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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): January 16, 2012

BLACKBAUD, INC.
(Exact name of registrant as specified in its charter)

Delaware		
(State or other jurisdiction of incorporation)		
000-50600		**11-2617163**
(Commission File Number)		(IRS Employer ID Number)

2000 Daniel Island Drive, Charleston, South Carolina 29492
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (843) 216-6200

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☒ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On January 16, 2012, Blackbaud, Inc., a Delaware corporation ("Blackbaud"), Caribou Acquisition Corporation, a Delaware corporation and a direct wholly owned subsidiary of Blackbaud ("Merger Sub"), and Convio, Inc., a Delaware corporation ("Convio"), entered into an Agreement and Plan of Merger (the "Merger Agreement") providing for the acquisition of Convio by Blackbaud for approximately $275 million (based on Convio's enterprise value). The transaction is expected to close during the first quarter of 2012. A copy of the press release announcing the Merger Agreement is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Pursuant to the Merger Agreement and upon the terms and subject to the conditions thereof, Merger Sub will conduct a tender offer (the "Offer") to purchase all of the outstanding shares of Convio's common stock (the "Convio Shares") at a price of $16.00 per share, net to the holder thereof in cash (the "Per Share Amount"). Following the consummation of the Offer and subject to the satisfaction or waiver of conditions set forth in the Merger Agreement, Merger Sub will be merged with and into Convio (the "Merger"), with Convio surviving as a wholly owned subsidiary of Blackbaud. In the Merger, the Convio Shares remaining outstanding following the consummation of the Offer, other than Convio Shares held by Blackbaud, Merger Sub or by stockholders who have validly exercised their appraisal rights under Delaware law, will be converted into the right to receive a cash amount equal to the Per Share Amount, without interest.

Effective upon completion of the Merger, all vested options to purchase Convio common stock ("Convio Vested Options") will be terminated and each holder of a Convio Vested Option will be paid in cash the amount that the Per Share Amount exceeds the exercise price for the number of shares that are vested. Blackbaud will assume any options not yet vested ("Assumed Options") and the Assumed Options will be converted into options to purchase shares of Blackbaud common stock with the same vesting schedule and other terms as provided in the awards of the Assumed Options. In addition, Convio will use its reasonable best efforts to terminate any warrants that have been issued with respect to Convio Shares (the "Convio Warrants"). The holders of each Convio Warrant will be paid in cash the amount that the Per Share Amount exceeds the exercise price of the Convio Warrant for the number of Convio Shares subject thereto.

The obligation of Merger Sub to accept for payment and pay for Convio Shares tendered in the Offer is subject to the satisfaction or waiver of a number of conditions set forth in the Merger Agreement. In particular, there must have been validly tendered and not properly withdrawn a number of Convio Shares which, together with any Convio Shares that Blackbaud or Merger Sub beneficially owns, will constitute at least a majority of the total number of outstanding Convio Shares as of the date Merger Sub accepts the Convio Shares for purchase, assuming all vested options and other rights to purchase Convio Shares have been exercised (the "Minimum Condition"). Additionally, the waiting periods applicable to the Merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and other applicable antitrust laws must have expired and all antitrust consents must have been obtained.

As part of the Merger Agreement, Convio granted Merger Sub an irrevocable option (the "Top-Up Option") to purchase up to that number of Convio Shares (the "Top-Up Option Shares") equal to the lowest number of Convio Shares that, when added to the number of Convio Shares collectively owned by Blackbaud or Merger Sub at the time of exercise, will constitute one Convio Share more than 90% of the Convio Shares then outstanding (determined on a fully diluted basis after giving effect to the issuance of the Top-Up Option Shares), at a purchase price per Top-Up Option Share equal to the Per Share Amount. The Top-Up Option is not exercisable if (i) the Minimum Condition is not met or (ii) the aggregate number of (A) Convio Shares issuable upon exercise of the Top-Up Option, plus (B) Convio Shares then outstanding, plus (C) Convio Shares issuable upon exercise of all options and other rights to purchase Convio Shares, would exceed the number of authorized Convio Shares.

The Merger Agreement includes customary representations, warranties and covenants of Blackbaud, Merger Sub and Convio. Convio has agreed not to solicit, initiate or encourage any takeover proposal from a third party, participate in any discussions or negotiations regarding, or furnish any information with respect to, or take any other action to facilitate knowingly, the making of any inquiry or any proposal that constitutes or would be reasonably expected to lead to, any takeover proposal, in each case subject to certain exceptions if Convio receives an unsolicited takeover proposal that Convio's Board of Directors determines, in good faith, is or is reasonably likely to result in a superior proposal.

The Merger Agreement contains certain termination rights for both Blackbaud and Convio, and further provides that, upon termination of the Merger Agreement under specified circumstances, including a termination by Convio pursuant to an unsolicited superior proposal, Convio is required to pay Blackbaud a termination fee of $11,000,000 plus all reasonable, documented out-of-pocket expenses of up to $1,500,000. The Merger Agreement also provides that in the event of termination in certain circumstances because of or if there exists any antitrust action, any antitrust consent has not been obtained or any antitrust order has not been vacated, filed, reversed or overturned, then, subject to certain conditions in the Merger Agreement, Blackbaud is required to pay Convio a termination fee of $11,000,000 plus all reasonable, documented out-of-pocket expenses of up to $1,500,000.

As a condition and inducement to Blackbaud's and Merger Sub's willingness to enter into the Merger Agreement, Convio directors, officers and certain other stockholders (collectively, the "Stockholders"), have entered into a Tender and Support Agreement with Blackbaud. Under the Tender and Support Agreement, the Stockholders have agreed to tender to Blackbaud all Convio Shares they beneficially own which currently is approximately 31.5% of the issued and outstanding Convio common stock.

The foregoing description of the Merger Agreement and Tender and Support Agreements is qualified in its entirety by reference to the complete text of the Merger Agreement, a copy of which is filed as Exhibit 2.4 hereto as is incorporated herein by reference, and Tender and Support Agreement, the form of which is filed as Exhibit 10.52 hereto and is incorporated herein by reference. The Merger Agreement contains representations and warranties that the parties made to, and are solely for the benefit of, each other. The assertions embodied in the

representations and warranties made by Convio in the Merger Agreement are qualified in information contained in a confidential schedule of exceptions that Convio delivered to Blackbaud and Merger Sub in connection with signing the Merger Agreement. Accordingly, investors and security holders should not rely on the representations and warranties as characterizations of the actual state of facts, since they were made only as of the date of the Merger Agreement and the representations and warranties of Convio are modified by the underlying disclosure schedules. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in Convio's public disclosures.

Item 7.01. Regulation FD Disclosure.

On January 17, 2012, Blackbaud's management held a conference call to discuss transactions contemplated by the Merger Agreement. A copy of the script for the conference call and slides presented at the conference call are attached hereto as Exhibits 99.2 and 99.3.

The information furnished in Item 7.01 of this report on Form 8-K shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific release in such a filing.

The tender offer for Convio stock has not yet commenced, and this report on Form 8-K is neither an offer to purchase nor a solicitation of an offer to sell securities. At the time the tender offer is commenced, Blackbaud's wholly owned subsidiary Caribou Acquisition Corporation will file with the SEC a tender offer statement on Schedule TO. Investors and Convio stockholders should read the tender offer statement (including an offer to purchase, letter of transmittal and related tender offer documents) and the related solicitation/recommendation statement on Schedule 14D-9 that will be filed by Convio with the SEC, because they will contain important information. These documents will be available at no charge through the SEC's website at www.sec.gov, from Georgeson Inc., the information agent for the offer, toll-free at (800) 868-1391 (banks and brokers call (212) 440-9800), from Blackbaud (with respect to documents filed by Blackbaud with the SEC) by going to the Investor Relations section of Blackbaud's website at www.blackbaud.com, or from Convio (with respect to documents filed by Convio with the SEC) by going to the Investor Relations section of Convio's website at www.convio.com.

In addition to the offer to purchase, the related letter of transmittal and other offer documents, as well as the solicitation/recommendation statement, Blackbaud and Convio file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any of these reports, statements or other information in the EDGAR database at the SEC website, www.sec.gov, or at the SEC public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.4	Agreement and Plan of Merger dated January 16, 2012 by and among Blackbaud, Inc., Caribou Acquisition Corporation and Convio, Inc.
10.52	Form of Tender and Support Agreement by and between Blackbaud, Inc. and the directors, officers and certain stockholders of Convio, Inc.
99.1	Press release dated January 17, 2012.
99.2	Script for conference call held on January 17, 2012.
99.3	Slides presented during conference call held on January 17, 2012.

SIGNATURES

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

BLACKBAUD, INC.

Date: January 17, 2012

/s/ Anthony W. Boor

Anthony W. Boor,
Senior Vice President and Chief Financial Officer

Exhibit 2.4

AGREEMENT AND PLAN OF MERGER

by and among

BLACKBAUD, INC.,

CARIBOU ACQUISITION CORPORATION AND

CONVIO, INC.

Dated as of January 16, 2012

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ANNEXES, EXHIBITS & SCHEDULES

Annexes:

Exhibits:

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (this "*Agreement*") is dated as of January 16, 2012 (the "*Execution Date*"), among **BLACKBAUD, INC.**, a Delaware corporation ("*Parent*"), **CARIBOU ACQUISITION CORPORATION**, a Delaware corporation and a direct wholly-owned subsidiary of Parent ("*Merger Sub*"), and **CONVIO, INC.**, a Delaware corporation (the "*Company*"). Each of Parent, Merger Sub and the Company is a "*Party*" and together, the "*Parties*."

RECITALS:

WHEREAS, the boards of directors of Parent, Merger Sub and the Company have each determined that it is in the best interests of their respective stockholders for Parent to acquire the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance of such acquisition, it is proposed that Merger Sub make a cash tender offer (as it may be amended from time to time, the "*Offer*") to acquire all of the issued and outstanding shares of Common Stock, par value $0.001 per share, of the Company ("*Company Common Stock*") (shares of Company Common Stock being hereinafter collectively referred to as "*Company Shares*") for $16.00 per Company Share (such amount, or any greater amount per Company Share paid pursuant to the Offer, the "*Per Share Amount*") net to the holder thereof in cash, without interest, on the terms and subject to the conditions of this Agreement and the Offer;

WHEREAS, it is also proposed that, following the consummation of the Offer, Merger Sub will merge with and into the Company, with the Company surviving the merger as a wholly-owned subsidiary of Parent (the "*Merger*"), and each Company Share that is not tendered and accepted pursuant to the Offer will thereupon be cancelled and converted into the right to receive cash in an amount equal to the Per Share Amount, on the terms and subject to the conditions set forth herein;

WHEREAS, the board of directors of the Company (the "*Company Board*") has (a) determined that the Offer is fair to, and in the best interests of, the Company's stockholders; (b) approved and declared advisable this Agreement, the Top-Up Option (as defined below) and the transactions contemplated hereby, including the Offer and the Merger (collectively, the "*Transactions*"); and (c) resolved and agreed to recommend, subject to the provisions set forth herein, that holders of Company Shares tender their Company Shares pursuant to the Offer and (to the extent necessary) adopt this Agreement and approve the Merger;

WHEREAS, the boards of directors of Parent and Merger Sub have each approved and declared advisable this Agreement and the Transactions; and

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent's and Merger Sub's willingness to enter into this Agreement, the Company's directors, Section 16 Officers, and certain of the Company's stockholders are entering into a Tender and Support Agreement with Parent and Merger Sub substantially in the form attached hereto as Exhibit A (the "*Tender and Support Agreement*").

