitrust Filings*

(a) *Filing Under the HSR Act and Other Applicable Antitrust Laws.* Each of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company (and its Affiliates, if applicable), on the other hand, will (i) file with the FTC and the Antitrust Division of the DOJ a Notification and Report Form relating to this Agreement and the Merger as required by the HSR Act within ten (10) Business Days following the Agreement Date and the Austrian Cartel Act 2005 within fifteen (15) Business Days following the Agreement Date; and (ii) to the extent required in the reasonable judgment of counsel to Parent and the Company, promptly file comparable pre-merger or post-merger notification filings, forms and submissions with any Governmental Authority pursuant to other applicable Antitrust Laws in connection with the Merger, with Parent having primary responsibility for the making of such filings. Each of Parent and the Company will use reasonable best efforts to (A) cooperate and coordinate (and cause its respective Affiliates to cooperate and coordinate) with the other in the making of such filings; (B) supply the other (or cause the other to be supplied) with any information that may be required in order to make such filings; (C) supply (or cause the other to be supplied), to the extent reasonable and advisable, any additional documents or information that may be required or requested by the FTC, the DOJ or the Governmental Authorities of any other applicable jurisdiction in which any such filing is made; and (D) take all action necessary to (I) cause the expiration or termination of the applicable waiting periods pursuant to the HSR Act and any other Antitrust Laws applicable to the Merger; and (II) obtain any required Consents pursuant to any Antitrust Laws applicable to the Merger, in each case as soon as practicable. Notwithstanding the foregoing or anything to the contrary in this Agreement, no Party shall be required to (x) offer, negotiate, commit to, or effect, by consent decree, hold separate order or otherwise, the sale, divestiture, license or other disposition of any capital stock, other equity or voting interest, assets (whether tangible or intangible), rights, products or businesses of any Person, or any other restrictions on the activities of any Person, or (y) contest, defend or appeal any Legal Proceedings. Parent shall pay all filing fees under the HSR Act and for any filings required under foreign Antitrust Laws, but the Company shall bear its own costs for the preparation of any such filings. If any Party or Affiliate thereof receives a request for additional information or documentary material from any Governmental Authority with respect to the Merger pursuant to the HSR Act or any other Antitrust Laws applicable to the Merger, then such Party will make (or cause to be made), as soon as reasonably practicable and after consultation with the other Parties, an appropriate response to such request.

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(b) *Cooperation.* In furtherance and not in limitation of the foregoing, the Company, Parent and Merger Sub shall (and shall cause their respective Subsidiaries to), subject to any restrictions under applicable Laws, (i) promptly notify the other Parties of, and, if in writing, furnish the others with copies of (or, in the case of oral communications, advise the others of the contents of) any material communication received by such Person from a Governmental Authority in connection with the Merger and permit the other Parties to review and discuss in advance (and to consider in good faith any comments made by the other parties in relation to) any proposed draft notifications, formal notifications, filing, submission or other written communication (and any analyses, memoranda, white papers, presentations, correspondence or other documents submitted therewith) made in connection with the Merger to a Governmental Authority; (ii) keep the other parties reasonably informed with respect to the status of any such submissions and filings to any Governmental Authority in connection with the Merger and any developments, meetings or discussions with any Governmental Authority in respect thereof, including with respect to (A) the receipt of any non-action, action, clearance, consent, approval or waiver, (B) the expiration of any waiting period, (C) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial action or proceeding under applicable Laws and (D) the nature and status of any objections raised or proposed or threatened to be raised by any Governmental Authority with respect to the Merger; and (iii) not independently participate in any substantive meeting, hearing, proceeding or discussions (whether in person, by telephone or otherwise) with or before any Governmental Authority in respect of the Merger without giving the other parties reasonable prior written notice of such meeting or discussions and, unless prohibited by such Governmental Authority, the opportunity to attend or participate. However, each of the Company, Parent and Merger Sub may designate any non-public information provided to any Governmental Authority as restricted to “outside counsel” only and any such information shall not be shared with employees, officers or directors or their equivalents of the other party without approval of the party providing the non-public information; *provided, however,* that each of Company, Parent and Merger Sub may redact any valuation and related information before sharing any information provided to any Governmental Authority with another Party on an “outside counsel” only basis. This Section 6.2 (and not any other provisions) provides the parties’ sole and exclusive obligations with respect to seeking and obtaining antitrust approvals.

6.3 *Proxy Statement and Other Required SEC Filings.*

(a) *Proxy Statement.* Promptly following the Agreement Date (but in no event later than twenty-five (25) Business Days) following the date hereof, the Company will prepare and file with the SEC a preliminary proxy statement (as amended or supplemented, the “**Proxy Statement**”) relating to the Company Stockholder Meeting. Subject to Section 5.3, the Company must include the Company Board Recommendation in the Proxy Statement; *provided*, that if the Company Board shall have effected a Company Board Recommendation Change in accordance with Section 5.3, then in submitting this Agreement to the Company’s stockholders, the Company Board may submit this Agreement to the Company’s stockholders without the Company Board Recommendation, in which event the Company Board may communicate the basis for its lack of recommendation to the Company’s stockholders in the Proxy Statement or an appropriate amendment thereof or supplement thereto.

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(b) *Other Required Company Filing.* If the Company determines that it is required to file any document other than the Proxy Statement with the SEC in connection with the Merger pursuant to applicable Law (such document, as amended or supplemented, an “**Other Required Company Filing**”), then the Company will promptly prepare and file such Other Required Company Filing with the SEC. The Company will use reasonable best efforts to cause the Proxy Statement and any Other Required Company Filing to comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules of the SEC and NASDAQ. The Company may not file the Proxy Statement or any Other Required Company Filing with the SEC without first providing Parent and its counsel a reasonable opportunity to review and comment thereon, and the Company will give due consideration to all reasonable additions, deletions or changes suggested thereto by Parent or its counsel (but shall have no affirmative obligation to include any such additions, deletions or changes). On the date of filing, the date of mailing to the Company Stockholders (if applicable) and at the time of the Company Stockholder Meeting, neither the Proxy Statement nor any Other Required Company Filing will 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 false or misleading. Notwithstanding the foregoing, no representation, warranty or covenant is made by the Company with respect to any information supplied by Parent, Merger Sub or any of their respective Affiliates for inclusion or incorporation by reference in the Proxy Statement or any Other Required Company Filing. The information supplied by the Company for inclusion or incorporation by reference in any Other Required Parent Filings will not, at the time that such Other Required Parent Filing is filed with the SEC, 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.

(c) *Other Required Parent Filing.* If Parent, Merger Sub or any of their respective Affiliates determines that it is required to file any document with the SEC in connection with the Merger or the Company Stockholder Meeting pursuant to applicable Law (an “**Other Required Parent Filing**”), then Parent and Merger Sub will, and will cause their respective Affiliates to, promptly prepare and file such Other Required Parent Filing with the SEC. Parent and Merger Sub will cause, and will cause their respective Affiliates to cause, any Other Required Parent Filing to comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules of the SEC. Neither Parent or Merger Sub nor any of their respective Affiliates may file any Other Required Parent Filing (or any amendment thereto) with the SEC without first providing the Company and its counsel a reasonable opportunity to review and comment thereon, and Parent will give due consideration to all reasonable additions, deletions or changes suggested thereto by the Company or its counsel. On the date of filing, the date of mailing to the Company Stockholders (if applicable) and at the time of the Company Stockholder Meeting, no Other Required Parent Filing may 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 false or misleading. Notwithstanding the foregoing, no covenant is made by Parent or Merger Sub with respect to any information supplied by the Company for inclusion or incorporation by reference in any Other Required Parent Filing. The information supplied by Parent, Merger Sub and their respective Affiliates for inclusion or incorporation by reference in the Proxy Statement or any Other Required Company Filing will not, at the time that the Proxy Statement or such Other Required Company Filing is filed with the SEC, 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.

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(d) *Furnishing Information.* Each of the Company, on the one hand, and Parent and Merger Sub, on the other hand, will furnish all information concerning it and its Affiliates, if applicable, as the other Party may reasonably request in connection with the preparation and filing with the SEC of the Proxy Statement and any Other Required Company Filing or any Other Required Parent Filing. If at any time prior to the Company Stockholder Meeting any information relating to the Company Group, Parent, Merger Sub or any of their respective Affiliates should be discovered by the Company, on the one hand, or Parent or Merger Sub, on the other hand, that should be set forth in an amendment or supplement to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be, so that such filing would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, then the Party that discovers such information will promptly notify the other, and an appropriate amendment or supplement to such filing describing such information will be promptly prepared and filed with the SEC by the appropriate Party and, to the extent required by applicable Law or the SEC or its staff, disseminated to the Company Stockholders.

(e) *Consultation Prior to Certain Communications.* The Company and its Affiliates, on the one hand, and Parent, Merger Sub and their respective Affiliates, on the other hand, may not communicate in writing with the SEC or its staff with respect to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be, without first providing the other Party a reasonable opportunity to review and comment on such written communication, and each Party will give due consideration to all reasonable additions, deletions or changes suggested thereto by the other Parties or their respective counsel; *provided* that this clause shall not apply to any document relating to an Acquisition Proposal or a Company Board Recommendation Change.

(f) *Notices.* The Company, on the one hand, and Parent and Merger Sub, on the other hand, will advise the other, promptly after it receives notice thereof, of any receipt of a request by the SEC or its staff for (i) any amendment or revisions to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be; (ii) any receipt of comments from the SEC or its staff on the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be; or (iii) any receipt of a request by the SEC or its staff for additional information in connection therewith.

(g) *Dissemination of Proxy Statement.* Subject to applicable Law, the Company will use commercially reasonable efforts to cause the Proxy Statement to be disseminated to the Company Stockholders as promptly as reasonably practicable following the filing thereof with the SEC and confirmation from the SEC that it will not review, or that it has completed its review of, the Proxy Statement, which confirmation will be deemed to occur if the SEC has not affirmatively notified the Company prior to the tenth (10th) calendar day after filing the Proxy Statement that the SEC will or will not be reviewing the Proxy Statement (the “**SEC Clearance Date**”), but in any event no later than five (5) Business Days following the SEC Clearance Date; *provided* that in no event shall the Company be obligated to disseminate the Proxy Statement to the Company Stockholders prior to the first (1st) date from and after the No-Shop Period Start Date.

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6.4 *Company Stockholder Meeting.*

(a) *Call of Company Stockholder Meeting.* Subject to the provisions of this Agreement, the Company will take all action necessary in accordance with the DGCL, the Charter, the Bylaws and the rules of NASDAQ to establish a record date for (and, unless otherwise required by applicable Law, the Company will not change the record date without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed)), duly call, give notice of, convene and hold a meeting of its stockholders (the “**Company Stockholder Meeting**”) as promptly as reasonably practicable following the mailing of the Proxy Statement to the Company Stockholders for the purpose of obtaining the Requisite Stockholder Approval. Notwithstanding anything to the contrary in this Agreement, the Company will not be required to convene and hold the Company Stockholder Meeting at any time prior to the twentieth (20th) Business Day following the mailing of the Proxy Statement to the Company Stockholders; *provided* that the Company Stockholder Meeting shall not be held later than forty-five (45) days after the SEC Clearance Date. Subject to Section 5.3 and unless there has been a Company Board Recommendation Change, the Company will use reasonable best efforts to solicit proxies to obtain the Requisite Stockholder Approval.

(b) *Adjournment of Company Stockholder Meeting.* Notwithstanding anything to the contrary in this Agreement, nothing will prevent the Company from postponing or adjourning the Company Stockholder Meeting, from time to time, if (i) the Company reasonably believes, after consultations with Parent, it is necessary or advisable to solicit additional votes in order to obtain the Requisite Stockholder Approval, (ii) there are holders of an insufficient number of shares of Company Common Stock present or represented by proxy at the Company Stockholder Meeting to constitute a quorum at the Company Stockholder Meeting (it being understood that the Company may not postpone or adjourn the Company Stockholder Meeting more than two (2) times pursuant to this clause (ii) without Parent’s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed)); or (iii) the Company is required to postpone or adjourn the Company Stockholder Meeting by applicable Law or a request from the SEC or its staff. If the Company shall have delivered a notice to Parent as contemplated by Section 5.3(e), the Company may adjourn (or postpone) the Company Stockholder Meeting to a date no later than five (5) Business Days after the expiration of any Proposal Notice Period or Event Notice Period, as applicable. Unless this Agreement is validly terminated in accordance with Section 8.1, the Company will submit this Agreement and the Merger to its stockholders at the Company Stockholder Meeting even if the Company Board (or a committee thereof) has effected a Company Board Recommendation Change.

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6.5 *Financing.*

(a) *No Amendments to Financing Letters.* Subject to the terms and conditions of this Agreement, each of Parent and Merger Sub will not permit any amendment or modification to be made to, or any waiver of any provision or remedy pursuant to, the Financing Letters if such amendment, modification or waiver would, or would reasonably be expected to, (i) reduce the aggregate amount of the Financing (in each case, except as expressly permitted therein), including in the case of the Debt Financing Letters, by changing the amount of fees to be paid or the original issue discount of the debt to an amount, taken together with other reasonably available financial resources of Parent and its controlled Affiliates, that would be less than the amount required to consummate the Transactions and make the other payments required to be made by Parent, Merger Sub or Company hereunder or otherwise contemplated in connection herewith (and including, for the avoidance of doubt, on the timelines contemplated in this Agreement) and repay or refinance the debt contemplated in this Agreement or the Financing Letters; (ii) impose new or additional conditions or other terms or otherwise expand, amend or modify any of the conditions to the receipt of the Financing or expand the information required to be provided by the Company; (iii) expand, amend or modify any other terms to the Financing in a manner that would reasonably be expected to (A) delay or prevent the Closing Date; or (B) make the timely funding of the Financing, or the satisfaction of the conditions to obtaining the Financing, less likely to occur in any respect; or (iv) adversely impact the ability of Parent, Merger Sub or the Company, as applicable, to enforce its rights against the other parties to the Financing Letters or the definitive agreements with respect thereto (including any right to seek or obtain specific performance of the Financing Letters); *provided*, *however*, for the avoidance of doubt, Parent may amend, replace, supplement and/or modify the Debt Financing Commitments solely (I) to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed the Debt Commitment Letter as of the date of this Agreement (including in replacement of a lender), if the addition of such additional parties, individually or in the aggregate, would not prevent, delay or impair the availability of the Debt Financing when required to be funded or the satisfaction of the conditions to obtaining the Debt Financing, in each case on the Closing Date, or (II) to implement or exercise of any “flex” provisions provided in the Redacted Fee Letter as in effect as of the date of this Agreement. The term “Debt Financing Letters” shall mean the Debt Financing Letters as amended, replaced, supplemented or modified by any such amendment, supplement or modification has been made in compliance with this Section 6.5, including any alternative financing. Parent will fully pay, or cause to be paid, all commitment and other fees under or arising pursuant to the Debt Financing Letters as and when they become earned, due and payable. In addition to the foregoing, Parent shall not release or consent to the termination of the Debt Financing Letters or of any lender under the Debt Financing Letters (excluding, for the avoidance of doubt, an assignment as contemplated in the foregoing proviso), except for replacements of the Debt Financing Letters with alternative financing commitments pursuant to Section 6.5(c).

(b) *Taking of Necessary Actions.* Subject to the terms and conditions of this Agreement, each of Parent and Merger Sub shall use, and shall cause its Affiliates to use, its best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable to arrange and obtain the Financing on the terms and conditions described in the Financing Letters, including using its best efforts to (i) maintain in effect the Financing Letters in accordance with the terms and subject to the conditions thereof (including the “market flex” provisions, in the case of the Debt Financing Letters); (ii) negotiate, enter into, execute and deliver definitive agreements with respect to the Debt Financing contemplated by the Debt Commitment Letter and any related Fee Letter on a timely basis on the terms and subject only to the conditions (including any “flex” provisions in the Redacted Fee Letter) set forth in the Debt Commitment Letter and the Redacted Fee Letter (or on terms not materially less favorable to Parent and Merger Sub than the terms and conditions (including “market flex” provisions) set forth in the Financing Debt Commitment Letter and Redacted Fee Letter); (iii) satisfy (and cause its Affiliates to satisfy) on a timely basis all conditions to funding that are applicable to Parent and Merger Sub in the Financing Letters to fund the Financing at the Closing; (iv) consummate the Financing at or prior to the Closing; (v) comply with its covenants and other obligations pursuant to the Financing Letters; (vi) enforce its rights pursuant to the Financing Letters and the definitive documents relating to the Financing on or prior to the Effective Time, including by commencing an appropriate Legal Proceeding against any such breaching Financing Source to compel such breaching Financing Source to provide its portion of the Debt Financing at or prior to the time Closing should occur pursuant to Section 2.3 hereof; and (vii) notify the Company promptly of any event or circumstance that exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default under any Financing Letter.

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(c) *Alternate Debt Financing.* If any portion of the Debt Financing becomes unavailable on the terms and conditions (including any “flex” provisions in any Fee Letter) contemplated in the Debt Commitment Letter and the Redacted Fee Letter, Parent and Merger Sub shall promptly notify the Company in writing and each of Parent and Merger Sub shall use its reasonable best efforts to, as promptly as reasonably practicable following the occurrence of such event, (i) obtain the Debt Financing or such portion of the Debt Financing from the same or alternative sources on terms, conditions (including market flex provisions) and costs not materially less favorable in the aggregate to Parent and Merger Sub than those contained in the Debt Commitment Letter and any Fee Letter (*provided*, that such terms, conditions and costs would not have any of the effects specified in Section 6.5(a)) and in an amount at least equal to the Debt Financing or such unavailable and required portion thereof, as the case may be (the “**Alternate Debt Financing**”); and (ii) obtain one (1) or more new financing commitment letters with respect to such Alternate Debt Financing (collectively, the “**New Debt Commitment Letters**”), which new letters will replace the existing Debt Commitment Letter in whole or in part. Parent will promptly provide a copy of any New Debt Commitment Letter (and any fee letter in connection therewith or other agreements related thereto) to the Company. Any reference in this Agreement to (A) the “Financing Letters”, “Debt Financing Letters” or the “Debt Commitment Letter” will be deemed to include the Debt Commitment Letter to the extent not superseded by a New Debt Commitment Letter at the time in question and any New Debt Commitment Letter to the extent then in effect, (B) the “Financing Letters” and the “Debt Financing Letters” shall refer to such documents as otherwise amended or modified in accordance with the terms of this Agreement, and (C) the “Financing” means the financing contemplated by the Financing Letters as amended or modified in accordance with the terms of this Agreement.

(d) *No Financing Condition*. Parent and Merger Sub each acknowledge and agree that obtaining the Financing, or any permitted alternative financing (including any Alternate Debt Financing), in each case shall not constitute a condition to the Closing. If the Financing or any permitted alternative financing (including any Alternate Debt Financing) has not been obtained, Parent and Merger Sub will each continue to be obligated, subject to the satisfaction or waiver of the conditions set forth in Article VII, to consummate the Merger.

6.6 *Cooperation With Debt Financing.*

(a) *Cooperation with Debt Financing.* During the Interim Period, the Company will use commercially reasonable efforts to, and will use commercially reasonable efforts to cause each of its Subsidiaries and its and their respective Representatives to, do the following:

(i) participate (and cause senior management and Representatives, with appropriate seniority and expertise, of the Company to participate) in a reasonable number of meetings and presentations with actual or prospective lenders, road shows and due diligence sessions, drafting sessions and sessions (upon reasonable request) with rating agencies to the extent customary for the Debt Financing contemplated by the Debt Commitment Letter at times and locations (which may include telephonic or video calls) to be mutually agreed upon reasonable advance notice and during normal business hours;

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(ii) [Reserved];

(iii) provide reasonable and customary assistance to Parent and the Financing Sources in connection with the timely preparation of customary (A) rating agency presentations, bank information memoranda, confidential information memoranda, lender presentations and similar documents required in connection with or proper for the Debt Financing or customarily used to arrange transactions similar to the Debt Financing by companies of a comparable size in a comparable industry as the Company; and (B) pro forma financial statements and forecasts of financial statements of the Surviving Corporation for one (1) or more periods following the Closing Date, in each case, based on financial information and data derived from the Company’s historical books and records; *provided, however,* that no member of the Company Group will be required to provide any information or assistance with respect to the preparation of pro forma financial statements and forecasts of financing statements relating to (I) the determination of the proposed aggregate amount of the Debt Financing, the interest rates thereunder or the fees and expenses relating thereto; (II) the determination of any post-Closing or pro forma cost savings, synergies, capitalization, ownership or other pro forma adjustments desired to be incorporated into any information used in connection with the Debt Financing; or (III) any financial information related to Parent or any of its Subsidiaries or any adjustments that are not directly related to the acquisition of the Company;

(iv) assisting Parent in connection with the preparation and, subject to the occurrence of the Effective Time, registration, execution and delivery (but in the case of execution and delivery, solely to the extent any such execution and delivery would only be effective on or after the Closing Date) of any pledge and security documents, mortgages, currency or interest hedging arrangements and other definitive financing documents and certificates as may be reasonably requested by Parent or the Financing Sources, obtaining insurance certificates and endorsements, and facilitating the delivery of all stock and other certificates representing equity interests in the Company and its Subsidiaries to the extent required in connection with the Debt Financing, and otherwise reasonably facilitating the pledging of collateral and the granting of security interests in respect of the Debt Financing, it being understood that such documents will not take effect until the Effective Time;

(v) furnishing Parent, Merger Sub and Financing Sources as promptly as reasonably practicable, with regard to the extent customarily provided by companies of comparable size and comparable industry in transactions similar to the Debt Financing for a financing type being incurred, financial and other pertinent and customary information (and supplementing such information to the extent any such information contains any material misstatement of fact or omits to state a material fact necessary to make such information not misleading) regarding the Company Group as may be reasonably requested by Parent, Merger Sub or the Financing Sources to the extent that such information is of the type and form customarily included in a bank confidential information memorandum in connection with the arrangement of financing similar to the Debt Financing or in rating agency presentations, lender presentations or other customary marketing materials;

(vi) [Reserved];

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(vii) reasonably facilitating the granting of security interests (and perfection thereof) in collateral or the reaffirmation of the pledge of collateral on or after the Closing Date, and obtaining and delivering any pay-off letters and other cooperation in connection with the repayment or other retirement of existing indebtedness required to be repaid at the Closing and the release and termination of any and all related Liens on or prior to the Closing Date;

(viii) delivering notices of prepayment within the time periods required by the relevant agreements governing indebtedness and obtaining customary payoff letters, Lien terminations and instruments of discharge to be delivered at the Closing, giving any other necessary notices, to allow for the payoff, discharge and termination in full at the Closing of all indebtedness required to be repaid at the Closing and release of all Liens in connection therewith; and cooperating in the replacement, backstop or cash collateralization of any outstanding letters of credit issued for the account of any Company Group Member;

(ix) providing customary authorization letters required for the syndication of the Debt Financing;

(x) facilitating and assisting in the preparation, execution and delivery of one or more credit agreements, guarantees, certificates (including a customary solvency certificate) and other definitive financing documents as may be reasonably requested by Parent (including furnishing all information relating to the Company and its Subsidiaries and their respective businesses to be included in any schedules thereto or in any perfection certificates); *provided* that the foregoing documentation shall be subject to the occurrence of the Closing Date and become effective no earlier than the Closing Date;

(xi) [Reserved];

(xii) taking all corporate and other organizational actions, subject to the occurrence of the Closing, reasonably requested by Parent or Merger Sub to (A) permit the consummation of the Debt Financing (including distributing the proceeds of the Debt Financing, if any, obtained by any Subsidiary of the Company to the Surviving Corporation); and (B) cause the direct borrowing or incurrence of all of the proceeds of the Debt Financing by the Surviving Corporation or any of its Subsidiaries concurrently with or immediately following the Effective Time, in each case of clauses (A) and (B), including, facilitating the execution and delivery at the Closing of definitive documents reasonably related to the Debt Financing (such documents, collectively, the “**Debt Documents**”) on the terms contemplated by the Debt Commitment Letter, in connection with the authorization of the Debt Financing and the Debt Documents and the execution and delivery of the Debt Documents in anticipation of the Closing;

(xiii) promptly furnishing (but in no event later than three (3) Business Days prior to the Closing Date) Parent, Merger Sub and the Financing Sources with all documentation and other information about the Company Group as is reasonably requested by Parent, Merger Sub or the Financing Sources relating to applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into Law on October 26, 2001), and a certification regarding beneficial ownership required by 31 C.F.R. § 1010.230, in each case, at least five (5) Business Days prior to the Closing Date, to the extent requested in writing at least eight (8) Business Days prior to the Closing Date; and

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(xiv) cooperating in satisfying the conditions precedent set forth in the definitive agreements relating to the Debt Financing to the extent satisfaction thereof requires the cooperation, or is within the control, of the Company, its Subsidiaries or their respective representatives and is neither in conflict with Law nor any of the Company’s rights or obligations under this Agreement.