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions. The following capitalized terms as used herein shall have the meanings ascribed to them in this Article I:

"*2009 Plan*" has the meaning set forth in Section 6.1(c).

"*Acceptance Time*" has the meaning set forth in Section 2.1(d) of this Agreement.

"*Acquisition Agreement*" has the meaning set forth in Section 6.10(b)(i) of this Agreement.

"*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 first Person. For the purposes of this definition "control" (including the terms "controlling," "controlled by" and "under common control with"), as applied 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 Persons*" has the meaning set forth in Section 4.20(a) of this Agreement.

"*Aggregate Merger Consideration*" means the sum of (i) the Merger Consideration and (ii) the Option Consideration and (iii) the Warrant Consideration.

"*Antitrust Action*" has the meaning set forth in Section 6.3(b) of this Agreement.

"*Antitrust Consents*" has the meaning set forth in Section 6.3(b) of this Agreement.

"*Antitrust Law*" means, as to any Person, any state, federal and foreign statues, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws requiring notice to, filings with, or the consent or approval of, any Governmental Entity, or that otherwise may cause any restriction, in connection with the Merger and the transactions contemplated thereby, including the Sherman Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914 and other antitrust Laws that are designed or intended to prohibit, restrict or regulate actions deemed to effect or result in monopolization, restraint of trade or the lessening of competition through merger or otherwise.

"*Assumed Option*" has the meaning set forth in Section 3.7(b) of this Agreement.

"*Assumed RSU*" has the meaning set forth in Section 3.7(c) of this Agreement.

"*Average Price*" means average closing price of Parent's common stock over the twenty (20) trading days ending two (2) days prior to the Closing.

"*Balance Sheet Date*" has the meaning set forth in Section 4.7(d) of this Agreement.

"*Benefit Plans*" has the meaning set forth in Section 4.12(b) of this Agreement.

"*Business Day*" means a day other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern Time.

"*Certificate*" has the meaning set forth in Section 3.6(c) of this Agreement.

"*Certificate of Merger*" has the meaning set forth in Section 3.2.

"*Change in Recommendation*" has the meaning set forth in Section 6.10(b)(i) of this Agreement.

"*Claim*" has the meaning set forth in Section 6.7(b) of this Agreement.

"*Closing*" has the meaning set forth in Section 3.2 of this Agreement.

"*Closing Date*" has the meaning set forth in Section 3.2 of this Agreement.

"*COBRA*" has the meaning set forth in Section 4.12(f) of this Agreement.

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

"*Commitment Letter*" has the meaning set forth in Section 6.17 of this Agreement.

"*Company*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Company Board*" has the meaning set forth in the Recitals of this Agreement.

"*Company Bylaws*" has the meaning set forth in Section 4.1(b) of this Agreement.

"*Company Certificate*" has the meaning set forth in Section 4.1(b) of this Agreement.

"*Company Common Stock*" has the meaning set forth in the Recitals of this Agreement.

"*Company Intellectual Property*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Company License Agreements*" has the meaning set forth in Section 4.13(i) of this Agreement.

"*Company Material Adverse Effect*" means any fact, event, circumstance or effect, other than any Excluded Matters, that (i) is materially adverse to the business, the financial condition or results of operations of the Company and its Subsidiaries, taken as a whole, or (ii) prevents or materially delays the ability of the Company and its Subsidiaries to perform in all material respects their obligations under this Agreement or to consummate the Transactions in accordance with the terms hereof.

"*Company Option*" means all issued and outstanding options to purchase or otherwise acquire (by payment of consideration, conversion or otherwise) any Company Common Stock (whether or not vested or exercisable) held by any current or former employee, consultant or director to the Company and granted pursuant to any Company Stock Plan.

"*Company Owned Intellectual Property*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Company Preferred Stock*" has the meaning set forth in Section 4.2 of this Agreement.

"*Company Products*" has the meaning set forth in Section 4.13(d) of this Agreement.

"*Company Representatives*" has the meaning set forth in Section 6.5 of this Agreement.

"*Company Registered Intellectual Property*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Company RSU*" has the meaning set forth in Section 3.7(c) of this Agreement.

"*Company Schedule of Exceptions*" has the meaning set forth in the introductory paragraph to Article IV.

"*Company Shares*" has the meaning set forth in the Recitals of this Agreement.

"*Company Stockholder Approval*" has the meaning set forth in Section 4.4(a) of this Agreement.

"*Company Stockholders Meeting*" has the meaning set forth in Section 6.2(a) of this Agreement.

"*Company Stock Plans*" means the Company's Amended and Restated 2009 Stock Incentive Plan, 1999 Stock Option/Stock Issuance Plan, as amended, 2006 Equity Incentive Plan, as amended, and 2000 Stock Option Plan, as amended.

"*Company Takeover Proposal*" means any inquiry, proposal or offer from any Person relating to, or that is reasonably likely to lead to, directly or indirectly: (i) a merger, consolidation, tender offer, exchange offer, binding share exchange, joint venture, dissolution, recapitalization, liquidation, business combination or other similar transaction involving the Company; (ii) the acquisition by any Person in any manner of a number of shares of any class of equity securities of the Company or any Company Subsidiary equal to or greater than ten percent (10%) of the number of such shares outstanding before such acquisition; or (iii) the acquisition by any Person in any manner, directly or indirectly, of assets that constitute ten percent (10%) or more of the net revenues, net income or assets of the Company, in each case other than the Transactions.

"*Company Termination Fee*" has the meaning set forth in Section 8.3(b)(ii) of this Agreement.

"*Company Vested Option*" shall have the meaning set forth in Section 3.7(a) of this Agreement.

"*Company Warrant*" means each of the warrants set forth on Exhibit B.

"*Confidentiality Agreement*" has the meaning set forth in Section 6.5 of this Agreement.

"*Contaminants*" has the meaning set forth in Section 4.13(o) of this Agreement.

"*D&O Insurance*" has the meaning set forth in Section 6.7(c) of this Agreement.

"*DGCL*" means the Delaware General Corporation Law, as amended.

"*Debt Financing Source*" means each Person that, as of the time of determination, has committed to provide or otherwise entered into agreements in connection with the Financing and its Affiliates, including those party to the Commitment Letter and any joinder agreements, credit agreements, indentures (or other definitive documentation) relating thereto.

"*Diligence Agreements*" has the meaning set forth in Section 6.5.

"*Dissenting Shares*" has the meaning set forth in Section 3.9 of this Agreement.

"*Domain Names*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Effective Time*" has the meaning set forth in Section 3.2 of this Agreement.

"*Environmental Laws*" means, whenever in effect, all Laws, all judicial and administrative orders and determinations, all contractual obligations and all common law concerning public health and safety, workplace health and safety, and pollution or protection of the environment.

"*ERISA*" has the meaning set forth in Section 4.12(b) of this Agreement.

"*ERISA Affiliate*" has the meaning set forth in Section 4.12(d) of this Agreement.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Excluded Matters*" means any one or more of the following: (i) changes in Laws, rules or regulations of general applicability or interpretations thereof by Governmental Entity; (ii) changes in GAAP (or the interpretations thereof); (iii) general changes in economic conditions or general changes in the industry in which the Company operates generally; (iv) changes in general financial, credit or capital market conditions, including interest rates or currency exchange rates, or changes therein; (v) a change in the market price or trading volume of the Company Common Stock, in and of itself; (vi) changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of

any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or upon any jurisdiction in which the Company or its Subsidiaries operate; (vii) earthquakes, hurricanes, other natural disasters or acts of God; (viii) changes resulting from the execution and delivery of the Agreement or the consummation of any of the Transactions contemplated thereby, or the public announcement of the Agreement, including (1) the loss or departure of officers or other employees of the Company or any of its Subsidiaries, (2) the termination or potential termination of (or the failure or potential failure to renew) any contracts with customers, suppliers, distributors or other business partners, whether as a direct or indirect result of the loss or departure of officers or employees of the Company or otherwise, and (3) any other negative development (or potential negative development) in the Company's relationships with any of its customers, suppliers, distributors or other business partners, whether as a direct or indirect result of the loss or departure of officers or employees of the Company or otherwise; (ix) any failure by the Company to meet any analyst or other third party estimates or expectations of the Company's financial performance or results of operations, or any failure by the Company to meet internal projections or forecasts; *provided*, *however*, that the underlying causes of such failure may be deemed to constitute a Company Material Adverse Effect and may be taken into account when determining whether a Company Material Adverse Effect has occurred or may, would or could occur; (x) any matter referred to in the Company Schedule of Exceptions, unless otherwise provided therein; (xi) any 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) resulting from, relating to or arising out of this Agreement or any of the Transactions contemplated hereby, unless the Proceeding causes a failure to fulfill the condition to closing set forth in Section 7.1(a); (xii) any deterioration in the business, results of operations, financial condition, liquidity, stockholders' equity or prospects of the Company or its Subsidiaries substantially resulting from circumstances or conditions existing as of the date of this Agreement that were generally publicly known as of the date of this Agreement or that were previously disclosed to Parent in writing or in the SEC Reports; or (xiii) changes resulting from any action or omission taken with the prior written consent of Merger Sub and Parent, or as otherwise expressly permitted or required by this Agreement, or any action otherwise taken by Merger Sub, Parent or any of its Affiliates; *provided*, *however*, that any matter in subsection (i), (ii), (iii), (vi) or (vii) that disproportionately materially adversely affects the Company compared with other companies operating in the industries in which the Company operates shall not be an Excluded Matter to the extent of the disproportionate effect.

"*Execution Date*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Executive Officer*" means the Chief Executive Officer of the Company and each other officer of the Company who reports directly to the Chief Executive Officer.

"*Expiration Date*" has the meaning set forth in Section 2.1(c).

"*Fairness Opinion*" has the meaning set forth in Section 4.23 of this Agreement.

"*Financing*" has the meaning set forth in Section 5.7 of this Agreement.

"*Future SEC Reports*" has the meaning set forth in Section 4.7(a) of this Agreement.

"*GAAP*" means United States generally accepted accounting principles.