(b) *Obligations of the Company.* Nothing in this Section 6.6 will require any Company Group Member to (i) waive or amend any terms of this Agreement or agree to pay any fees or reimburse any expenses prior to the Effective Time for which it has not received prior reimbursement or is not otherwise indemnified by or on behalf of Parent; (ii) enter into any definitive agreement or distribute any cash (except to the extent subject to concurrent reimbursement by Parent) that will be effective prior to the Closing Date; (iii) give any indemnities in connection with the Debt Financing or any action required to be taken by any Company Group Member pursuant to this Section 6.6(b) that are, in each case, effective prior to the Effective Time; (iv) take any action that, in the good faith determination of the Company, would unreasonably interfere with the conduct of the business of the Company Group, breach any confidentiality obligations or create an unreasonable risk of damage or destruction to any property or assets of the Company Group; (v) take any action that will conflict with or violate its organizational documents or any applicable Laws or would result in a material violation or breach of, or default under, any material agreement to which any member of the Company is a party; or (vi) provide any information the disclosure of which is prohibited or restricted under applicable Law or is legally privileged. In addition, (A) no action, liability or obligation of the Company Group or any of its Representatives pursuant to any certificate, agreement, arrangement, document or instrument relating to the Debt Financing or any of the actions required to be taken by the Company Group pursuant to Section 6.6(b) (other than with respect to customary authorization letters required for the syndication of the Debt Financing) will be effective until the Effective Time, and the Company Group will not be required to take any action pursuant to any certificate, agreement, arrangement, document or instrument (other than with respect to customary authorization letters required for the syndication of the Debt Financing) that is not contingent on the occurrence of the Closing or that must be effective prior to the Effective Time; and (B) any bank information memoranda required in relation to the Debt Financing will contain disclosure reflecting the Surviving Corporation or its Subsidiaries as the obligor. Nothing in this Section 6.6 will require (I) any officer or Representative of the Company Group to deliver any certificate or opinion or take any other action under this Section 6.6 that could reasonably be expected to result in personal liability to such officer or Representative; or (II) the Company Board to approve any financing or Contracts related thereto, effective prior to the Closing Date. Notwithstanding anything to the contrary in this Agreement, the condition set forth in Section 7.2(b), as it applies to the Company’s obligations relating to the Debt Financing, shall be deemed satisfied, and the Company shall not be deemed to have breached or failed to perform or observe any covenants, obligations or other agreements contained in this Agreement relating to the Debt Financing, in each case, unless the Debt Financing has not been obtained solely as a result of the Company’s Willful Breach.

(c) *Use of Logos.* The Company hereby consents to the use of its and its Subsidiaries’ logos in connection with the Debt Financing so long as such logos (i) are used solely in a manner that is not intended to or likely to harm or disparage the Company Group or the reputation or goodwill of the Company Group; (ii) are used solely in connection with a description of the Company, its business and products or the Merger; and (iii) are used in any other a manner consistent with the other terms and conditions that the Company reasonably imposes.

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(d) *Confidentiality.* All non-public or other confidential information provided by the Company or any of its Representatives pursuant to this Agreement will be kept confidential in accordance with the Confidentiality Agreement, except that Parent and Merger Sub will be permitted to disclose such information to any Financing Sources or prospective Financing Sources and other financial institutions and investors that may become parties to the Debt Financing (and, in each case, to their respective counsel and auditors) so long as such Persons are “Representatives” under the Confidentiality Agreement and (i) are informed of the confidential nature of such information and agree to keep information of this type confidential pursuant to written agreements which are on terms materially no less favorable to the Company (and its Subsidiaries) than the terms of the Confidentiality Agreement; or (ii) are subject to other confidentiality undertakings reasonably satisfactory to the Company and of which the Company is a beneficiary.

(e) *Reimbursement.* Promptly upon request by the Company, Parent will reimburse the Company Group for any documented and reasonable out-of-pocket costs and expenses (including attorneys’ fees) incurred by the Company in connection with the cooperation of the Company Group contemplated by this Section 6.6.

(f) *Indemnification.* The Company Group and its Representatives will be indemnified and held harmless by Parent from and against any and all liabilities, losses, damages, claims, costs, expenses (including attorneys’ fees), interest, awards, judgments, penalties and amounts paid in settlement suffered or incurred by them in connection with any cooperation provided pursuant to this Section 6.6 or the provision of information utilized in connection therewith, except to the extent resulting from the Company Group’s or any of its Representative’s bad faith or willful and material misconduct. Parent’s obligations pursuant to Section 6.6(e) and this Section 6.6(f) referred to collectively as the “**Parent Reimbursement Obligations**.”

(g) *No Exclusive Arrangements.* In no event will the Guarantor, Parent, Merger Sub or any of their respective Affiliates (which for this purpose will be deemed to include each direct investor in Parent or Merger Sub and the financing sources or potential financing sources of Parent, Merger Sub and such investors) enter into any Contract (i) awarding any agent, broker, investment banker or financial advisor any financial advisory role on an exclusive basis; or (ii) prohibiting or seeking to prohibit any bank, investment bank or other potential provider of debt financing from providing or seeking to provide debt financing or financial advisory services to any Person, in each case in connection with a transaction relating to the Company Group or in connection with the Merger.

6.7 *Anti-Takeover Laws.* Each of Parent (and its Affiliates) and the Company and the Company Board (and any committee empowered to take such action, if applicable) will, to the extent permitted by applicable Law, (a) take all actions within their power to ensure that no “anti-takeover” statute or similar statute or regulation is or becomes applicable to the Merger; and (b) if any “anti-takeover” statute or similar statute or regulation becomes applicable to the Merger, take all action within their power to ensure that the Merger may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Merger.

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6.8 *Access.* At all times during the Interim Period, the Company will afford Parent and its Representatives reasonable access during normal business hours, upon reasonable advance notice, to the properties, books and records and personnel of the Company Group, except that the Company may restrict or otherwise prohibit access to any documents or information to the extent that (a) any applicable Law or regulation requires the Company to restrict or otherwise prohibit access to such documents or information; (b) access to such documents or information would give rise to a reasonably likely risk of waiving (or otherwise jeopardize) any attorney-client privilege, work product doctrine or other privilege applicable to such documents or information; (c) access to a Contract to which any Company Group Member is a party or otherwise bound would violate or cause a material default pursuant to, or give a third Person the right terminate or accelerate the rights pursuant to, such Contract; (d) access would result in the disclosure of any trade secrets of third Persons; (e) in the Company’s reasonable, good faith discretion, restricting or prohibiting access is advisable in connection with any COVID-19 Measures; (f) such documents or information are reasonably pertinent to any adverse Legal Proceeding between the Company and its Affiliates, on the one hand, and Parent and its Affiliates, on the other hand; or (g) subject to compliance with (and without limiting) the relevant provisions of Section 5.3, such documents or information relate to an Acquisition Proposal or a Company Board Recommendation Change or the actions of the Company Board (or a committee thereof) with respect thereto; *provided* that with respect to the items noted in the preceding clauses (a) through (f), the Company shall give notice to Parent of the fact that it is withholding such information or documents and thereafter the Company shall use commercially reasonable efforts to allow the disclosure of such information (or as much of it as possible under the circumstances) in a manner that would not violate any of clauses (a) through (f). Any information so disclosed shall be disclosed subject to execution of a joint defense agreement in customary form. Nothing in this Section 6.8 will be construed to require the Company Group or any of its Representatives to prepare any reports, analyses, appraisals, opinions or other information. Any such access pursuant to this Section 6.8 shall be conducted at Parent’s sole cost and expense under the supervision of appropriate personnel of the Company Group. Any investigation conducted pursuant to the access contemplated by this Section 6.8 will be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Company Group or create a risk of damage or destruction to any property or assets of the Company. Any access to the properties of the Company Group will be subject to the Company’s reasonable security measures and insurance requirements and will not include the right to perform invasive testing. The terms and conditions of the Confidentiality Agreement will apply to any information obtained by Parent or any of its Representatives in connection with any investigation conducted pursuant to the access contemplated by this Section 6.8. All requests for access pursuant to this Section 6.8 must be directed to the General Counsel (or comparable position) of the Company, or another person designated in writing by the Company. Nothing in this Section 6.8 shall require the Company to permit the inspection of, or to disclose, any information regarding or related to the deliberations of the Company Board with respect to the transactions contemplated by this Agreement, the entry into this Agreement or any materials provided to the Company Board in connection therewith.

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6.9 *Section 16(b) Exemption.* During the Interim Period, the Company will take all actions reasonably necessary to cause the Merger, and any dispositions of equity securities of the Company (including derivative securities) in connection with the Merger by each individual who is a director or executive officer of the Company to be exempt pursuant to Rule 16b-3 promulgated under the Exchange Act.

6.10 *Directors’ and Officers’ Exculpation, Indemnification and Insurance.*

(a) *Indemnified Persons.* For a period of six (6) years following the Closing Date, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) honor and fulfill, in all respects, the obligations of the Company Group with respect to indemnification, advancement of expenses and exculpation by the Company or any other Company Group Member existing in favor of the current or former directors, officers or employees of any Company Group Member (and any person who becomes a director, officer or employee of a Company Group Member prior to the Effective Time) (collectively, the “**Indemnified Persons**”) for their respective acts and omissions occurring prior to the Effective Time, in each case, as provided in the certificate of incorporation, bylaws and other charter and organizational documents (including the Charter and the Bylaws) of the applicable Company Group Member as in effect on the Agreement Date and as provided in any indemnification agreements between any Company Group Member and said Indemnified Person for any acts or omissions by such Indemnified Persons or employees occurring prior to the Effective Time. In addition, during the period commencing at the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) cause the certificates of incorporation, bylaws and other similar organizational documents of the Surviving Corporation and its Subsidiaries to contain provisions with respect to indemnification, exculpation and the advancement of expenses that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions set forth in the Charter, the Bylaws and the other similar organizational documents of the Subsidiaries of the Company, as applicable, as of the Agreement Date. During such six (6) year period, such provisions may not be repealed, amended or otherwise modified in any manner except as required by applicable law.

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(b) *Indemnification Obligation.* Without limiting the generality of the provisions of Section 6.10(a), during the period commencing at the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) indemnify and hold harmless, to the fullest extent permitted by applicable Law or pursuant to the certificate of incorporation, bylaws and other charter and organizational documents (including the Charter and the Bylaws) of the applicable Company Group Member and as provided in any indemnification agreements between any Company Group Member and said Indemnified Person, in each case, in effect prior to the Effective Time, each Indemnified Person from and against any costs, fees and expenses (including attorneys’ fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement or compromise in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, to the extent that such Legal Proceeding arises, directly or indirectly, out of or pertains, directly or indirectly, to (i) any action or omission, or alleged action or omission, in such Indemnified Person’s capacity as a director, officer, employee or agent of the Company Group or its Affiliates to the extent that such action or omission, or alleged action or omission, occurred prior to or at the Effective Time; and (ii) the Merger, as well as any actions taken by the Company, Parent or Merger Sub with respect thereto (including any disposition of assets of the Surviving Corporation or any of its Subsidiaries that is alleged to have rendered the Surviving Corporation or any of its Subsidiaries insolvent), except that if, at any time prior to the sixth (6th) anniversary of the Effective Time, any Indemnified Person delivers to Parent a written notice asserting a claim for indemnification pursuant to this Section 6.10(b), then the claim asserted in such notice will survive the sixth (6th) anniversary of the Effective Time until such claim is fully and finally resolved. In the event of any such Legal Proceeding, (A) the Surviving Corporation will have the right to control the defense thereof after the Effective Time (it being understood that, by electing to control the defense thereof, the Surviving Corporation will be deemed to have waived any right to object to the Indemnified Person’s entitlement to indemnification hereunder with respect thereto); (B) each Indemnified Person will be entitled to retain his or her own counsel, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding; (C) the Surviving Corporation will advance all fees and expenses (including fees and expenses of any counsel) as incurred by an Indemnified Person in the defense of such Legal Proceeding, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding; and (D) no Indemnified Person will be liable for any settlement of such Legal Proceeding effected without his or her prior written consent (unless such settlement relates only to monetary damages for which the Surviving Corporation is entirely responsible). Notwithstanding anything to the contrary in this Agreement, none of Parent, the Surviving Corporation nor any of their respective Affiliates will settle or otherwise compromise or consent to the entry of any judgment with respect to, or otherwise seek the termination of, any Legal Proceeding for which indemnification may be sought by an Indemnified Person pursuant to this Agreement unless such settlement, compromise, consent or termination includes an unconditional release of all Indemnified Persons from all liability arising out of such Legal Proceeding. Any determination required to be made with respect to whether the conduct of any Indemnified Person complies or complied with any applicable standard will be made by independent legal counsel selected by the Surviving Corporation (which counsel will be reasonably acceptable to such Indemnified Person), the fees and expenses of which will be paid by the Surviving Corporation.

(c) *D&O Insurance.* During the period commencing at the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) maintain in effect the Company Group’s current directors’ and officers’ liability insurance (“**D&O Insurance**”) in respect of acts or omissions occurring at or prior to the Effective Time on terms (including with respect to coverage, conditions, retentions, limits and amounts) that are equivalent to those of the D&O Insurance. In satisfying its obligations pursuant to this Section 6.10(c), the Surviving Corporation will not be obligated to pay annual premiums in excess of three hundred percent (300%) of the amount paid by the Company Group for coverage for its last full fiscal year (such three hundred percent (300%) amount, the “**Maximum Annual Premium**”). If the annual premiums of such insurance coverage exceed the Maximum Annual Premium, then the Surviving Corporation will be obligated to obtain a directors’ and officers’ liability insurance policy with the greatest coverage available for a cost not exceeding the Maximum Annual Premium from an insurance carrier with the same or better credit rating as the Company’s current directors’ and officers’ liability insurance carrier. Prior to the Effective Time, the Company may purchase a prepaid “tail” policy with respect to the D&O Insurance from an insurance carrier with the same or better credit rating as the Company’s current directors’ and officers’ liability insurance carrier so long as the annual cost for such “tail” policy does not exceed the Maximum Annual Premium. If the Company elects to purchase such a “tail” policy prior to the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) maintain such “tail” policy in full force and effect and continue to honor its obligations thereunder for so long as such “tail” policy is in full force and effect.

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(d) *Successors and Assigns.* If Parent, the Surviving Corporation or any of their respective successors or assigns will (i) consolidate with or merge into any other Person and not be the continuing or surviving corporation or entity in such consolidation or merger; or (ii) transfer all or substantially all of its properties and assets to any Person, then proper provisions will be made so that the successors and assigns of Parent, the Surviving Corporation or any of their respective successors or assigns will assume all of the obligations of Parent and the Surviving Corporation set forth in this Section 6.10.

(e) *No Impairment.* The obligations set forth in this Section 6.10 may not be terminated, amended or otherwise modified in any manner that adversely affects any Indemnified Person (or any other person who is a beneficiary pursuant to the D&O Insurance or the “tail” policy referred to in Section 6.10(c) (and their heirs and representatives)) without the prior written consent of such affected Indemnified Person or other person. Each of the Indemnified Persons or other persons who are beneficiaries pursuant to the D&O Insurance or the “tail” policy referred to in Section 6.10(c) (and their heirs and representatives) are intended to be third party beneficiaries of this Section 6.10, with full rights of enforcement as if such person were a Party. The rights of the Indemnified Persons (and other persons who are beneficiaries pursuant to the D&O Insurance or the “tail” policy referred to in Section 6.10(c) (and their heirs and representatives)) pursuant to this Section 6.10 will be in addition to, and not in substitution for, any other rights that such persons may have pursuant to (i) the Charter and Bylaws; (ii) the similar organizational documents of the Subsidiaries of the Company; (iii) any and all indemnification agreements entered into with any Company Group Member; or (iv) applicable Law (whether at law or in equity).

(f) *Joint and Several Obligations.* The obligations of the Surviving Corporation, Parent and their respective Subsidiaries pursuant to this Section 6.10 will be joint and several.

(g) *Other Claims.* Nothing in this Agreement is intended to, or will be construed to, release, waive or impair any rights to directors’ and officers’ insurance claims pursuant to any applicable insurance policy or indemnification agreement that is or has been in existence with respect to any Company Group Member for any of its directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 6.10 is not prior to or in substitution for any such claims pursuant to such policies or agreements.

6.11 *Employee Matters.*

(a) *Acknowledgement.* Parent hereby acknowledges and agrees that a “change in control” (or similar phrase) within the meaning of each of the Employee Plans, as applicable, will occur as of the Effective Time.

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(b) *Existing Arrangements.* From and after the Effective Time through one year following the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) honor all of the Employee Plans set forth on Section 3.18(a) of the Company Disclosure Letter in accordance with their terms as in effect on the Agreement Date. Notwithstanding the foregoing, nothing will prohibit the Surviving Corporation from in any way amending, modifying or terminating any such Employee Plans in accordance with their terms or if otherwise required pursuant to applicable law.

(c) *Employment; Benefits.* As of the Closing, the Surviving Corporation or one (1) of its Subsidiaries will continue to employ the employees of the Company Group as of the Effective Time. For a period of one (1) year following the Effective Time, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) provide to each Continuing Employee who remains employed with the Surviving Corporation or any of its Subsidiaries (i) a base salary or wage rate at least as favorable as such Continuing Employee’s base salary or wage rate as of immediately prior to the Effective Time, (ii) short-term cash bonus or cash commission compensation opportunities that are substantially comparable in the aggregate to such compensation opportunities the Continuing Employee received as of immediately prior to the Effective Time under the applicable Employee Plans set forth on Section 3.18(a) of the Company Disclosure Letter, (iii) vacation, paid time off, qualified defined contribution retirement, health and welfare and other employee benefits (excluding any equity or equity-based benefits, defined benefit pension plans and/or nonqualified deferred compensation plans) that are substantially comparable in the aggregate to such employee benefits that each such Continuing Employee received as of immediately prior to the Effective Time under the applicable Employee Plans set forth on Section 3.18(a) of the Company Disclosure Letter or as required by applicable Law, and (iv) severance payments and benefits that are substantially comparable in the aggregate to the severance payments and benefits that each such Continuing Employee would have been eligible to receive as of immediately prior to the Effective Time under the applicable Employee Plans set forth on Section 3.18(a) of the Company Disclosure Letter or as required by applicable Law.

(d) *New Plans.* To the extent that an employee benefit plan is made available to any Continuing Employee at or after the Effective Time, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) cause to be granted to such Continuing Employee credit for service with the Company Group prior to the Effective Time for purposes of eligibility to participate, vesting and entitlement to benefits where length of service is relevant (including for purposes of vacation accrual and severance pay entitlement, but not including for any purpose under equity or equity-based benefit or compensation arrangements) to the same extent and for the same purpose as such service was credited to such person under the corresponding Employee Plan as of the Effective Time, except that such service need not be credited to the extent that it would result in duplication of coverage or benefits. In addition, and without limiting the generality of the foregoing, (i) each Continuing Employee will be immediately eligible to participate, without any waiting period, in any and all employee benefit plans sponsored by the Surviving Corporation and its Subsidiaries (other than the Employee Plans) (such plans, collectively, the “**New Plans**”) to the extent that coverage pursuant to any such New Plan replaces at the Effective Time coverage pursuant to a comparable Employee Plan in which such Continuing Employee participates immediately before the Effective Time (such plans, collectively, the “**Old Plans**”); (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, or vision benefits to any Continuing Employee, the Surviving Corporation will use commercially reasonable efforts to cause all waiting periods, pre-existing condition exclusions, evidence of insurability requirements and actively-at-work or similar requirements of such New Plan to be waived for such Continuing Employee and his or her covered dependents to the same extent waived under the corresponding Old Plan, and the Surviving Corporation will use commercially reasonable efforts to cause any eligible expenses incurred by such Continuing Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date that such Continuing Employee’s participation in the corresponding New Plan begins to be given full credit pursuant to such New Plan for purposes of satisfying the applicable deductible, coinsurance, co-pay, offsets and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan to the same extent as such amounts were credited for the same purpose under the corresponding Old Plan; and (iii) credit the accounts of such Continuing Employees pursuant to any New Plan that is a flexible spending plan with any unused balance in the account of such Continuing Employee. Any vacation or paid time off accrued but unused by a Continuing Employee as of immediately prior to the Effective Time will be credited to such Continuing Employee following the Effective Time, and will not be subject to accrual limits or other forfeiture and will not limit future accruals (except to the extent that such limits or forfeitures applied under the Employee Plans in effect as of the Agreement Date).

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(e) *Annual Bonus*. From and after the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) honor in accordance with their terms the Annual Bonus Plans with respect to the 2021 calendar year and, to the extent the Effective Time occurs in calendar year 2022, with respect to the 2022 calendar year, in a manner consistent with past practice. In addition, the Company shall (and Parent shall cause the Surviving Corporation to) pay, at a time no later than the time customarily paid by the Company related to any Annual Bonus Plan, to each employee of the Company or any of its Subsidiaries actively employed on the applicable payment dates for the 2021 and 2022 bonuses who is then participating in any Annual Bonus Plan, respectively, a bonus based on actual performance, in a manner consistent with past practice and in accordance with the terms of such Annual Bonus Plan.

(f) *No Third Party Beneficiary Rights.* Notwithstanding anything to the contrary set forth in this Agreement, this Section 6.11 will not be deemed to (i) guarantee employment for any period of time for, or preclude the ability of Parent, the Surviving Corporation or any of their respective Subsidiaries to terminate any Continuing Employee for any reason; (ii) create rights in any Continuing Employee requiring Parent, the Surviving Corporation or any of their respective Subsidiaries to continue any Employee Plan or prevent the amendment, modification or termination thereof after the Effective Time; (iii) create any other third party beneficiary rights in any Person; or (iv) establish, amend or modify any benefit plan, program, agreement or arrangement.

6.12 *Obligations of Merger Sub.* Parent will take all action necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations pursuant to this Agreement and to consummate the Merger upon the terms and subject to the conditions set forth in this Agreement. Parent and Merger Sub will be jointly and severally liable for the failure by either of them to perform and discharge any of their respective covenants, agreements and obligations pursuant to this Agreement.

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6.13 *Public Statements and Disclosure.* The initial press release concerning this Agreement and the Merger of the Company, on the one hand, and Parent and Merger Sub, on the other hand, will be a joint press release reasonably acceptable to Parent and the Company. At all times during the Interim Period, the Company (other than with respect to the portion of any communication relating to a Superior Proposal (or an Acquisition Proposal which could constitute or could reasonably expected to lead to a Superior Proposal) or a Company Board Recommendation Change), on the one hand, and Parent and Merger Sub, on the other hand, will use reasonable best efforts to consult with the other Parties before (a) participating in any media interviews; (b) engaging in any meetings or calls with analysts, institutional investors or other similar Persons; or (c) providing any statements that are public or are reasonably likely to become public, in any such case to the extent relating to the Merger, except that (i) Parent and the Company will not be obligated to engage in such consultation with respect to communications that are (A) required by applicable Law, regulation or stock exchange rule or listing agreement; (B) principally directed to employees, suppliers, customers, partners or vendors or other commercial and business relationships so long as such communications are consistent with the previous press releases, public disclosures or public statements made jointly by the Parties (or individually if approved by the other Party); (C) solely to the extent related to a Superior Proposal (or an Acquisition Proposal which could constitute or could reasonably expected to lead to a Superior Proposal) or Company Board Recommendation Change or (D) descriptions of the Transactions which are consistent with the previous press releases, public disclosures or public statements made jointly by the Parties (or individually if approved by the other Party) and (ii) Parent will not be obligated to engage in such consultation with respect to communications that are disclosures or communications by Parent, Merger Sub and their Affiliates to existing or prospective general or limited partners, equity holders, members, managers and investors of such Person or any Affiliates of such Person, in each case who are subject to customary confidentiality restrictions, and deal descriptions on such Person’s website in the ordinary course of business (but with respect to such deal descriptions, only to the extent that such descriptions are consistent with the previous press releases, public disclosures or public statements made jointly by the Parties (or individually if approved by the other Party)).