"*Governmental Entity*" means any United States and/or foreign, federal, state, provincial, local or other Governmental Entity of any kind or nature, including any department, subdivision, commission, board, bureau, agency or instrumentality thereof, any court and any administrative agency, and any comparable body performing any governmental functions.

"*Hazardous Substances*" means all materials, substances and wastes defined by or as to which liability or standards of conduct are imposed pursuant to Environmental Laws, including petroleum and any fraction thereof, asbestos, lead and polychlorinated biphenyls.

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

"*Indemnified Parties*" has the meaning set forth in Section 6.7(b) of this Agreement.

"*Intellectual Property*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Knowledge*" means, with respect to the Company, the actual knowledge of the current Executive Officers and members of the Company Board and the actual knowledge that the Chief Executive Officer, Chief Financial Officer and General Counsel possess after an inquiry by any such person(s) that such person(s) believed reasonable under the circumstances.

"*Knowledge*" means, with respect to Parent or Merger Sub, the actual knowledge of the Parent's Chief Executive Officer, Chief Financial Officer and General Counsel and the actual knowledge that the Chief Executive Officer, Chief Financial Officer and General Counsel possess after an inquiry by any such person(s) that such person(s) believed reasonable under the circumstances.

"*Law*" means, as to any Person, any statute, rule, regulation, ordinance, code, guideline, law, judicial decision, determination, order (including any injunction, judgment, writ, award or decree), or consent of the Court, other Governmental Entity or arbitrator, in each case applicable to or binding upon such Person, including the conduct of its business, or any of its assets or revenues to which such Person or any of its assets or revenues are subject.

"*Leases*" has the meaning set forth in Section 4.9 of this Agreement.

"*Liens*" means any pledges, rights of first refusal, options, liens, encumbrances, mortgages, claims, security interests or charge of any kind.

"*Losses*" has the meaning set forth in Section 6.7(b) of this Agreement.

"*Material Contracts*" has the meaning set forth in Section 4.15(a) of this Agreement.

"*Merger*" has such meaning as set forth in the Recitals of this Agreement.

"*Merging Corporations*" means Merger Sub and the Company, collectively.

"*Merger Consideration*" has the meaning set forth in Section 3.6(c) of this Agreement.

"*Merger Sub*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Minimum Condition*" has the meaning set forth in Annex A to this Agreement.

"*Multiemployer Pension Plans*" has the meaning set forth in Section 4.12(b) of this Agreement.

"*Negotiation Period*" has the meaning set forth in Section 6.10(b)(ii) of this Agreement.

"*New Benefit Plans*" has the meaning set forth in Section 6.8 of this Agreement.

"*Offer*" has the meaning set forth in the Recitals of this Agreement.

"*Offer Documents*" has the meaning set forth in Section 2.1(e) of this Agreement.

"*Offer to Purchase*" has the meaning set forth in Section 2.1(e) of this Agreement.

"*Option Exchange Ratio*" has the meaning set forth in Section 3.7(b) of this Agreement.

"*Ordinary Course Grants*" has the meaning set forth in Section 6.1(c) of this Agreement.

"*Ordinary Course Terms*" has the meaning set forth in Section 6.1(c) of this Agreement.

"*Outside Date*" means June 30, 2012; *provided, however,* that the Outside Date shall be extended (and "Outside Date" shall mean) September 30, 2012 if the waiting periods applicable to the Merger under the HSR Act and other applicable Antitrust Laws shall not have expired or been terminated and all Antitrust Consents applicable to the Merger shall not have been obtained.

"*Parent*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Parent Material Adverse Effect*" means any effect, circumstance, event or fact that prevents or materially delays the ability of Parent and Merger Sub to perform in all material respects their obligations under this Agreement or to consummate the Transactions in accordance with the terms hereof.

"*Parent Representatives*" has the meaning set forth in Section 6.5 of this Agreement.

"*Parent Termination Fee*" has the meaning set forth in Section 8.3(b)(iv) of this Agreement.

"*Party*" or "*Parties*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Paying Agent*" has the meaning set forth in Section 3.10(a) of this Agreement.

"*Payment Fund*" has the meaning set forth in Section 3.10(a) of this Agreement.

"*PCAOB*" means the Public Company Accounting Oversight Board.

"*Pension Plans*" has the meaning set forth in Section 4.12(b) of this Agreement.

"*Per Share Amount*" has the meaning set forth in the Recitals of this Agreement

"*Permits*" has the meaning set forth in Section 4.10 of this Agreement.

"*Permitted Liens*" means (i) Liens for Taxes or other governmental charges not yet delinquent, or the amount or validity of which is being contested in good faith and for which the Company has established adequate reserves in its financial statements in accordance with GAAP, (ii) mechanics', carriers', workers', repairers', and similar Liens arising or incurred in the ordinary course of business, (iii) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations, (iv) purchase money Liens arising in the ordinary course of business, (v) zoning, entitlement and other land use and environmental regulations by Governmental Entities, (vi) with respect to leasehold interests, Liens incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without the consent of the lessee, (vii) with respect to securities, Liens created as a result of federal or state securities laws, (viii) Liens in favor of the Company or any Subsidiary of the Company securing intercompany borrowing by any Subsidiary of the Company, and (x) Liens set forth on Section 1.1 of the Company Schedule of Exceptions.

"*Person*" means an individual, company, agency, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Entity.

"*Post-Closing Period*" has the meaning set forth in Section 3.7(e) of this Agreement.

"*Post-Signing Return*" has the meaning set forth in Section 6.16 of this Agreement.

"*Proceedings*" means any claims, controversies, demands, actions, lawsuits, investigations, proceedings or other disputes, formal or informal, including any by, involving or before any arbitrator or any Governmental Entity.

"*Proxy Statement*" has the meaning set forth in Section 4.19 of this Agreement.

"*PTO*" has the meaning set forth in Section 4.13(b) of this Agreement.

"*Registered Intellectual Property*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Schedule 14D-9*" has the meaning set forth in Section 2.2(b) of this Agreement.

"*Schedule TO*" has the meaning set forth in Section 2.1(e) of this Agreement.

"*Section 16 Officers*" means all officers of the Company who file statements of ownership and changes therein pursuant to Section 16 of the Exchange Act.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*SEC Reports*" has the meaning set forth in the introductory paragraph of Article IV.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Software*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Stifel Nicolaus*" has the meaning set forth in Section 4.23 of this Agreement.

"*Subsidiary*" means any corporation, partnership, limited liability company, joint venture or other legal entity of which Parent or the Company, as the case may be (either alone or through or together with any other Subsidiary), owns, directly or indirectly, fifty percent (50%) or more of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation, partnership, limited liability company, joint venture or other legal entity means.

"*Subsidiary Bylaws*" has the meaning set forth in Section 4.1(c) of this Agreement.

"*Subsidiary Charters*" has the meaning set forth in Section 4.1(c) of this Agreement.

"*Substantial Customer Contracts*" has the meaning set forth in Section 4.22(b) of this Agreement.

"*Superior Company Proposal*" means any bona fide written offer not solicited by or on behalf of the Company made by a third party that if consummated would result in such third party acquiring, directly or indirectly, at least a majority of the voting power of the Company Common Stock (so long as such third party is obliged to consummate a customary back end merger pursuant to which any remaining holders of Company Common Stock are entitled to receive the same consideration) or all or substantially all the assets of the Company and the Company Subsidiaries taken as a whole, (i) for consideration that the Company Board determines in its good faith judgment to be superior from a financial point of view on a present value basis to the holders of Company Common Stock than the Transactions (based on the advice of an independent financial advisor of nationally recognized reputation and after consultation with outside legal counsel), taking into account all the terms and conditions of such proposal, this Agreement and any proposal by Parent to amend the terms of this Agreement, (ii) for which financing, to the extent required, is then committed, (iii) for which, in the good faith judgment of the Company Board, no regulatory approvals are required, including antitrust approvals, that would not reasonably be expected to be obtained without undue cost or delay and (iv) that, in the good faith judgment of the Company Board, is otherwise reasonably likely to be consummated, taking into account all legal, financial, regulatory and other aspects of the proposal and the person making the proposal.

"*Superior Proposal Notice*" has the meaning set forth in Section 6.10(b)(ii) of this Agreement.

"*Surviving Corporation*" has the meaning set forth in Section 3.1 of this Agreement.

"*Tax*" or "*Taxes*" has the meaning set forth in Section 4.18(t) of this Agreement.

"*Tax Return*" has the meaning set forth in Section 4.18(t) of this Agreement.

"*Tender and Support Agreement*" has the meaning set forth in the Recitals of this Agreement.

"*Top-Up Closing*" has the meaning set forth in Section 2.3(c) of this Agreement.

"*Top-Up Exercise Notice*" has the meaning set forth in Section 2.3(c) of this Agreement.

"*Top-Up Option*" has the meaning set forth in Section 2.3(a) of this Agreement.

"*Top-Up Option Shares*" has the meaning set for this Section 2.3(a) of this Agreement.

"*Transactions*" has the meaning set forth in the Recitals of this Agreement.

"*Treasury Regulations*" means the temporary and final regulations promulgated under the Code.

"*URLs*" has the meaning set forth in Section 4.13(a) of this Agreement.

"*Vested*" shall mean those shares of Company Common Stock that are vested under any Company Option as may be provided in the applicable Company Stock Plan.

"*Warrant Consideration*" has the meaning set forth in Section 3.8 of this Agreement.

"*Worker Safety Laws*" has the meaning set forth in Section 4.21 of this Agreement.

Section 1.2 Construction. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, and references to the singular include the plural, (b) references to any gender include the other gender, (c) the words "include," "includes" and "including" do not limit the preceding terms or words and will be deemed to be followed by the words "without limitation," (d) the terms "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (e) the terms "day" and "days" mean and refer to calendar day(s) and (f) the terms "year" and "years" mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to (a) any document, instrument or agreement (including this Agreement) include (1) all exhibits, schedules and other attachments thereto, (2) all documents, instruments or agreements issued or executed in replacement thereof and (3) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (b) a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect through the Closing Date. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified. This Agreement will not be construed

as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it. All accounting terms not specifically defined herein will be construed in accordance with GAAP.

ARTICLE II

THE OFFER

Section 2.1 The Offer.

(a) Provided that the Company has fulfilled its obligation to provide information to Parent and Merger Sub on a timely basis as contemplated by Section 2.1(e), Merger Sub shall, and Parent shall cause Merger Sub to, commence (within the meaning of Rule 14d-2 under the Exchange Act) the Offer as promptly as reasonably practicable after the date hereof.

(b) The obligation of Merger Sub to accept for payment, purchase and pay for any Company Shares tendered pursuant to the Offer shall be subject to (i) the Minimum Condition and (ii) the other conditions set forth in Annex A hereto. Merger Sub expressly reserves the right (but shall not be obligated) at any time or from time to time, in its sole discretion, to waive any such condition (other than the Minimum Condition), to increase the price per Company Share payable in the Offer, and to make any other changes in the terms and conditions of the Offer; *provided*, *however*, that without the prior written consent of the Company no change may be made that (i) decreases the price per Company Share payable in the Offer, (ii) changes the form of consideration payable in the Offer, (iii) reduces the maximum number of Company Shares sought to be purchased in the Offer, (iv) adds to the conditions to the Offer set forth in Annex A hereto, (v) extends the Offer other than as set forth in this Section 2.1, or (vi) modifies or amends any condition to the Offer in any manner materially adverse to the holders of Company Shares.

(c) The Offer initially shall be scheduled to expire twenty (20) Business Days following (and including, if it is a Business Day, the day of) the commencement thereof (the "*Expiration Date*," unless extended in accordance with this subsection (c), in which case any expiration time and date established pursuant to an authorized extension of the Offer in accordance with the terms of this Agreement, shall be the Expiration Date). Notwithstanding anything herein to the contrary, Merger Sub (i) at the written request of the Company, shall, and Parent shall then cause Merger Sub to, from time to time extend the Offer, in increments of no more than ten (10) Business Days each, if at the initial or any subsequent scheduled Expiration Date of the Offer any of the conditions to Merger Sub's obligation to accept Company Shares for payment shall not be satisfied or waived, but each such condition is reasonably capable of being satisfied at or prior to the Outside Date, until such time as such conditions are satisfied or waived to the extent permitted by this Agreement, (ii) shall, and Parent shall cause Merger Sub to, extend the Offer for any period required by any rule, regulation or interpretation of the SEC, or the staff thereof, applicable to the Offer, or (iii) may extend the Offer one time for up to five (5) Business Days if all of the conditions to Merger Sub's obligation to accept for payment Company Shares are satisfied or waived, but the number of Company Shares validly tendered and not withdrawn pursuant to the Offer is less than ninety percent (90%) of the then outstanding

Company Shares on a fully diluted basis at the otherwise scheduled Expiration Date. Notwithstanding the foregoing, no such extension provided for in this Section 2.1(c) shall extend the Offer beyond the Outside Date. In each of the above cases, Parent shall cause Merger Sub to extend the Offer from time to time in accordance with this Section 2.1(c) for the shortest time periods which it reasonably believes are necessary until consummation of the Offer if the conditions of the Offer shall not have been satisfied or waived, so long as this Agreement shall not have been terminated in accordance with Article VIII hereof.

(d) The Per Share Amount shall, subject to applicable withholding of Taxes, be net to the seller of Company Shares in cash, upon the terms and subject to the conditions of the Offer. Merger Sub shall, and Parent shall cause Merger Sub to, pay the Per Share Amount for all Company Shares validly tendered and not withdrawn promptly following the acceptance of Company Shares for payment in accordance with the terms of the Offer (the date and time of acceptance for payment of such Company Shares, the "*Acceptance Time*"). If payment of the Per Share Amount is to be made to a Person other than the Person in whose name the surrendered certificate formerly evidencing Company Shares is registered on the stock transfer books of the Company, it shall be a condition of payment that the certificate so surrendered shall be endorsed properly or otherwise be in proper form for transfer and that the Person requesting such payment shall have paid all transfer and other Taxes required by reason of the payment of the Per Share Amount to a Person other than the registered holder of the certificate surrendered, or shall have established to the reasonable satisfaction of Merger Sub that such Taxes either have been paid or are not applicable.

(e) As promptly as practicable on the date of commencement of the Offer, and conditioned on Company's having fulfilled its obligation to provide information to Parent and Merger Sub on a timely basis as contemplated by this Section 2.1(e), Merger Sub shall, and Parent shall cause Merger Sub to, file with the SEC a Tender Offer Statement on Schedule TO (together with all amendments and supplements thereto, the "*Schedule TO*") with respect to the Offer. The Schedule TO shall contain or shall incorporate by reference an offer to purchase (the "*Offer to Purchase*") and forms of the related letter of transmittal and any related summary advertisement (the Schedule TO, the Offer to Purchase and such other documents, together with all exhibits, supplements and amendments thereto, being referred to herein collectively as the "*Offer Documents*"). Merger Sub shall, and Parent shall cause Merger Sub to, use its reasonable best efforts to cause the Offer Documents to be disseminated to holders of Company Shares in all material respects to the extent required by applicable federal securities laws. Parent and Merger Sub shall use their reasonable best efforts to cause the Offer Documents to comply in all material respects with the applicable requirements of federal securities laws. Parent, Merger Sub and the Company agree to correct promptly any information provided by any of them for use in the Offer Documents that shall have become false or misleading in any material respect, and Parent and Merger Sub further agree to take all steps necessary to cause the Schedule TO, as so corrected, to be filed with the SEC, and the other Offer Documents, as so corrected, to be disseminated to holders of Company Shares, in each case in all material respects as required by applicable federal securities laws. The Company shall as promptly as practicable furnish to Merger Sub or Parent all information concerning the Company that is required by applicable federal securities laws or reasonably requested by Merger Sub or Parent in connection with their obligations relating to the Offer Documents or any action contemplated by this Section 2.1(e). Parent and Merger Sub shall give the Company and its counsel a reasonable opportunity to review and comment on the

Schedule TO before it is filed with the SEC. In addition, Parent and Merger Sub agree to provide the Company and its counsel (i) in writing with any comments, whether written or oral, Parent, Merger Sub or their counsel may receive from time to time from the SEC or its staff with respect to the Offer Documents promptly after the receipt of such comments, and any written or oral responses thereto, and (ii) reasonable opportunity to review and comment on any written or oral response to such comments or any proposed amendment to the Offer Documents prior to the filing thereof with the SEC.

(f) If, between the date of this Agreement and the date on which any particular Company Share is accepted for payment and paid for pursuant to the Offer, the outstanding shares of Company Common Stock are changed into a different number or class of shares by means of any stock split, division or subdivision of shares, stock dividend, reverse stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or similar transaction, then the Per Share Amount applicable to such Company Share shall be appropriately adjusted.

Section 2.2 Company Action.

(a) Subject to the terms of this Agreement, the Company hereby consents to and approves the Offer. Subject to Section 6.10, the Company hereby further consents to the inclusion in the Offer Documents of such approval and of the recommendation of the Company Board described in Section 4.4(b). The Company shall not withdraw or modify such recommendation in any manner adverse to Merger Sub or Parent except as provided in Section 6.10.

(b) Concurrently with the filing of the Schedule TO by Merger Sub and conditioned on Parent's and Merger Sub's having fulfilled their obligation to provide information to Company on a timely basis as contemplated by this Section 2.2(b), the Company shall file with the SEC a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments and supplements thereto, the "*Schedule 14D-9*") containing, except as provided in Section 6.10, the recommendation of the Company Board described in Section 4.4(b). The Company shall use its reasonable best efforts to cause the Schedule 14D-9 to be disseminated in all material respects as required by applicable federal securities laws. The Company shall use its reasonable best efforts to cause the Schedule 14D-9 to comply in all material respects with the applicable requirements of federal securities laws. The Company, Parent and Merger Sub agree to correct promptly any information provided by any of them for use in the Schedule 14D-9 which shall have become false or misleading in any material respect, and the Company further agrees to take all steps necessary to cause the Schedule 14D-9, as so corrected, to be filed with the SEC and disseminated to holders of Company Shares, in each case in all material respects as required by applicable federal securities laws. Parent or Merger Sub shall as promptly as practicable furnish to the Company all information concerning Parent and Merger Sub that is required by applicable federal securities laws or reasonably requested by the Company in connection with its obligations relating to the Schedule 14D-9. The Company shall give Parent, Merger Sub and their counsel a reasonable opportunity to review and comment on the Schedule 14D-9 (including any amendments thereto) before it is filed with the SEC. In addition, the Company agrees to provide Parent, Merger and their counsel (i) in writing with any comments, whether written or oral, the Company or its counsel may receive from time to time

from the SEC or its staff with respect to the Schedule 14D-9 promptly after the receipt of such comments, and (ii) reasonable opportunity to review and comment on any written or oral response to such comments or any proposed amendment to the Schedule 14D-9 prior to the filing thereof with the SEC.

(c) In connection with the Offer, the Company shall as promptly as practicable furnish or cause to be furnished (including by instructing its transfer agent to promptly furnish) to Merger Sub mailing labels containing the names and addresses of all record holders of Company Shares and with security position listings of Company Shares held in stock depositories, each as of a recent date, together with all other available listings and computer files containing names, addresses and security position listings of record holders and beneficial owners of Company Shares. The Company shall promptly furnish or cause to be furnished to Merger Sub such additional information, including updated listings and computer files of stockholders, mailing labels and security position listings, and such other assistance in disseminating the Offer Documents to holders of Company Shares as Parent or Merger Sub may reasonably request. Subject to the requirements of Law, including applicable stock exchange rules, and except for such steps as are necessary to disseminate the Offer Documents and any other documents necessary to consummate the Offer or the Merger, Parent and Merger Sub shall hold in confidence the information contained in such labels, listings and files and shall use such information only in connection with the Transactions.

Section 2.3 Top-Up Option.

(a) The Company hereby grants to Merger Sub an irrevocable option (the "*Top-Up Option*") to purchase up to that number of Company Shares (the "*Top-Up Option Shares*") equal to the lowest number of Company Shares that, when added to the number of Company Shares collectively owned by Parent or Merger Sub at the time of exercise, shall constitute one Company Share more than ninety percent (90%) of the Company Shares then outstanding (determined on a fully diluted basis after giving effect to the issuance of the Top-Up Option Shares), at a purchase price per Top-Up Option Share equal to the Per Share Amount. Notwithstanding the foregoing provisions of this Section 2.3(a), the Top-Up Option shall not be exercisable if (i) the Minimum Condition shall have not been met or (ii) the aggregate number of (A) Company Shares issuable upon exercise of the Top-Up Option, plus (B) Company Shares then outstanding, plus (C) Company Shares issuable upon exercise of all options and other rights to purchase Company Shares, would exceed the number of authorized Company Shares.

(b) Merger Sub may, at its election, exercise the Top-Up Option, in whole, but not in part, at any one time after Merger Sub's acceptance for payment of Company Shares pursuant to the Offer and prior to the earlier of (i) the Effective Time and (ii) the termination of this Agreement.

(c) If Merger Sub wishes to exercise the Top-Up Option, Merger Sub shall send to the Company a written notice (a "*Top-Up Exercise Notice*") specifying the place for the closing of the purchase of the Top-Up Option Shares (the "*Top-Up Closing*") and a date not earlier than one (1) Business Day nor later than ten (10) Business Days after the date of the Top-Up Exercise Notice for the Top-Up Closing. The Company shall, promptly after receipt of the Top-Up Exercise Notice, deliver a written notice to Parent or Merger Sub confirming (i) the number of Company Shares then outstanding on a fully diluted basis, and (ii) the number of Top-Up Option Shares and the aggregate purchase price therefor.