6.14 *Transaction Litigation.* At all times during the Interim Period, the Company shall control the defense of any Transaction Litigation, but the Company will provide Parent with prompt notice of all Transaction Litigation (including by providing copies of all pleadings with respect thereto) and keep Parent reasonably informed with respect to the status thereof. The Company will (a) give Parent the opportunity to participate (at Parent’s sole cost and expense) in the defense, settlement or prosecution of any Transaction Litigation; and (b) consult with Parent with respect to the defense, settlement and prosecution of any Transaction Litigation. The Company may not compromise, settle or come to an arrangement regarding, or agree to compromise, settle or come to an arrangement regarding, any Transaction Litigation unless Parent has consented thereto in writing (which consent shall not be unreasonably withheld, delayed or conditioned). For purposes of this Section 6.14, “participate” means that Parent will be kept apprised of proposed strategy and other significant decisions with respect to the Transaction Litigation by the Company (to the extent that the attorney-client privilege between the Company and its counsel is not undermined or otherwise affected or jeopardized in any respect), and Parent may offer comments or suggestions with respect to such Transaction Litigation but will not be afforded any decision-making power or other authority over such Transaction Litigation except for the settlement or compromise consent set forth above. For the avoidance of doubt, any Legal Proceeding related to Dissenting Company Shares will be governed by Section 2.7(c).

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6.15 *Stock Exchange Delisting; Deregistration.* At all times during the Interim Period, the Company will cooperate with Parent and use reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things reasonably necessary, proper or advisable on its part pursuant to applicable Law and the rules and regulations of NASDAQ to cause (a) the delisting of the Company Common Stock from NASDAQ as promptly as practicable after the Effective Time; and (b) the deregistration of the Company Common Stock pursuant to the Exchange Act as promptly as practicable after such delisting.

6.16 *Additional Agreements.* If at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of either of the Company or Merger Sub, then the proper officers and directors of each Party will use reasonable best efforts to take such action.

6.17 *Parent Vote.* Immediately following the execution and delivery of this Agreement, Parent, in its capacity as the sole stockholder of Merger Sub, will execute and deliver to Merger Sub and the Company a written consent, in form and substance reasonably acceptable to the Company, approving the Merger in accordance with the DGCL.

6.18 *No Control of the Other Party’s Business.* The Parties acknowledge and agree that the restrictions set forth in this Agreement are not intended to give Parent or Merger Sub, on the one hand, or the Company, on the other hand, directly or indirectly, the right to control or direct the business or operations of the other at any time prior to the Effective Time. Prior to the Effective Time, each of Parent and the Company will exercise, consistent with the terms, conditions and restrictions of this Agreement, complete control and supervision over their own business and operations.

6.19 *USRPHC Certificate*. On or prior to the Closing Date, the Company shall deliver to Parent a certification from the Company pursuant to Treasury Regulations Section 1.1445-2(c) dated no more than thirty (30) days prior to the Closing Date and signed by a responsible corporate officer of the Company, together with a signed notice as contemplated by Treasury Regulation Section 1.897-2(h), which Parent shall be entitled to file with the Internal Revenue Service after the Closing.

**ARTICLE VII****CONDITIONS TO THE MERGER**

7.1 *Conditions to Each Party’s Obligations to Effect the Merger.* The respective obligations of Parent, Merger Sub and the Company to consummate the Merger are subject to the satisfaction or waiver (where permissible pursuant to applicable Law) prior to the Effective Time of each of the following conditions:

(a) *Requisite Stockholder Approval.* The Company shall have received the Requisite Stockholder Approval at the Company Stockholder Meeting.

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(b) *Antitrust Laws.* The (i) waiting period, if any, applicable to the Merger pursuant to the HSR Act will have expired or otherwise been terminated, no timing agreements prohibiting the consummation of the Merger shall be in effect, and all requisite consents under, or notices provided to Governmental Authorities pursuant to, applicable Antitrust Laws shall have been obtained or provided, and (ii) applicable waiting periods (and any extensions thereof) for the Federal Cartel Authority and the Federal Cartel Attorney Competition Authority have expired or, in the case of an application to the Cartel Court, clearance having been obtained or the application for an in-depth review having been rejected or withdrawn.

(c) *No Prohibitive Laws or Injunctions.* No temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, nor will any action have been taken by any Governmental Authority of competent jurisdiction, and no statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger, that in each case prohibits, makes illegal, or enjoins the consummation of the Merger.

7.2 *Conditions to the Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to consummate the Merger will be subject to the satisfaction or waiver (where permissible pursuant to applicable Law) prior to the Effective Time of each of the following conditions, any of which may be waived exclusively by Parent:

(a) *Representations and Warranties.*

(i)Other than the Company Fundamental Representations and the representations and warranties set forth in Section 3.12(a)(ii), the representations and warranties of the Company contained in Article III shall be true and correct both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date), and shall be interpreted without giving effect to the words “materially” or “material” or to any qualifications based on such terms or based on the term “Company Material Adverse Effect”, except where the failure of such representations and warranties to be true and correct, in the aggregate, does not constitute a Company Material Adverse Effect.

(ii) The Company Fundamental Representations that (A) are not qualified by the words “materially” or “material” or any qualifications based on such terms or based on the term “Company Material Adverse Effect” shall be true and correct in all material respects both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct in all material respects as of such specified date) and (B) that are qualified by the words “materially” or “material” or any qualifications based on such terms or based on the term “Company Material Adverse Effect” shall be true and correct in all respects (and, for the avoidance of doubt, taking into account such qualifications) both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date).

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(iii) The representations and warranties set forth in Section 3.12(a)(ii) shall be true and correct in all respects.

(iv) The Specified Company Fundamental Representations shall be true and correct in all respects as of the Closing Date except where the failure to be so true and correct in all respects would not reasonably be expected to result in the requirement of Parent to pay pursuant to Section 2.7(a)(ii), Section 2.8(a)(i) and Section 2.8(b)(i) additional Merger Consideration in excess of $35,000,000 over the amount of Merger Consideration that would have been payable pursuant to Section 2.7(a)(ii), Section 2.8(a)(i) and Section 2.8(b)(i) had the Specified Company Fundamental Representations been true and correct in all respects as of the Closing Date.

(b) *Performance of Obligations of the Company.* The Company will have performed and complied in all material respects with its covenants, obligations and conditions of this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) *Officer’s Certificate.* Parent and Merger Sub will have received a certificate of the Company, validly executed for and on behalf of the Company and in its name by a duly authorized executive officer thereof, certifying that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(d) *Company Material Adverse Effect.* No Company Material Adverse Effect will have occurred after the Agreement Date that is continuing.

7.3 *Conditions to the Company’s Obligations to Effect the Merger.* The obligations of the Company to consummate the Merger are subject to the satisfaction or waiver (where permissible pursuant to applicable Law) prior to the Effective Time of each of the following conditions, any of which may be waived exclusively by the Company:

(a) *Representations and Warranties.* (i) Other than the Parent Fundamental Representations, the representations and warranties of Parent and Merger Sub contained in Article IV shall be true and correct in all respects both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date), and shall be interpreted without giving effect to the words “materially” or “material” or to any qualifications based on such terms, except where the failure of such representations and warranties to be true and correct, in the aggregate, does not prevent, materially delay or materially impair the ability of Parent or Merger Sub to consummate the Transactions, and (ii) the Parent Fundamental Representations that (A) are not qualified by the words “materially” or “material” or any qualifications based on such terms shall be true and correct in all material respects both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct in all material respects as of such specified date) and (B) are qualified by the words “materially” or “material” or any qualifications based on such terms shall be true and correct in all respects (and, for the avoidance of doubt, taking into account such qualifications) both at and as of the Agreement Date and at and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date).

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(b) *Performance of Obligations of Parent and Merger Sub.* Parent and Merger Sub will each have performed and complied in all material respects with its covenants, obligations and conditions of this Agreement required to be performed and complied with by Parent and Merger Sub at or prior to the Closing.

(c) *Officer’s Certificate.* The Company will have received a certificate of Parent and Merger Sub, validly executed for and on behalf of Parent and Merger Sub and in their respective names by a duly authorized officer thereof, certifying that the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

7.4 *Frustration of Closing Conditions.* None of Parent, Merger Sub or the Company may rely, either as a basis for not consummating the Merger or any of the other Transactions or terminating this Agreement and abandoning the Merger, on the failure of a condition set forth in this Article VII to be satisfied if such failure was caused by such Party’s failure to act in good faith or to use the requisite efforts to cause the Closing to occur as required by this Agreement.

**ARTICLE VIII****TERMINATION, AMENDMENT AND WAIVER**

8.1 *Termination.* This Agreement may be validly terminated, and the Transactions (including the Merger) may be abandoned, at any time prior to the Effective Time, only as follows (it being understood and agreed that this Agreement may not be terminated for any other reason or on any other basis):

(a) at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) by mutual written agreement of Parent and the Company;

(b) by either Parent or the Company, at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) if (i) any permanent injunction or other judgment or order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, or any action has been taken by any Governmental Authority of competent jurisdiction, that, in each case, prohibits, makes illegal or enjoins the consummation of the Merger and has become final and non-appealable; or (ii) any statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger that prohibits, makes illegal or enjoins the consummation of the Merger; *provided*, that the right to terminate this Agreement pursuant to this Section 8.1(b) will not be available to any Party that has failed to use reasonable best efforts to resist, appeal, obtain consent pursuant to, resolve or lift, as applicable, such injunction, action, statute, rule, regulation or order;

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(c) by either Parent or the Company, at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) if the Effective Time has not occurred by 11:59 p.m., Pacific Time, on January 8, 2022 (the “**Termination Date**”), it being understood that the right to terminate this Agreement pursuant to this Section 8.1(c) will not be available to (i) Parent if the Company has perfected its right to terminate this Agreement pursuant to Section 8.1(i); and (ii) any Party whose action or failure to act (which action or failure to act constitutes a breach by such Party of this Agreement (and it being understood that a breach of this Agreement by Merger Sub shall be deemed to be a breach by Parent for purposes of this Agreement)) has been the primary cause of, or primarily resulted in, either (A) the failure to satisfy the conditions to the obligations of the terminating Party to consummate the Merger set forth in Article VII prior to the Termination Date; or (B) the failure of the Effective Time to have occurred prior to the Termination Date;

(d) by either Parent or the Company, at any time prior to the Effective Time if the Company fails to obtain the Requisite Stockholder Approval at the Company Stockholder Meeting (or any adjournment or postponement thereof) at which a vote is taken on the Merger; *provided*, that it being understood that the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to any Party whose action or failure to act (which action or failure to act constitutes a breach by such Party of this Agreement (and it being understood that a breach of this Agreement by Merger Sub shall be deemed to be a breach by Parent for purposes of this Agreement)) has been the cause of, or resulted in, the failure to obtain the Requisite Stockholder Approval at the Company Stockholder Meeting (or any adjournment or postponement thereof);

(e) by Parent (whether prior to or after the receipt of the Requisite Stockholder Approval), if the Company has breached or failed to perform any of its representations, warranties, covenants, obligations or other agreements contained in this Agreement, which breach or failure to perform would result in a failure of a condition set forth in Section 7.1 or Section 7.2 to be satisfied, except that if such breach is capable of being cured by the Termination Date, Parent will not be entitled to terminate this Agreement pursuant to this Section 8.1(e) prior to the delivery by Parent to the Company of written notice of such breach, delivered at least thirty (30) days prior to such termination (or such shorter period of time as remains prior to the Termination Date, the shorter of such periods, the “**Company Breach Notice Period**”), stating Parent’s intention to terminate this Agreement pursuant to this Section 8.1(e) and the basis for such termination, it being understood that Parent will not be entitled to terminate this Agreement if (i) such breach has been cured within the Company Breach Notice Period (to the extent capable of being cured) or (ii) the Company has the valid right to terminate this Agreement pursuant to Section 8.1(g);