(d) At the Top-Up Closing, subject to the terms and conditions of this Agreement: (i) the Company shall deliver to Merger Sub a certificate or certificates evidencing the applicable number of Top-Up Option Shares; *provided*, *however*, that the obligation of the Company to deliver Top-Up Option Shares upon the exercise of the Top-Up Option is subject to the conditions that (A) no provision of any applicable Law shall prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Option Shares in respect of any such exercise and (B) the Top-Up Option shall not be exercisable if the issuance of the Top-Up Option Shares would result in the issuance of Company Shares equal to or greater than 19.9% of the Company Shares issued and outstanding immediately prior to the Execution Date unless Parent and Merger Sub certify to the Company in writing that within three (3) Business Days following the exercise of the Top-Up Option, Parent and Merger Sub shall consummate the Merger in a short-form merger without a meeting of the Company shareholders in accordance with Section 253 of the DGCL (in which case, the Top-Up Option may be exercised without regard to this subsection B); and (ii) Merger Sub shall purchase each Top-Up Option Share from the Company at the Per Share Amount. Payment by Merger Sub of the purchase price for the Top-Up Option Shares may be made by delivery of immediately available funds by wire transfer to an account designated by the Company, a six-month full recourse promissory note bearing interest at the six-month LIBOR rate then in effect, or any combination of such wire transfer funds and promissory note. The Parties shall cooperate to ensure that the issuance of the Top-Up Option Shares is accomplished consistent with all applicable legal requirements, including all federal securities laws.

(e) Upon the delivery by Merger Sub to the Company of the Top-Up Exercise Notice, and the tender of the consideration described in Section 2.3(d), the Company shall use its reasonable best efforts to cause Merger Sub to be the holder of record of the Top-Up Option Shares issuable upon that exercise, notwithstanding that the stock transfer books of the Company may then be closed or that certificates representing those Top-Up Option Shares may not then be actually delivered to Merger Sub or the Company may have failed or refused to designate the account described in Section 2.3(d).

(f) Certificates evidencing Top-Up Option Shares delivered hereunder shall include legends legally required by applicable securities laws.

Section 2.4 Board of Directors and Committees; Section 14(f).

(a) Promptly upon the purchase by Merger Sub of Company Shares pursuant to the Offer and from time to time thereafter, and subject to the last sentence of this Section 2.4(a), Parent shall be entitled to designate up to such number of directors, rounded to the nearest whole number, constituting at least a majority of the directors, on the Company Board as will give Parent representation on the Company Board equal to the product of the number of directors on the Company Board (giving effect to any increase in the number of directors pursuant to this Section 2.4) and the percentage that the number of Company Shares beneficially owned by Parent and Merger Sub bears to the total number of outstanding Company Shares, and the Company shall use all reasonable efforts to, upon request by Parent, promptly, at the Company's

election, either increase the size of the Company Board or secure the resignation of such number of directors as is necessary to enable Parent's designees to be elected or appointed to the Company Board and to cause Parent's designees to be so elected or appointed. At such times, the Company will use its reasonable best efforts to cause persons designated by Parent to constitute a majority of each (i) committee of the Company Board, other than any committee of the Company Board, if any, established to take action under this Agreement, (ii) Board of Directors of each Subsidiary of the Company, and (iii) each committee thereof. Notwithstanding the foregoing, the Company shall use all reasonable efforts to ensure that three of the members of the Company Board as of the date hereof shall remain members of the Company Board until the Effective Time. If the number of directors who are members of the Company Board as of the date hereof is reduced below three prior to the Effective Time, the remaining directors who are members of the Company Board as of the date hereof or their designees (or if there is only one such director, that remaining director) shall be entitled to designate a person (or persons) to fill such vacancy (or vacancies).

(b) The Company's obligation to appoint designees to the Company Board shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. Subject to the Parent's compliance with the final sentence of this Section 2.4(b), the Company shall promptly take all actions, including filing an amendment to the Schedule 14D-9 (and disseminating such amendment to the stockholders of the Company to the extent required by applicable Laws) containing such information with respect to the Company and its officers and directors and Parent's designees as Section 14(f) and Rule 14f-1 require, in order to fulfill its obligations under this Section 2.4. Parent shall timely supply to the Company in writing and be solely responsible for any information with respect to itself and its nominees, officers, directors and affiliates required by Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder.

(c) Following the election or appointment of Parent's designees pursuant to this Section 2.4 and prior to the Effective Time, if there shall be any directors of the Company who were directors as of the date hereof, any amendment of this Agreement, any termination of this Agreement by the Company, any extension by the Company of the time for the performance of any of the obligations or other acts of Parent or Merger Sub or waiver of any of the Company's rights hereunder or other action adversely affecting the rights of stockholders of the Company (other than Parent or Merger Sub), will require the concurrence of a majority of such directors.

Section 2.5 Short Form Merger. If, after the consummation of the Offer and any exercise of the Top-Up Option, the number of Company Shares beneficially owned by Parent, Merger Sub and Parent's other Subsidiaries collectively represent at least ninety percent (90%) of the then outstanding Company Shares, Parent shall cause Merger Sub to, and the Company shall, execute and deliver such documents and instruments and take such other actions as Parent or Merger Sub may request, in order to cause the Merger to be completed as promptly as reasonably practicable as provided in Section 253 of the DGCL, and otherwise as provided in Article III below.

ARTICLE III

THE MERGER

Section 3.1 The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the DGCL, Merger Sub shall be merged with and into the Company at the Effective Time. As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (the "*Surviving Corporation*") and shall continue its corporate existence under the DGCL.

Section 3.2 Closing; Effective Time. The closing of the transactions contemplated by this Agreement (the "*Closing*") and all actions specified in this Agreement to occur at the Closing shall take place at the offices of Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina 27607, at 10:00 a.m., local time, on the second Business Day following the day on which the last of the conditions set forth in Article VII shall have been fulfilled or waived (other than those conditions that by their nature are satisfied at Closing, but subject to the waiver of fulfillment of those conditions) or at such other time and place as Parent and the Company shall agree (the "*Closing Date*"). On the Closing Date and subject to the terms and conditions hereof, the Parties hereto shall cause the Merger to be consummated by filing a Certificate of Ownership and Merger in the case of a short-form merger or a Certificate of Merger in the case of a long-form merger, in substantially the respective forms attached hereto as Exhibits C and D (each being a "*Certificate of Merger*"), executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware (or at such subsequent time as Parent and the Company shall agree and as shall be specified in the Certificate of Merger), such time being referred to herein as the "*Effective Time*."

Section 3.3 Effects of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL, this Agreement and the Certificate of Merger. Without limiting the generality of the foregoing and subject thereto, as of the Effective Time, all properties, rights, immunities, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 3.4 Certificate of Incorporation; Bylaws.

(a) At and following the Effective Time, the Amended and Restated Certificate of Incorporation of the Company attached to the Certificate of Merger filed with the Secretary of State of the State of Delaware shall be the Certificate of Incorporation of the Surviving Corporation until thereafter duly amended.

(b) At and following the Effective Time, the bylaws of the Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation until thereafter duly amended.

Section 3.5 Directors; Officers.

(a) The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

(b) The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 3.6 Manner and Basis of Converting Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holders of any securities of the Merging Corporations:

(a) Merger Sub Common Stock. Each share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value $0.001 per share, of the Surviving Corporation and shall constitute the only shares of capital stock of the Surviving Corporation outstanding immediately after the Effective Time. Each stock certificate of Merger Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Each share of Company Common Stock held in the treasury of the Company and all shares of Company Common Stock owned by Parent or by any direct or indirect wholly-owned Subsidiary of Parent or the Company (including any shares of Company Common Stock issued by the Company pursuant to the Top-Up Option) immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made with respect thereto.

(c) Conversion of Company Common Stock. Each Company Share issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 3.6(b) and other than Dissenting Shares, as hereinafter defined) shall be converted into the right to receive an amount in cash, payable to the holder thereof, without any interest thereon, equal to the Per Share Amount (the "*Merger Consideration*"), less any required withholding taxes, upon surrender and exchange of a Certificate. As of the Effective Time, all such Company Shares, when so converted, shall no longer be outstanding and shall automatically be canceled and retired, and shall cease to exist, and each holder of a certificate representing any such Company Shares (a "*Certificate*") shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration as provided herein.

Section 3.7 Treatment of Company Options and Restricted Company Shares.

(a) Following the Effective Time, Parent shall or shall cause the Surviving Corporation to pay to each holder of a Company Option that is Vested immediately prior to the Effective Time (each such option, or portion thereof, a "*Company Vested Option*"), an amount in cash in respect thereof equal to the product of (A) the excess, if any, of the Per Share Amount over the per share exercise price of the Company Vested Option held by such holder and (B) the number of shares of common stock subject thereto (the "*Option Consideration*") (such payment, if any, to be net of applicable Taxes). Parent shall, or shall cause the Surviving Corporation to, pay such amounts under this Section 3.7(a) to the holder of each such Company Vested Option within ten (10) Business Days following receipt by Parent of all reasonably necessary forms of transmittal information from such holder. Parent shall provide the Company within five (5) Business Days following the date hereof forms of all transmittal information (including any Tax forms or certifications) reasonably necessary in respect to the payment of the Option Consideration. In connection therewith, the Company shall disseminate such transmittal information, provide any other notices to holders of vested Company Options, and the Company Board shall adopt any resolutions, in each case as reasonably requested by Parent.

(b) Effective as of the Effective Time, Parent shall assume any Company Option, or portion of such Company Option, that is not Vested immediately prior to the Effective Time (each an "*Assumed Option*"), and each such Assumed Option shall become an option to acquire, on the same terms and conditions as were applicable under such Assumed Option immediately prior to the Effective Time, a number of shares of Parent common stock (rounded down to the nearest whole share) determined by multiplying (i) the number of Shares subject to the unvested Company Option immediately prior to the Effective Time by (ii) the quotient obtained from dividing the Per Share Amount by the Average Price (the "*Option Exchange Ratio*") (rounded down to the nearest whole number), at a price per share of Parent common stock (rounded up to the nearest whole cent) equal to the quotient obtained from dividing (A) the exercise price per share of the shares of Company Common Stock purchasable pursuant to the assumed Company Option immediately prior to the Effective Time by (B) the Option Exchange Ratio. In connection therewith, the Company shall provide any notices to holders of Assumed Options and the Company Board shall adopt any resolutions, in each case as reasonably requested by Parent, to effectuate the foregoing.

(c) Except as otherwise separately agreed in writing between Parent and any holder of an award of Company restricted stock units, each award of Company restricted stock units (each a "*Company RSU*") outstanding at the Effective Time that is to be settled in Company Common Stock and is outstanding and not Vested immediately prior to the Effective Time shall be assumed by Parent (each an "*Assumed RSU*") and converted into a restricted stock unit, subject to the same terms and conditions as were applicable to such Company RSU, to acquire that number of shares of Parent common stock equal to the product obtained by multiplying (i) the number of shares of Company Common Stock subject to the Company RSU, and (y) the Option Exchange Ratio, rounded down to the nearest share of Parent.

(d) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent common stock for delivery upon exercise of the Assumed Options and conversion and settlement of the Assumed RSUs. As soon as practicable (but in no event more than three (3) Business Days after the Effective Time), Parent shall file a registration statement on Form S-8 (or any successor form) or another appropriate form with respect to the shares of Parent common stock subject to such Assumed Options and Assumed RSUs, and thereafter shall use commercially reasonable efforts to maintain the effectiveness of that registration statement for as long as any Assumed Options or Assumed RSUs remain outstanding.

(e) Notwithstanding any provision to the contrary herein, any Tax deductions arising from any change-in-control, bonus or similar payments, or the cancellation and termination of Company Options and payment of Option Consideration arising from or pursuant to the transactions contemplated by this Agreement (i) shall be treated as arising on the day of, but arising and properly allocable to the portion of the day after, the Effective Time and (ii) shall be treated as arising in, and shall be allocated to, the Company's taxable period or portion thereof beginning after the day of the Effective Time (the "*Post-Closing Period*"). The parties shall report consistently with the preceding sentence for all Tax purposes, and shall not take any inconsistent position in any Tax proceeding. In making such allocation, the parties agree that the cancellation and termination of the Company Vested Options and payment of the Option Consideration pursuant to this Agreement, arises outside the ordinary course of business of the Company as carried on prior to the day of the Effective Time and therefore is appropriately allocated to the Post-Closing Period.

Section 3.8 Treatment of Company Warrants. The Company shall use its reasonable best efforts to ensure that, effective as of the Effective Time, the Company Warrants are terminated. In consideration of such termination, Parent shall or shall cause the Surviving Corporation to (a) pay to the holder of each Company Warrant, an amount in cash in respect thereof equal to the product of (i) the excess, if any, of the Merger Consideration over the exercise price of the Company Warrant held by such holder and (ii) the number of shares of Company Common Stock subject thereto (the "*Warrant Consideration*") (such payment, if any, to be net of applicable withholding taxes). Parent shall, or shall cause the Surviving Corporation to, pay such amounts under this Section 3.8 as soon as practicable following (but in no event more than three (3) Business Days after) the Effective Time to the holder of the Company Warrant.

Section 3.9 Dissenters' Rights. Notwithstanding any provision of this Agreement to the contrary, Company Shares which are issued and outstanding immediately prior to the Effective Time and which are held by holders who shall have complied with the provisions of Section 262 of the DGCL (the "*Dissenting Shares*") shall not be converted into the right to receive the Merger Consideration, and holders of such Dissenting Shares shall be entitled to receive payment of the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL, unless and until the applicable holder fails to comply with the provisions of Section 262 of the DGCL or effectively withdraws or otherwise loses such holder's rights to receive payment of the fair value of such holder's Dissenting Shares under Section 262 of the DGCL. If, after the Effective Time, any such holder fails to comply with the provisions of Section 262 of the DGCL or effectively withdraws or loses such right, such Dissenting Shares

shall thereupon be treated as if they had been converted at the Effective Time into the right to receive the Merger Consideration. Notwithstanding anything to the contrary contained in this Section 3.9, if this Agreement is terminated prior to the Effective Time, then the right of any holder of Company Shares to be paid the fair value of such holder's Dissenting Shares pursuant to Section 262 of the DGCL shall cease. The Company shall give Parent notice of any written demands for appraisal of Dissenting Shares received by the Company under Section 262 of the DGCL, and shall give Parent the opportunity to participate in negotiations and Proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, (i) make any payment with respect to any such demands for appraisal, (ii) offer to settle or settle any such demands, (iii) waive any failure to timely deliver a written demand for appraisal in accordance with the DGCL or (iv) agree to do any of the foregoing.

Section 3.10 Exchange Procedures.

(a) Paying Agent. At or prior to the Effective Time, (i) Parent shall appoint a commercial bank or trust company reasonably acceptable to the Company to act as exchange and paying agent, registrar and transfer agent (the "*Paying Agent*") for the purpose of exchanging certificates representing, immediately prior to the Effective Time, Company Shares for the Merger Consideration, and (ii) Parent shall deposit, or Parent shall otherwise take all steps necessary to cause to be deposited, in trust with the Paying Agent for the benefit of the holders of Company Shares, cash in an aggregate amount equal to the product of (x) the number of Company Shares issued and outstanding immediately prior to the Effective Time and entitled to receive the Merger Consideration in accordance with Section 3.6(c) and (y) the Merger Consideration (such aggregate amount being hereinafter referred to as the "*Payment Fund*"). For purposes of determining the aggregate amount of cash to be deposited by Parent pursuant to this Section 3.10(a), Parent shall assume that no holder of Company Shares will perfect their right to appraisal of their Company Shares under the DGCL. Following the Effective Time, the Paying Agent shall retain the right to invest and reinvest the Payment Fund on behalf of the Surviving Corporation in securities listed or guaranteed by the United States government or certificates of deposit of commercial banks that have, or are members of a group of commercial banks that has, consolidated total assets of not less than $500,000,000 and the Surviving Corporation shall receive the interest earned thereon.

(b) Exchange Procedures. Promptly after the Effective Time, but in no event more than three (3) Business Days thereafter, the Surviving Corporation shall cause the Paying Agent to mail to each record holder of a Certificate or Certificates that immediately prior to the Effective Time represented Company Shares (i) a notice of the effectiveness of the Merger, (ii) a form letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Paying Agent, which shall be in a form and contain such other provisions as Parent and the Company may determine necessary, and (iii) instructions for use in surrendering such Certificates and receiving the Merger Consideration in respect thereof to which such holder is entitled under this Agreement. Upon surrender to the Paying Agent of a Certificate, together with such letter of transmittal duly executed and completed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor, in the case of Company Shares, cash in an amount equal to the product of (i) the number of Company Shares formerly represented by such Certificate and (ii) the Merger Consideration, to be mailed within ten (10)

Business Days of receipt of such Certificate. No interest or dividends will be paid or accrued on the Merger Consideration. If the Merger Consideration is to be delivered in the name of a person other than the person in whose name the Certificate surrendered is registered in the stock transfer records of the Company, it shall be a condition of such delivery that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such delivery shall pay any transfer or other taxes required by reason of such delivery to a person other than the registered holder of the Certificate, or that such person shall establish to the reasonable satisfaction of the Surviving Corporation that such tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 3.10(b), each Certificate (other than Certificates representing Dissenting Shares or Company Shares to be canceled pursuant to Section 3.6(b)) shall represent, for all purposes, only the right to receive an amount in cash equal to the Merger Consideration multiplied by the number of Company Shares formerly evidenced by such Certificate without any interest or dividends thereon. The Payment Fund shall be used as provided herein and shall not be used for any other purpose.

(c) No Further Ownership Rights in Shares. The consideration issued upon the surrender of Certificates in accordance with this Agreement shall be deemed to have been issued in full satisfaction of all rights pertaining to such Company Shares formerly represented thereby. After the Effective Time, there shall be no transfers on the stock transfer books of the Surviving Corporation of any shares of Company Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be canceled and exchanged as provided in this Article III.

(d) Termination of Fund. Any portion of the Payment Fund (including any amounts that may be payable to the former stockholders of the Company in accordance with the terms of this Agreement) which remains unclaimed by the former stockholders of the Company upon the first anniversary of the Effective Time shall be returned to the Surviving Corporation, upon demand, and any former stockholders of the Company who have not theretofore complied with this Article III shall, subject to Section 3.10(e), thereafter look only to the Parent and the Surviving Corporation only as general unsecured creditors thereof for payment of any Merger Consideration, without any interest or dividends thereon, that may be payable in respect of each Company Share held by such stockholders. None of Merger Sub, the Company or the Paying Agent shall be liable to a holder of Certificates or any other person in respect of any cash or other consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(e) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if requested by Parent or the Surviving Corporation, the posting by such Person of a bond, in such reasonable amount as Parent or the Surviving Corporation may direct, as indemnity against any claim that may be made against the Paying Agent, Parent or the Surviving Corporation with respect to such Certificate, Parent will pay in exchange for such lost, stolen or destroyed Certificate the Merger Consideration to which the holders thereof are entitled pursuant to Section 3.6.

(f) Withholding Taxes. The right of any Person to receive payment or consideration payable upon surrender of a Certificate pursuant to the Merger will be subject to any applicable requirements with respect to the withholding of any Tax. To the extent amounts are so withheld by Parent, the Surviving Corporation or the Paying Agent, (i) such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Shares, in respect of which the deduction, withholding and remittance to the appropriate Governmental Entity was made and (ii) Parent shall, or shall cause the Surviving Corporation or the Paying Agent, as the case may be, to, promptly pay over such withheld amounts to the appropriate Governmental Entity. This Section 3.10(f) shall also apply, mutatis mutandis, to any amounts payable pursuant to Section 3.7.

(g) Adjustments. Notwithstanding anything in this Agreement to the contrary, if, between the date of this Agreement and the Effective Time, the issued and outstanding Company Shares shall have been changed into a different number of shares or a different class by reason of any stock split, reverse stock split, stock dividend, reclassification, redenomination, recapitalization, split-up, combination, exchange of shares or other similar transaction, the Merger Consideration and any other dependent items shall be appropriately adjusted to provide to the holders of Company Shares the same economic effect as contemplated by this Agreement prior to such action and as so adjusted shall, from and after the date of such event, be the Merger Consideration or other dependent item, subject to further adjustment in accordance with this sentence.

Section 3.11 Further Assurances. If at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either of the Merging Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Company or Surviving Corporation, as applicable, and their respective proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Merging Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Merging Corporation or any such Stockholder, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Merging Corporation and otherwise to carry out the purposes of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the applicable section of the schedule of exceptions delivered by the Company to Parent and Merger Sub simultaneously with the execution and delivery of this Agreement (the "*Company Schedule of Exceptions*") (it being agreed that disclosure of any information in a particular section or subsection of the Company Schedule of Exceptions shall be deemed to be disclosed with respect to any other section or subsection of the Agreement to which the relevance of such information is reasonably apparent on its face), and except as

disclosed in the Company's reports, schedules, forms and registration statements filed with the SEC pursuant to the Securities Act or the Exchange Act and the rules and regulations of the SEC promulgated thereunder through the date of this Agreement (other than forward-looking disclosures in the "Risk Factors" section of such filings and any other disclosures included in such filings that are forward-looking in nature) (collectively, the "*SEC Reports*"), the Company represents and warrants to Parent and Merger Sub as follows:

Section 4.1 Organization, Power and Standing.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing (to the extent such concept is relevant in such jurisdiction) under the laws of its respective jurisdiction of organization, and each has the requisite power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of the Company and its Subsidiaries is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not reasonably be expected to have, when aggregated with all other such failures, a Company Material Adverse Effect.