(f) by Parent, if at any time the Company Board (or a committee thereof) has effected a Company Board Recommendation Change, except that Parent’s right to terminate this Agreement pursuant to this Section 8.1(f) will expire on the earlier of (i) 5:00 p.m., Pacific Time, on the tenth (10th) Business Day following the date on which Parent becomes aware of such Company Board Recommendation Change and (ii) the time the Requisite Stockholder Approval is obtained;

(g) by the Company (whether prior to or after the receipt of the Requisite Stockholder Approval), if Parent or Merger Sub has breached or failed to perform any of its respective representations, warranties, covenants, obligations or other agreements contained in this Agreement, which breach or failure to perform would result in a failure of a condition set forth in Section 7.1 or Section 7.3 to be satisfied, except that if such breach is capable of being cured by the Termination Date, the Company will not be entitled to terminate this Agreement pursuant to this Section 8.1(g) prior to the delivery by the Company to Parent of written notice of such breach, delivered at least thirty (30) days prior to such termination (or such shorter period of time as remains prior to the Termination Date, the shorter of such periods, the “**Parent Breach Notice Period**”), stating the Company’s intention to terminate this Agreement pursuant to this Section 8.1(g) and the basis for such termination, it being understood that the Company will not be entitled to terminate this Agreement pursuant to this Section 8.1(g) if (i) such breach has been cured within the Parent Breach Notice Period (to the extent capable of being cured) or (ii) Parent has the valid right to terminate this Agreement pursuant to Section 8.1(e);

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(h) by the Company, at any time prior to receiving the Requisite Stockholder Approval if (i) the Company has received a Superior Proposal; (ii) the Company Board (or a committee thereof) has authorized the Company to enter into a definitive Alternative Acquisition Agreement to consummate the Acquisition Transaction contemplated by that Superior Proposal; (iii) the Company has complied in all material respects with Section 5.3 with respect to such Superior Proposal; and (iv) as a condition to such termination the Company pays the Company Termination Fee due to Parent in accordance with the applicable provision of Section 8.3(b); or

(i) by the Company, at any time prior to the Effective Time, if (i) all of the conditions set forth in Section 7.1 and Section 7.2 have been, and continue to be, satisfied (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing) or, to the extent permitted by applicable Law, waived, (ii) Parent and Merger Sub shall have failed to consummate the Merger by the time the Closing was required to occur under Section 2.3; (iii) the Company has irrevocably notified Parent in writing that, if Parent performs its obligations hereunder and the Equity Financing contemplated by the Equity Commitment Letter and the Debt Financing contemplated by the Debt Commitment Letter is funded, the Company stands ready, willing and able to consummate, and will consummate, the Merger; (iv) the Company shall have given Parent written notice at least two (2) Business Days prior to such termination stating the Company’s intention to terminate this Agreement pursuant to this Section 8.1(i) and (v) the Merger shall not have been consummated by the end of such two (2) Business Day period, it being understood that the Company will not be entitled to terminate this Agreement pursuant to this Section 8.1(i) if Parent has the valid right to terminate this Agreement pursuant to Section 8.1(e).

8.2 *Manner and Notice of Termination; Effect of Termination.*

(a) *Manner of Termination.* The Party terminating this Agreement pursuant to Section 8.1 (other than pursuant to Section 8.1(a)) must deliver prompt written notice thereof to the other Parties setting forth in reasonable detail the provision of Section 8.1 pursuant to which this Agreement is being terminated and the facts and circumstances forming the basis for such termination pursuant to such provision.

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(b) *Effect of Termination.* Any proper and valid termination of this Agreement pursuant to Section 8.1 will be effective immediately upon the delivery of written notice by the terminating Party to the other Parties. In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement will be of no further force or effect without liability of any Party (or any partner, member, manager, stockholder, director, officer, employee, Affiliate, agent or other representative of such Party) to the other Parties, as applicable, except that Section 3.27, Section 4.16, Section 4.17, Section 6.6(e), Section 6.6(f), Section 6.13, this Section 8.2, Section 8.3 and Article IX (other than Section 9.8(b)) will each survive the termination of this Agreement in accordance with their respective terms. Notwithstanding the foregoing but subject to Section 8.3(f), nothing in this Agreement will relieve any Party from any liability for fraud or any Willful Breach of this Agreement prior to its termination. For the avoidance of doubt, in the event of a termination of this Agreement, the Financing Sources will have no liability to the Company, any of its Affiliates or any of its or their direct or indirect equityholders hereunder or otherwise relating to or arising out of the Transactions or any Debt Financing (including for any Willful Breach). In addition to the foregoing, no termination of this Agreement will affect the rights or obligations of any Party pursuant to the Confidentiality Agreement or the Guaranty, which rights, obligations and agreements will survive the termination of this Agreement in accordance with their respective terms.

8.3 *Fees and Expenses.*

(a) *General.* Except as set forth in this Section 8.3, all fees and expenses incurred in connection with this Agreement and the Transactions will be paid by the Party incurring such fees and expenses whether or not the Merger is consummated. For the avoidance of doubt, Parent or the Surviving Corporation will be responsible for all costs, fees and expenses of the Payment Agent. Except to the extent otherwise provided in Section 2.9(e), Parent will pay or cause to be paid all (i) transfer, stamp and documentary Taxes or fees; and (ii) sales, use, real property transfer and other similar Taxes or fees arising out of or in connection with entering into this Agreement and the consummation of the Merger.

(b) *Company Payments.*

(i) If (A) this Agreement is validly terminated pursuant to (I) Section 8.1(c) at a time when the Requisite Stockholder Approval has not been obtained and the conditions set forth in Section 7.1(b) or Section 7.1(c) have not been satisfied (but in the case of a termination by the Company, only if at such time Parent would not be prohibited from terminating this Agreement on the basis of Section 8.1(c)(i), Section 8.1(c)(ii) or the limitations set forth in the proviso of Section 8.1(d)), or (II) Section 8.1(e); (B) following the execution and delivery of this Agreement and prior to the termination of this Agreement pursuant to the immediately preceding clause (A), an Acquisition Proposal for an Acquisition Transaction has been publicly announced or disclosed and not withdrawn or otherwise abandoned; and (C) within twelve (12) months following the termination of this Agreement pursuant to the preceding clause (A), either an Acquisition Transaction is consummated or the Company enters into a definitive agreement providing for the consummation of an Acquisition Transaction, as applicable, then the Company will concurrently with the consummation of such Acquisition Transaction pay to Parent an amount equal to $199,000,000 (the “**Company Termination Fee**”) in accordance with the payment instructions which have been provided to the Company by Parent as of the Agreement Date, or as further updated by written notice by Parent from time to time. For purposes of this Section 8.3(b)(i), all references to “twenty percent (20%)” in the definition of “Acquisition Transaction” will be deemed to be references to “fifty percent (50%).”

(ii) If this Agreement is validly terminated pursuant to Section 8.1(f), then the Company must promptly (and in any event within two (2) Business Days) following such termination pay to Parent the Company Termination Fee, in accordance with the payment instructions which have been provided to the Company by Parent as of the Agreement Date, or as further updated by written notice by Parent from time to time.

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(iii) If this Agreement is validly terminated pursuant to Section 8.1(h), then the Company must prior to or concurrently with such termination pay to Parent the Company Termination Fee in accordance with the payment instructions which have been provided to the Company by Parent as of the Agreement Date, or as further updated by written notice by Parent from time to time; *provided*, that if the Company terminates this Agreement pursuant to Section 8.1(h) and enters into an Alternative Acquisition Agreement with an Excluded Party prior to the No-Shop Period Start Date, then the “Company Termination Fee” shall mean an amount equal to $99,500,000.

(c) *Parent Payment.* If this Agreement is validly terminated by (i) the Company pursuant to Section 8.1(g) or Section 8.1(i) or (ii) Parent pursuant to Section 8.1(c) and at such time the Company could have validly terminated this Agreement pursuant to Section 8.1(g) or Section 8.1(i), in each case, then Parent must promptly (and in any event within five (5) Business Days) following such termination pay to the Company $365,000,000 in cash (the “**Parent Termination Fee**”) in accordance with the payment instructions which have been provided to Parent by the Company as of the Agreement Date, or as further updated by written notice by the Company from time to time.

(d) *Single Payment Only.* The Parties acknowledge and agree that in no event will the Company or Parent, as applicable, be required to pay the Company Termination Fee or the Parent Termination Fee, as applicable, on more than one (1) occasion, whether or not the Company Termination Fee or the Parent Termination Fee, as applicable, may be payable pursuant to more than one provision of this Agreement at the same or at different times and upon the occurrence of different events.

(e) *Payments; Default.* The Parties acknowledge that the agreements contained in this Section 8.3 are an integral part of the Merger, and that, without these agreements, the Parties would not enter into this Agreement. Accordingly, if either Party fails to promptly pay any amount due pursuant to Section 8.3 and, in order to obtain such payment, the payee Party commences a Legal Proceeding that results in a judgment against the payor Party for the amount set forth in this Section 8.3 or any portion thereof, the payor Party will pay to the payee Party its reasonable and documented out-of-pocket costs, fees and expenses (including reasonable and documented attorneys’ fees) in connection with such Legal Proceeding, together with interest on such amount or portion thereof at the annual rate of five percent (5%) *plus* the prime rate as published in *The Wall Street Journal* in effect on the date that such payment or portion thereof was required to be made through the date that such payment or portion thereof was actually received, or a lesser rate that is the maximum permitted by applicable Law (collectively, the “**Enforcement Expenses**”). All payments under this Section 8.3 shall be made by the payor Party to the payee Party by wire transfer of immediately available funds to an account designated in writing by the payee Party.

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(f) *Sole and Exclusive Remedy.*

(i) If this Agreement is terminated pursuant to Section 8.1, the Company’s receipt of the Parent Termination Fee to the extent owed pursuant to Section 8.3(c) (including the Company’s right to enforce the Guaranty with respect thereto and receive the Parent Termination Fee from the Guarantor), the Parent Reimbursement Obligations and the Company’s right to seek specific performance pursuant to Section 9.8 will be the sole and exclusive remedies of the Company and the Company Related Parties against the Parent Related Parties in respect of this Agreement, any agreement executed in connection herewith and the transactions contemplated hereby and thereby, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable Law arising out of any breach, termination or failure. Upon payment of the Parent Termination Fee, none of the Parent Related Parties will have any further liability or obligation to any of (A) the Company and its Affiliates; and (B) the former, current and future holders of any equity, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders and assignees of each of the Company and its Affiliates (the Persons in clauses (A) and (B) collectively, the “**Company Related Parties**”) relating to or arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby for any matters forming the basis of such termination (except that the Parties (and/or their respective Affiliates) will remain obligated with respect to, and the Company may be entitled to remedies with respect to, the Confidentiality Agreement and Section 8.3(e), as applicable). Notwithstanding the foregoing, this Section 8.3(f)(i) will not relieve Parent, Merger Sub or the Guarantor from any liability (I) for any fraud or Willful Breach of this Agreement or (II) for any breaches of the Confidentiality Agreement; *provided* that under no circumstances will the collective monetary damages payable by Parent, Merger Sub or any of their Affiliates for breaches (including any Willful Breach (but excluding, for the avoidance of doubt, for actual and intentional common law fraud)) under this Agreement (taking into account the payment of the Parent Termination Fee pursuant to this Agreement), the Guaranty or the Equity Commitment Letter exceed an amount equal to $365,000,000 *plus* the Enforcement Expenses and the Parent Reimbursement Obligations in the aggregate for all such breaches (the “**Parent Liability Limitation**”). In no event will any of the Company Related Parties seek or obtain, nor will they permit any of their Representatives or any other Person acting on their behalf to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or award in excess of the Parent Liability Limitation (except for actual and intentional common law fraud) against (x) Parent, Merger Sub or the Guarantor; or (y) the former, current and future holders of any equity, controlling persons, directors, officers, employees, agents, attorneys, Financing Sources, Affiliates (other than Parent, Merger Sub or the Guarantor), members, managers, general or limited partners, stockholders and assignees of each of Parent, Merger Sub and the Guarantor (the Persons in clauses (x) and (y) collectively, the “**Parent Related Parties**”), and, other than with respect to actual and intentional common law fraud, in no event will the Company be entitled to seek or obtain any monetary damages of any kind, including consequential, special, indirect or punitive damages, in excess of the Parent Liability Limitation against the Parent Related Parties for, or with respect to, this Agreement, the Equity Commitment Letter, the Debt Commitment Letter, the Guaranty or the transactions contemplated hereby and thereby (including, any breach by the Guarantor, Parent or Merger Sub), the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable Law arising out of any such breach, termination or failure; *provided* that the foregoing shall not preclude any liability of the Financing Sources to the Company, Parent or Merger Sub under the definitive agreements relating to the Debt Financing, nor limit the Company, Parent or Merger Sub from seeking to recover any such damages or obtain equitable relief from or with respect to any Financing Source pursuant to the definitive agreements relating to the Debt Financing. Other than the Guarantor’s obligations under the Guaranty and the Equity Commitment Letter and other than the obligations of Parent and Merger Sub to the extent expressly provided in this Agreement, in no event will any Parent Related Party or any other Person other than the Guarantor, Parent and Merger Sub have any liability for monetary damages to the Company or any other Person relating to or arising out of this Agreement or the Merger.

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(ii) If this Agreement is terminated pursuant to Section 8.1, Parent’s receipt of the Company Termination Fee to the extent owed pursuant to Section 8.3(b) and Parent’s right to seek specific performance pursuant to Section 9.8 will be the sole and exclusive remedies of Parent, Merger Sub, Guarantor and the Parent Related Parties against the Company Related Parties in respect of this Agreement, any agreement executed in connection herewith and the transactions contemplated hereby and thereby, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable Law arising out of any breach, termination or failure. Upon payment of the Company Termination Fee, none of the Company Related Parties will have any further liability or obligation to any of Parent, Merger Sub, Guarantor, or the Parent Related Parties relating to or arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby for any matters forming the basis of such termination. Parent’s receipt of the Company Termination Fee to the extent owed pursuant to Section 8.3(b) will be the only monetary damages of Parent and Merger Sub and each of their respective Affiliates may recover from Company Related Parties in respect of this Agreement, any agreement executed in connection herewith and the transactions contemplated hereby and thereby, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable Law arising out of any such breach, termination or failure, and upon payment of such amount, (A) none of the Company Related Parties will have any further liability or obligation to Parent or Merger Sub relating to or arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby or any matters forming the basis of such termination (except that the Parties (and/or their respective Affiliates) will remain obligated with respect to, and Parent may be entitled to remedies with respect to, the Confidentiality Agreement and Section 8.3(e), as applicable); and (B) none of Parent, Merger Sub or any other Person will be entitled to bring or maintain any Legal Proceeding against the Company or any Company Related Party arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby or any matters forming the basis for such termination (except that the Parties (and/or their respective Affiliates) will remain obligated with respect to, and the Company may be entitled to remedies with respect to, the Confidentiality Agreement, Section 8.3(a) and Section 8.3(e), as applicable). Notwithstanding the foregoing, this Section 8.3(f)(ii) will not relieve the Company Group from liability (I) for any Willful Breach of this Agreement or (II) for any breaches of the Confidentiality Agreement; *provided* that under no circumstances will the collective monetary damages payable by the Company for breaches (including any Willful Breach (but excluding, for the avoidance of doubt, for actual and intentional common law fraud)) under this Agreement (taking into account the payment of the Company Termination Fee pursuant to this Agreement) exceed an amount equal to $199,000,000 in the aggregate for all such breaches, *plus* the Enforcement Expenses (if any) (the “**Company Liability Limitation**”). In no event will any of the Parent Related Parties seek or obtain, nor will they permit any of their Representatives or any other Person acting on their behalf to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or award in excess of the Company Liability Limitation (except for actual and intentional common law fraud) against any of the Company Related Parties, and other than with respect to actual and intentional common law fraud in no event will Parent or Merger Sub be entitled to seek or obtain any monetary damages of any kind, including consequential, special, indirect or punitive damages, in excess of the Company Liability Limitation against the Company Related Parties for, or with respect to, this Agreement or the Merger, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable Law arising out of any such breach, termination or failure.

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(iii) Each of the Parties acknowledges that any amount payable by the Company or Parent pursuant to this Section 8.3, including the Company Termination Fee and the Parent Termination Fee, does not constitute a penalty, but rather shall constitute liquidated damages in a reasonable amount that will compensate a party for the disposition of its rights under this Agreement in the circumstances in which such amounts are due and payable, which amounts would otherwise be impossible to calculate with precision.

(g) *Acknowledgement Regarding Specific Performance.* Notwithstanding anything to the contrary in Section 8.3(f), it is agreed that Parent, Merger Sub and the Company will be entitled to an injunction, specific performance or other equitable relief as provided in Section 9.8(b), except that, although the Company, in its sole discretion, may determine its choice of remedies hereunder, including by pursuing specific performance in accordance with, but subject to the limitations of, Section 9.8(b), under no circumstances will the Company be permitted or entitled to receive both specific performance of the type contemplated by Section 9.8(b) and any monetary damages or payment of the Parent Termination Fee.

(h) *Non-Recourse Parent Party.* In no event will the Company seek or obtain, nor will it permit any of its Representatives to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or monetary award against any Non-Recourse Parent Party (as defined in the Equity Commitment Letter, which excludes, for the avoidance of doubt, the Guarantor, Parent and Merger Sub) with respect to this Agreement, the Equity Commitment Letter or the Guaranty or the transactions contemplated hereby and thereby (including any breach by the Guarantor, Parent or Merger Sub), the termination of this Agreement, the failure to consummate the transactions contemplated hereby or any claims or actions under applicable Laws arising out of any such breach, termination or failure, other than from Parent or Merger Sub to the extent expressly provided for in this Agreement or the Guarantor to the extent expressly provided for in the Guaranty and the Equity Commitment Letter.

8.4 *Amendment.*Subject to applicable Law and subject to the other provisions of this Agreement, this Agreement may be amended by the Parties at any time by execution of an instrument in writing signed on behalf of each of Parent, Merger Sub and the Company (pursuant to authorized action by the Company Board (or a committee thereof)), except that in the event that the Company has received the Requisite Stockholder Approval, no amendment may be made to this Agreement that requires the approval of the Company Stockholders pursuant to the DGCL without such approval. Notwithstanding anything to the contrary in this Agreement, the provisions relating to the Financing Sources set forth in Section 6.6(a), Section 8.2, Section 8.3(f), Section 8.6, Section 9.3, Section 9.6, Section 9.8, Section 9.9, Section 9.10, Section 9.11 and this Section 8.4 (and any provision of this Agreement to the extent an amendment, a modification, waiver or termination of such provision would materially and adversely modify the substance of the provisions relating to the Financing Sources set forth in Section 6.6(a), Section 8.3(f), Section 8.6, Section 9.3, Section 9.6, Section 9.8, Section 9.9, Section 9.10, Section 9.11 or this Section 8.4) may not be amended, modified or altered without the prior written consent of the Financing Sources.

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8.5 *Extension; Waiver.* At any time and from time to time prior to the Effective Time, any Party may, to the extent legally allowed and except as otherwise set forth herein, (a) extend the time for the performance of any of the obligations or other acts of the other Parties, as applicable; (b) waive any inaccuracies in the representations and warranties made to such Party contained herein or in any document delivered pursuant hereto; and (c) subject to the requirements of applicable Law, waive compliance with any of the agreements or conditions for the benefit of such Party contained herein. Any agreement on the part of a Party to any such extension or waiver will be valid only if set forth in an instrument in writing signed by such Party. Any delay in exercising any right pursuant to this Agreement will not constitute a waiver of such right.

8.6 *No Liability of Financing Sources.* None of the Financing Sources will have any liability to the Company or any of its Affiliates relating to or arising out of this Agreement, the Debt Financing or otherwise, whether at law or equity, in contract, in tort or otherwise, and neither the Company nor any of its Affiliates will have any rights or claims against any of the Financing Sources hereunder or thereunder; *provided,* that nothing in this Section 8.6 shall limit the rights of the Company and its Affiliates from and after the Effective Time under the Debt Commitment Letter or the definitive Debt Documents executed in connection with the Debt Financing (but not, for the avoidance of doubt, under this Agreement) to the extent the Company and/or its Affiliates are party thereto.

**ARTICLE IX****GENERAL PROVISIONS**

9.1 *Survival of Representations, Warranties and Covenants.* The representations, warranties and covenants, obligations and agreements of the Company, Parent and Merger Sub contained in this Agreement will terminate at the Effective Time, except that this Article IX, Section 6.10, Section 6.11 and any other covenants, obligations and agreements that by their terms survive the Effective Time will survive the Effective Time in accordance with their respective terms.

9.2 *Notices.* All notices and other communications hereunder must be in writing and will be deemed to have been duly delivered and received hereunder (i) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; or (iii) immediately upon delivery by hand or by email transmission, in each case to the intended recipient as set forth below:

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(a) if to Parent or Merger Sub to:

c/o Thoma Bravo, L.P.  
600 Montgomery Street, 20th Floor

San Francisco, CA 91444  
Attention: Holden Spaht; Brian Jaffee  
Email: hspaht@thomabravo.com; bjaffee@thomabravo.com

with a copy (which will not constitute notice) to:  
  
Kirkland & Ellis LLP  
300 N. LaSalle Street  
Chicago, Illinois 60654  
Attention: Theodore A. Peto, P.C.; Peter Stach  
Email: theodore.peto@kirkland.com; peter.stach@kirkland.com

(b) if to the Company (prior to the Effective Time) to:

Stamps.com Inc.  
1990 E Grand Ave

El Segundo, CA 90245  
Attention: Ken McBride; Matthew Lipson  
Email: kmcbride@stamps.com; mlipson@stamps.com

with a copy (which will not constitute notice) to:  
  
Proskauer Rose LLP  
2029 Century Park East,  
Suite 2400,  
Los Angeles, CA 90067  
Attention: Ben Orlanski  
Kristian Herrmann  
Facsimile: (310) 557-2193  
Email: borlanski@proskauer.com; kherrmann@proskauer.com

and to:  
  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036  
Attention: Daniel I. Ganitsky  
Facsimile: (212) 969-2900  
Email: dganitsky@proskauer.com

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Any notice received at the addressee’s location, or by email at the addressee’s email address, on any Business Day after 5:00 p.m., addressee’s local time, or on any day that is not a Business Day will be deemed to have been received at 9:00 a.m., addressee’s local time, on the next Business Day. From time to time, any Party may provide notice to the other Parties of a change in its address or email address through a notice given in accordance with this Section 9.2, except that that notice of any change to the address, email address or any of the other details specified in or pursuant to this Section 9.2 will not be deemed to have been received until, and will be deemed to have been received upon, the later of the date (A) specified in such notice; or (B) that is five (5) Business Days after such notice would otherwise be deemed to have been received pursuant to this Section 9.2.

9.3 *Assignment.* No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties, except that Parent and Merger Sub will have the right to assign all or any portion of their respective rights and obligations pursuant to this Agreement from and after the Effective Time (a) to any of their respective Affiliates; or (b) to any Financing Source pursuant to the terms of the Debt Financing for purposes of creating a security interest herein or otherwise assigning as collateral in respect of the Debt Financing, it being understood that, in each case, such assignment will not (i) relieve Parent or Merger Sub of any of its obligations under this Agreement, (ii) affect the obligations of the parties to the Financing Letters or the Guarantor pursuant to the Guaranty; or (iii) impede or delay the consummation of the Merger or otherwise materially impede the rights of the holders of shares of Company Common Stock and Company Equity Awards pursuant to this Agreement. Subject to the preceding sentence, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns. No assignment by any Party will relieve such Party of any of its obligations hereunder.

9.4 *Confidentiality.* Parent, Merger Sub and the Company hereby acknowledge that Thoma Bravo, L.P., a Delaware limited partnership, and the Company have previously executed a Confidentiality Agreement, dated as of May 19, 2021 (as amended, the “**Confidentiality Agreement**”), that will continue in full force and effect in accordance with its terms. Each of Parent, Merger Sub and their respective Representatives will hold and treat all documents and information concerning the Company furnished or made available to Parent, Merger Sub or their respective Representatives in connection with the Merger in accordance with the Confidentiality Agreement. By executing this Agreement, each of Parent and Merger Sub agree to be bound by, and to cause their respective Representatives to be bound by, the terms and conditions of the Confidentiality Agreement as if they were parties thereto.