(b) The copies of the Company's Certificate of Incorporation, as amended (the "*Company Certificate*"), and Bylaws (the "*Company Bylaws*"), filed with the Company's SEC Reports are complete and correct copies of such documents, and no other such documents are binding upon the Company. The Company Certificate and the Company Bylaws are in full force and effect. The Company is not in violation of any provision of the Company Certificate or the Company Bylaws that would have a Company Material Adverse Effect.

(c) Each of the Company's Subsidiaries has heretofore furnished to Parent a complete and correct copy of its Articles of Incorporation, Certificate of Incorporation, Articles of Organization or Articles of Association, as the case may be, (collectively, the "*Subsidiary Charters*") and its Bylaws or Memorandum of Association, as the case may be (collectively, the "*Subsidiary Bylaws*"), each as amended to date. The Subsidiary Charters and the Subsidiary Bylaws are in full force and effect. The Company's Subsidiaries are not in violation of any provision of the applicable Subsidiary Charters or the Subsidiary Bylaws that would have a Company Material Adverse Effect.

(d) The Company has made available to Parent and its representatives correct and complete copies of the minutes (or, in the case of minutes that have not yet been finalized, drafts thereof) of all meetings of stockholders, the Company Board and each committee of the Company Board and each of its Subsidiaries held since January 1, 2011.

Section 4.2 Capital Structure. The authorized capital stock of the Company consists of (i) Forty Million (40,000,000) shares of Common Stock, par value $0.001 per share and (ii) Five Million (5,000,000) shares of Preferred Stock, par value $0.001 per share ("*Company Preferred Stock*"). As of January 11, 2012, there were 18,591,609 shares of Company Shares issued and outstanding and no shares of Company Preferred Stock issued and outstanding, other than any Company Shares issued after the date hereof pursuant to Company Options and

Company RSUs outstanding on the date of this Agreement. As of January 11, 2012, there were outstanding Company Options to acquire 2,363,803 Company Shares and outstanding Company RSUs to acquire 461,468 Company Shares. As of the date of this Agreement, the only outstanding warrants to purchase Company Shares are the Company Warrants. Section 4.2 of the Company Schedule of Exceptions sets forth, as of the date of this Agreement, a complete and accurate list of the Company Options and Company RSUs, the Company Stock Plan under which each Company Option and Company RSU was awarded, the number of shares issuable thereunder, vesting schedule, exercise price, if any, and expiration date relating thereto. All of the issued and outstanding shares of Company Shares have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. As of the date of this Agreement, except as provided by this Agreement and except for the Company Options, Company RSUs and Company Warrants, there are no subscriptions, options, warrants, calls, stock appreciation rights or other commitments, rights or agreements of any character relating to dividend rights or the purchase, sale (other than registration rights), issuance or voting of any security of the Company to which the Company or any Subsidiary of the Company is a party, including any securities convertible into, exchangeable for or representing the right to purchase or otherwise receive, any Company Shares. There are no bonds, debentures, notes or other indebtedness of the Company or any of the Subsidiaries which provide by their terms a right to vote on matters submitted to stockholders of the Company. There are no voting trusts or other agreements or understandings to which the Company or any of the Subsidiaries is a party with respect to the voting of the shares or other equity interests of the Company or any of the Subsidiaries.

Section 4.3 Subsidiaries. Section 4.3 of the Company Schedule of Exceptions sets forth a complete and correct list of each Subsidiary of the Company, as well as the jurisdiction of organization or association and the ownership of outstanding equity interests of each such Subsidiary. The Company owns, directly or indirectly, all of the outstanding shares of capital stock of, or other equity or voting interests in, all of its Subsidiaries, free and clear of any Liens, other than Permitted Liens, and all equity interests of the Company's Subsidiaries held by the Company have been duly and validly authorized and are validly issued, fully paid and non-assessable and were not issued in violation of any preemptive or similar rights, purchase option, call or right of first refusal or similar rights. All such equity interests are free and clear of any Liens, other than Permitted Liens, or any other limitations or restrictions on such equity interests (including any limitation or restriction on the right to vote, pledge or sell or otherwise dispose of such equity interests). There are no outstanding subscriptions, options, warrants, calls, stock appreciation rights or other commitments or agreements of any character calling for the purchase, sale, issuance or voting by any Person other than the Company of any security of any Subsidiary of the Company, including any securities convertible into, exchangeable for or representing the right to purchase or otherwise receive any security of any Subsidiary of the Company. Except for the capital stock of, or other equity or voting interests in, its Subsidiaries, the Company does not own, directly or indirectly, any capital stock of (or other ownership interest in) or any other securities convertible or exchangeable into or exercisable for capital stock of (or ownership interest in) any Person other than the Company Subsidiaries.

Section 4.4 Authority.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the Transactions contemplated hereby, subject to (if the Merger is not consummated pursuant to Section 253 of the DGCL) obtaining the vote of holders of a majority of the issued and outstanding Company Shares in favor of the approval and adoption of the Agreement prior to the consummation of the Merger in accordance with Section 251 of the DGCL (the "*Company Stockholder Approval*"). The execution and delivery of this Agreement by the Company and the consummation by the Company of the Transactions have been duly and validly authorized by the Company, subject to receipt of the Company Stockholder Approval. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent and Merger Sub, and binding effect of this Agreement on Parent and Merger Sub) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws subject to creditors' rights generally and to general principles of equity.

(b) On or prior to the date of this Agreement, the Company Board has, by resolutions duly adopted by unanimous vote at a meeting of the Company Board duly called and held and not subsequently rescinded or modified in any way prior to the date hereof, duly (i) determined that this Agreement and the Transactions contemplated hereby, including each of the Offer and the Merger, are advisable, fair to, and in the best interests of the holders of Company Shares, (ii) approved and adopted this Agreement and the Transactions (such approval and adoption having been made in accordance with the DGCL), and (iii) recommended that the holders of Company Shares accept the Offer and tender Company Shares pursuant to the Offer, and to the extent required by applicable Law, approve and adopt this Agreement and the Transactions.

Section 4.5 Consents and Approvals; No Violation.

(a) Neither the execution and delivery of this Agreement, nor the consummation of the Transactions and compliance with the provisions hereof, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give to others a right of termination, cancellation or acceleration of any material obligation or result in the loss of a material benefit under, or result in the creation of any Lien, security interest, charge or encumbrance upon any of the properties or assets of the Company under, any provision of (i) the Company Certificate or Company Bylaws, (ii) any contract or any other note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise or license applicable to the Company or (iii) any judgment, order, decree, statute, Law, ordinance, rule or regulation applicable to the Company or any of its properties or assets, other than, in the case of clause (ii), any such violations, defaults, rights, Liens, security interests, charges or encumbrances that, individually or in the aggregate, would not have a Company Material Adverse Effect.

(b) No filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or with respect to the Company in connection with the execution and delivery of this Agreement by the Company or is necessary for the consummation of the Merger and the Transactions, except for:

(i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business;

(ii) such filings relating to the Proxy Statement, if required;

(iii) such filings relating to the HSR Act and other applicable Antitrust Laws;

(iv) such filings relating to NASDAQ; and

(v) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 4.6 Litigation. There is no outstanding claim or other Proceeding pending by or against, or to the Knowledge of the Company threatened in writing by or against the Company or any Subsidiary (including at law or in equity or before or by any Governmental Entity or arbitrator) that is reasonably expected to have a Company Material Adverse Effect. To the Knowledge of the Company, neither the Company nor any Subsidiary is in violation of any order of any Governmental Entity or any Law of any Governmental Entity applicable to the Company or any Subsidiary or any of their properties or assets, and the business operations of the Company and its subsidiaries have been conducted in compliance with all Laws of each Governmental Entity, except where such violation or noncompliance would not reasonably be expected to have a Company Material Adverse Effect. To the Company's Knowledge, there are no SEC inquiries or investigations or internal investigations pending or threatened.

Section 4.7 SEC Reports; Undisclosed Liabilities.

(a) The Company has filed all SEC Reports with the SEC required to be filed by it pursuant to the federal securities laws and the SEC rules and regulations thereunder on a timely basis or has timely filed a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. The SEC Reports, as amended, as well as all forms, reports, statements, schedules and other documents to be filed by the Company with the SEC after the date hereof and prior to the Effective Time but excluding the SEC Reports contemplated in Section 4.19 (the "*Future SEC Reports*"), (i) were and will be prepared in all material respects in accordance with the requirements of the Securities Act, the Exchange Act and the published rules and regulations of the SEC thereunder, each as applicable to such SEC Reports, as amended, and such later filed Future SEC Reports and (ii) did not and will not as of the time they were filed contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were and will be made, not misleading. No Subsidiary of the Company is subject to the periodic reporting requirements of the Exchange Act. As of the date hereof, there are no material unresolved comments issued by the staff of the SEC with respect to any of the SEC Reports.

(b) Each of the consolidated financial statements (including, in each case, any notes thereto) of the Company included in the SEC Reports, as amended, or any Future SEC Report has been, and in the case of any Future SEC Report will be, prepared in all material

respects in accordance with the published rules and regulations of the SEC (including Regulation S-X) and in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as otherwise stated in such financial statements, including the related notes) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise set forth in the notes thereto (subject, in the case of unaudited statements, to normal and recurring year-end adjustments, none of which is material, individually or in the aggregate, to the Company and its consolidated Subsidiaries, taken as a whole).

(c) The Company has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. The Company's disclosure controls and procedures are designed to ensure that material information required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act are made known to the management of the Company as appropriate to allow timely decisions regarding required disclosure. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Company Board (A) any known significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data and (B) any fraud or allegation of fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. Since January 1, 2011, the Company has not identified any material weaknesses in internal controls over financial reporting.

(d) Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), except liabilities or obligations: (i) as and to the extent set forth on the unaudited consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2011 (the "*Balance Sheet Date*") (including the notes thereto included in the SEC Reports, as amended); (ii) incurred after the Balance Sheet Date in the ordinary course of business consistent with past practice; (iii) that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect; (iv) under this Agreement; or (v) which are of a nature not required to be reflected in the consolidated financial statements of the Company prepared in accordance with GAAP consistently applied.

(e) None of the Company or any of its Subsidiaries is indebted to any director or officer of the Company or any of its subsidiaries (except for amounts due as normal salaries and bonuses or in reimbursement of ordinary business expenses and directors' fees), and no such person is indebted to the Company or any Subsidiary, and, except as set forth in the SEC Reports, as amended, there have been no other transactions of the type required to be disclosed pursuant to Items 402 or 404 of Regulation S-K promulgated by the SEC.