9.5 *Entire Agreement.* This Agreement and the documents and instruments and other agreements among the Parties as contemplated by or referred to herein, including the Confidentiality Agreement, the Company Disclosure Letter, the Guaranty and the Financing Letters, constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Notwithstanding anything to the contrary in this Agreement, the Confidentiality Agreement will (a) not be superseded; (b) survive any termination of this Agreement; and (c) continue in full force and effect until the earlier to occur of the Effective Time and the date on which the Confidentiality Agreement expires in accordance with its terms or is validly terminated by the parties thereto.

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9.6 *Third Party Beneficiaries.* Except as set forth in Section 6.10 and this Section 9.6, the Parties agree that their respective representations, warranties and covenants, obligations and agreements set forth in this Agreement are solely for the benefit of the other Parties in accordance with and subject to the terms of this Agreement. This Agreement is not intended to, and will not, confer upon any other Person any rights or remedies hereunder, except (a) as set forth in or contemplated by Section 6.10; and (b) from and after the Effective Time, the rights of the holders of shares of Company Common Stock and the Company Equity Awards to receive the Per Share Price as set forth in Article II. The provisions of Section 6.6(a), Section 8.2(b), Section 8.3(f), Section 8.4, Section 8.6, Section 9.3, Section 9.8, Section 9.9, Section 9.10, Section 9.11 and this Section 9.6 will inure to the benefit of the Financing Sources and their successors and assigns, each of whom are intended to be third party beneficiaries thereof (it being understood and agreed that the provisions of such Sections will be enforceable by the Financing Sources and their respective successors and assigns). The provisions of Section 8.3(f) will inure to the benefit of the Company Related Parties and Parent Related Parties, each of whom is intended to be a third party beneficiary thereof.

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

9.8 *Remedies.*

(a) *Remedies Cumulative.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. Although the Company may pursue both a grant of specific performance and monetary damages, under no circumstances will the Company be permitted or entitled to receive both a grant of specific performance that results in the occurrence of the Closing and payment of the Parent Termination Fee (and any related Enforcement Expenses pursuant to Section 8.3).

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(b) *Specific Performance.*

(i) The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy would occur in the event that the Parties do not timely perform the provisions of this Agreement (including any Party failing to take such actions as are required of it hereunder in order to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. The Parties acknowledge and agree that, subject to Section 8.6, (A) the Parties will be entitled, in addition to any other remedy to which they are entitled at law or in equity, to an injunction, specific performance and other equitable relief to prevent breaches (or threatened breaches) of this Agreement and to enforce specifically the terms and provisions hereof; (B) the provisions of Section 8.3 are not intended to and do not adequately compensate the Company, on the one hand, or Parent and Merger Sub, on the other hand, for the harm that would result from a breach of this Agreement, and will not be construed to diminish or otherwise impair in any respect any Party’s right to an injunction, specific performance and other equitable relief; and (C) the right of specific enforcement is an integral part of the Merger and without that right, neither the Company nor Parent would have entered into this Agreement. It is explicitly agreed that the Company shall have the right to an injunction, specific performance or other equitable remedies in connection with enforcing Parent’s and Merger Sub’s obligations to consummate the Merger and cause the Financing to be funded to fund the Merger (including to cause Parent to enforce the obligations of the Guarantor under the Financing Letters in order to cause the Financing to be timely completed in accordance with and subject to the terms and conditions set forth in the applicable Financing Letter) subject to the terms and conditions set forth therein and herein. Notwithstanding anything to the contrary in this Agreement, it is explicitly agreed that the right of the Company to seek an injunction, specific performance or other equitable remedies in connection with enforcing Parent’s obligation to cause the Equity Financing to be funded to fund a portion of the Required Amounts (but not the right of the Company to seek such injunctions, specific performance or other equitable remedies for any other reason) shall be subject to the requirements that (i) all of the conditions set forth in Section 7.1 and Section 7.2 have been, and continue to be, satisfied (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted hereunder) of such conditions), (ii) the Debt Financing has been funded in accordance with the terms and conditions thereof or will be funded in accordance with the terms and conditions thereof if the Equity Financing is funded and (iii) the Company has irrevocably confirmed in writing that if the Equity Financing and Debt Financing are funded, then the Company shall take such actions that are required of it by this Agreement to consummate the Closing pursuant to the terms of this Agreement.

(ii) The Parties agree not to raise any objections to (A) the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement by the Company, on the one hand, or Parent and Merger Sub, on the other hand; and (B) the specific performance of the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants, obligations and agreements of Parent and Merger Sub pursuant to this Agreement. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement will not be required to provide any bond or other security in connection with such injunction or enforcement, and each Party irrevocably waives any right that it may have to require the obtaining, furnishing or posting of any such bond or other security. Each Party further agrees that it will use reasonable best efforts to cooperate with the other Parties in seeking and agreeing to an expedited schedule in any litigation seeking an injunction or order of specific performance to attempt to fully resolve any dispute before the Termination Date.

9.9 *Governing Law.* This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement or the Transactions, shall be governed by the internal laws of the State of Delaware applicable to agreements made and to be performed entirely within such state, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction.

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9.10 *Consent to Jurisdiction.*

(a) *General Jurisdiction.* Each of the Parties (i) irrevocably consents to the service of the summons and complaint and any other process (whether inside or outside the territorial jurisdiction of the Chosen Courts) in any Legal Proceeding relating to the Transactions and the Guaranty, for and on behalf of itself or any of its properties or assets, in accordance with Section 9.2 or in such other manner as may be permitted by applicable Law, and nothing in this Section 9.10 will affect the right of any Party to serve legal process in any other manner permitted by applicable Law; (ii) irrevocably and unconditionally consents and submits itself and its properties and assets in any Legal Proceeding to the exclusive general jurisdiction of 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 federal court within the State of Delaware) (collectively, the “**Chosen Courts**”) in the event that any dispute or controversy arises out of this Agreement, the Guaranty or the transactions contemplated hereby or thereby; (iii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (iv) agrees that any Legal Proceeding arising in connection with this Agreement, the Guaranty or the transactions contemplated hereby or thereby will be brought, tried and determined only in the Chosen Courts; (v) waives any objection that it may now or hereafter have to the venue of any such Legal Proceeding in the Chosen Courts or that such Legal Proceeding was brought in an inconvenient court and agrees not to plead or claim the same; and (vi) agrees that it will not bring any Legal Proceeding relating to this Agreement, the Guaranty or the transactions contemplated hereby or thereby in any court other than the Chosen Courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any Legal Proceeding in the Chosen Courts will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(b) *Jurisdiction for Financing Sources.* Notwithstanding anything in this Agreement to the contrary but subject to Section 8.6, the Parties acknowledge and irrevocably agree (i) that any Legal Proceeding, whether in law or in equity, in contract, in tort or otherwise, involving the Financing Sources arising out of, or relating to, the Merger, the Debt Financing or the performance of services thereunder or related thereto will be subject to the exclusive jurisdiction of the Supreme Court of the State of New York, county of New York sitting in the Borough of Manhattan and any appellate court thereof, and each Party submits for itself and its property with respect to any such Legal Proceeding to the exclusive jurisdiction of such court; (ii) not to bring or permit any of their Affiliates to bring or support anyone else in bringing any such Legal Proceeding in any other court; (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in the Debt Commitment Letter will be effective service of process against them for any such Legal Proceeding brought in any such court; (iv) to waive and hereby waive, to the fullest extent permitted by law, any objection which any of them may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Proceeding in any such court; and (v) any such Legal Proceeding will be governed by, construed in accordance with and enforced under the laws of the State of New York.

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9.11 *WAIVER OF JURY TRIAL.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR LITIGATION THAT MAY ARISE OUT OF OR RELATE TO THIS AGREEMENT, OR THE NEGOTIATION, VALIDITY OR PERFORMANCE OF THIS AGREEMENT, OR THE TRANSACTIONS, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS, THE GUARANTY, THE EQUITY COMMITMENT LETTER, THE DEBT COMMITMENT LETTER, THE DEBT FINANCING OR THE EQUITY FINANCING (INCLUDING ANY SUCH LEGAL PROCEEDING INVOLVING FINANCING SOURCES IN CONNECTION WITH THE FINANCING DESCRIBED IN THIS AGREEMENT). EACH PARTY ACKNOWLEDGES AND AGREES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) IT MAKES THIS WAIVER VOLUNTARILY; AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

9.12 *Company Disclosure Letter References.* The Parties agree that the disclosure set forth in any particular section or subsection of the Company Disclosure Letter will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the Company that are set forth in the corresponding Section or subsection of this Agreement; and (b) any other representations and warranties (or covenants, as applicable) of the Company that are set forth in this Agreement, but in the case of this clause (b) only if the relevance of that disclosure as an exception to (or a disclosure for purposes of) such other representations and warranties (or covenants, as applicable) is reasonably apparent on the face of such disclosure.

9.13 *Counterparts.* This Agreement and any amendments hereto may be executed in one (1) or more counterparts, all of which will be considered one (1) and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Any such counterpart, to the extent delivered by .pdf, .tif, .gif, .jpg or similar attachment to electronic mail (any such delivery, an “**Electronic Delivery**”), will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party may raise the use of an Electronic Delivery to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of an Electronic Delivery, as a defense to the formation of a contract, and each Party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

9.14 *No Limitation.* It is the intention of the Parties that, to the extent possible, unless provisions are mutually exclusive and effect cannot be given to both or all such provisions, the representations, warranties, covenants and closing conditions in this Agreement will be construed to be cumulative and that each representation, warranty, covenant and closing condition in this Agreement will be given full, separate and independent effect and nothing set forth in any provision herein will in any way be deemed to limit the scope, applicability or effect of any other provision hereof.

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9.15 *Performance Guaranty.* Parent hereby guarantees the due, prompt and faithful performance and discharge by, and compliance with, all of the obligations, covenants, terms, conditions and undertakings of Merger Sub under this Agreement in accordance with the terms hereof, including any such obligations, covenants, terms, conditions and undertakings that are required to be performed, discharged or complied with following the Effective Time by the Surviving Corporation.

9.16 *Disclaimer.* The representations and warranties in this Agreement are the product of negotiations among the Parties and are for the sole contractual benefit of such Parties. Such representations and warranties may be made as of specific dates, only for purposes of this Agreement and for the benefit of the Parties. Such representations and warranties are subject to important exceptions and limitations agreed upon by the Parties, including being qualified by confidential disclosures, made for the purposes of allocating contractual risk between the Parties rather than establishing these matters as facts, and were made subject to a contractual standard of materiality that may differ from the standard generally applicable under federal securities laws or under other contracts. Any inaccuracies in such representations and warranties are subject to waiver by the Parties in accordance with Section 8.5 without notice or liability to any other Person. Any information concerning the subject matter of such representations and warranties may have changed, and may continue to change, since the Agreement Date, and such subsequent information may or may not be fully reflected in the Company’s public reports. In some instances, the representations and warranties in this Agreement may represent an allocation among the Parties of contractual risks associated with particular matters regardless of the Knowledge of any of such parties. Any filing of this Agreement with the SEC or otherwise is only to provide investors with information regarding its terms and conditions and not to provide any other factual information regarding the Company or its business. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement or any description thereof as characterizations of actual facts or circumstances as of the Agreement Date or as of any other date. The information in this Agreement should be considered together with the Company’s public reports filed with the SEC.

*[Signature pages follow]*

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **STREAM PARENT, LLC** | | |
|  | By: | /s/ Holden Spaht |  |
|  | Name: | Holden Spaht | |
|  | Title: | President and Secretary | |
|  |  |  | |
|  | **STREAM MERGER SUB, INC.** | | |
|  | By: | /s/ Holden Spaht |  |
|  | Name: | Holden Spaht | |
|  | Title: | President and Secretary | |

[Signature Page to Agreement and Plan of Merger]

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **STAMPS.COM INC.** | | |
|  |  |  | |
|  | By: | /s/ Ken McBride |  |
|  | Name: | Ken McBride | |
|  | Title: | Chief Executive Officer | |

[Signature Page to Agreement and Plan of Merger]