(f) The Company has heretofore furnished or made available to Parent and Merger Sub a complete and correct copy of any amendments or modifications which have not

yet been filed with the SEC to the SEC Reports pursuant to either the Securities Act and the rules and regulations promulgated thereunder or the Exchange Act and the rules and regulations promulgated thereunder.

Section 4.8 Absence of Certain Changes or Events. Since the Balance Sheet Date, the Company and its Subsidiaries have conducted their businesses in the ordinary course of business consistent with past practice and there has not been:

(a) any effect, event, or change which has had, or would reasonably be expected to have, a Company Material Adverse Effect;

(b) any material change in any method of accounting or accounting practice by the Company or any Subsidiary, except for any such change required by reason of a concurrent change in the rules and regulations of the PCAOB, SEC or in GAAP;

(c) any material revaluation by the Company or any Subsidiary of a material asset (including, without limitation, any material writing down of the value of inventory or material writing-off of notes or accounts receivable);

(d) any transaction or commitment made, or any contract or agreement entered into, by the Company or any Subsidiary relating to its assets or business (including, without limitation, the acquisition, disposition, leasing or licensing of any tangible or intangible assets) or any relinquishment by the Company or any Subsidiary of any contract or other right, in either case, material to the Company and Subsidiary taken as a whole, other than transactions and commitments in the ordinary course of business consistent with past practice and those contemplated by this Agreement;

(e) any declaration, setting aside or payment of any dividend (whether in cash, stock or property) or other distribution in respect of the Company's capital stock or any redemption, purchase or other acquisition of any of the Company's securities;

(f) any split, combination or reclassification of any of the Company's capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock;

(g) any amendment of any material term of any outstanding security of the Company or any Subsidiary;

(h) any issuance by the Company or any Subsidiary of any notes, bonds or other debt securities or any capital stock or other equity securities or any securities convertible, exchangeable or exercisable into any capital stock or other equity securities, except for the issuance of any Company Shares pursuant to the vesting of any Company RSUs or the exercise of any Company Options in existence prior to the date hereof;

(i) any material incurrence, assumption or guarantee by the Company or any Subsidiary of any indebtedness for borrowed money other than in the ordinary course of business and in amounts and on terms consistent with past practices;

(j) any creation or assumption by the Company or any Subsidiary of any material Lien on any material asset(s) (alone or in the aggregate) other than in the ordinary course of business consistent with past practice;

(k) any making of any loan, advance or capital contributions to or investment in any entity or person other than loans, advances or capital contributions to or investments in any Subsidiary and except for cash advances to employees for reimbursable travel and other reasonable business expenses, in each case made in the ordinary course of business consistent with past practice;

(l) any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the business or assets of the Company or any Subsidiary which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect, or any other event, change, circumstance or state of facts that has had or is reasonably likely to have a Company Material Adverse Effect;

(m) any material increase in the benefits under, or the establishment, material amendment or termination of, any Benefit Plan covering current or former employees, officers or directors of the Company or any Subsidiary, or any material increase in the compensation payable or to become payable to or any other material change in the employment terms for any directors or officers of the Company or any of its subsidiaries or any other employee earning noncontingent cash compensation in excess of $100,000 per year;

(n) any entry by the Company or any Subsidiary into any employment, consulting, severance, termination or indemnification agreement with any director or officer of the Company or any Subsidiary or entry into any such agreement with any person for a noncontingent cash amount in excess of $100,000 per year or outside the ordinary course of business;

(o) any material labor dispute, other than routine individual grievances, or any activity or proceeding by a labor union or representative thereof to organize any employees of the Company or any of its subsidiaries, which employees were not subject to a collective bargaining agreement as of the Balance Sheet Date or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to such employees; or

(p) any authorization of, or agreement by the Company or any Subsidiary to take, any of the actions described in this Section 4.8, except as expressly contemplated by this Agreement.

Section 4.9 Title to and Sufficiency of Assets. The Company and its Subsidiaries have good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in all of their tangible properties and assets, real and personal, used or held for use in their businesses located on their premises or shown on the consolidated balance sheet of the Company and its Subsidiaries as of the Balance Sheet Date or acquired thereafter, free and clear of any Liens, except for (i) Liens for taxes not yet delinquent or the amount or validity of which is being contested in good faith, and (ii) Liens which do not, individually or in the aggregate, materially interfere with or materially impair the conduct of the business of the Company or any

Subsidiary as presently conducted. Neither the Company nor any Subsidiary owns any real property. The Company's and each Subsidiary's buildings, equipment and other tangible assets are in good operating condition (normal wear and tear excepted) and are fit for use in the ordinary course of their businesses, except for any failure to be in such condition that could not reasonably be expected to have a Company Material Adverse Effect. Section 4.9 of the Company Schedule of Exceptions sets forth all of the licenses, leases and subleases for the use or occupancy of the leased real property used or held for use in the business operations of the Company and its Subsidiaries (collectively, the "*Leases*"). The Company has not, and to the Company's Knowledge no other party thereto has, cancelled, modified, assigned, extended or amended the Leases except as set forth on Section 4.9 of the Company Schedule of Exceptions, and the Leases are valid and effective in accordance with their respective terms, and there is not under any of the Leases, any existing default or event of default by the Company or the Subsidiaries (or event which with notice or lapse of time, or both, would constitute a default), except where the lack of such validity and effectiveness or the existence of such default or event of default would not reasonably be expected to have a Company Material Adverse Effect. The Company and its Subsidiaries have previously furnished true, correct and complete copies of the Leases to Parent, including any and all amendments thereto. There are no leasing commissions or similar payments due, arising out of, resulting from or with respect to any Lease which are owed by Company or its Subsidiaries. Except as otherwise set forth in the Leases, the Company or its Subsidiaries have not granted any oral or written right or interest in or to the leased real property to any other person to lease, sublease, license or otherwise use or occupy the leased real property. The Company has peaceful and undisturbed possession of the leased real property under the Leases. Each parcel of leased real property is located on public roads or streets or, to the Company's Knowledge, has a right of access without trespass to the same. To the Company's Knowledge, all utility systems required in connection with the use, occupancy and operation of each leased real property space is sufficient for their present purposes and are operational and there are no known material structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the leased real property. Neither the Company nor its Subsidiaries have received notice of any non-compliance with current zoning or land use laws affecting any leased real property or any portion thereof, and, to the Company's Knowledge, no such action is presently threatened. To the Company's Knowledge (A) there is no pending condemnation or similar proceeding affecting the leased real property or any portion thereof and (B) no such action is presently contemplated or threatened against any leased real property. To the Company's Knowledge, no material federal, state or municipal law, ordinance, regulation or restriction is violated by the continued maintenance, operation, use or occupancy of any leased real property in its present manner, except for such violations which would not reasonably be expected to have a Company Material Adverse Effect and, to the Company's Knowledge, the current use of the leased real property does not violate in any material respect any restrictive covenants affecting such leased real property. To the Company's Knowledge there is no law, ordinance, order, regulation or requirement now in existence which is reasonably likely to require any material expenditure to modify or improve any of the leased real property in order to bring it into compliance therewith.

Section 4.10 Permits and Compliance with Laws. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Subsidiary is in violation of any Law applicable to the Company or any Subsidiary. Except as would not reasonably be expected to have, individually or in the aggregate,

a Company Material Adverse Effect, the Company and the Subsidiaries each holds all permits, licenses, consents, authorizations, certificates, variances, exemptions, orders and approvals (collectively, "*Permits*") of and from all, and has made all material declarations and filings with, Governmental Entity necessary for the lawful conduct of their businesses, as presently conducted, and to own, lease, license and use their respective properties and assets. All of such Permits are valid, and in full force and effect, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.11 Employment Issues. As of the date of this Agreement, (a) there is no labor strike, dispute, slowdown, stoppage or lockout actually pending, or, to the Company's Knowledge, threatened against the Company or any Subsidiary by a union or labor organization, and during the past three (3) years there has not been any such action, (b) to the Company's Knowledge, no union claims to represent the employees of the Company or any Subsidiary, (c) neither the Company nor any Subsidiary is a party to or bound by any collective bargaining or similar agreement with any labor organization, or work rules or practices agreed to with any labor organization or employee association applicable to employees of the Company or any Subsidiary, (d) none of the employees of the Company or any Subsidiary is represented by any labor organization and the Company does not have any Knowledge of any current union organizing activities among the employees of the Company or any Subsidiary, nor is there a question concerning whether representation exists concerning such employees, (e) the Company and its Subsidiaries are, and for the past three years have been, in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health, and are not engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable Law, (f) there is no unfair labor practice charge or complaint against the Company or any Subsidiary pending or, to the Knowledge of the Company, threatened before the National Labor Relations Board or any similar state or foreign agency, (g) there is no grievance arising out of any collective bargaining agreement or other grievance procedure, (h) to the Company's Knowledge, no charges with respect to or relating to the Company or any Subsidiary are pending before the Equal Employment Opportunity Commission, the Department of Labor or any other agency responsible for the prevention of unlawful employment practices, (i) neither the Company nor any Subsidiary has received notice of the intent of any federal, state, local or foreign agency responsible for the enforcement of labor or employment Laws to conduct an investigation with respect to or relating to the Company or any Subsidiary and, to the Company's Knowledge, no such investigation is in progress, (j) there are no complaints, lawsuits or other Proceedings pending or, to the Company's Knowledge, threatened in any forum by or on behalf of any present or former employee of the Company or any Subsidiary alleging breach of any express or implied contract of employment, any Law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship and (k) to the Company's Knowledge, neither the Company nor any Subsidiary has any outstanding liability under the Worker Adjustment and Retraining Act of 1998 as a result of any action by the Company or any of its Subsidiaries. To the Knowledge of the Company, as of the date hereof, no Executive Officer or other key employee of the Company or any Subsidiary is subject to any noncompete, nonsolicitation, nondisclosure, confidentiality, employment, consulting or similar agreement relating to, affecting or in conflict with the present business activities of the Company and its Subsidiaries, except agreements between the Company or any Subsidiary and its present and former officers and employees. To the Company's Knowledge, no

officer, employee, agent or consultant of the Company or any of its Subsidiaries is in material violation of any material term of any employment, consultant, non-disclosure, non-competition, confidentiality or other similar agreement.

Section 4.12 Employee Benefit Plans.

(a) As of the date of this Agreement, there exist no employment, consulting, severance or termination agreements, arrangements or understandings between the Company or any Subsidiary and any individual current or former employee, officer or director of the Company or any Subsidiary with respect to which the annual cash noncontingent payments thereunder exceed $150,000 or where the contingent and noncontingent annual compensation is reasonably likely to exceed $200,000.

(b) Section 4.12(b) of the Company Schedule of Exceptions sets forth a true and complete list, separately identified for each country in which current employees, consultants or directors and former employees of the Company and any of its Subsidiaries are, or in the case of former employees were, based, of all (i) "employee pension benefit plans" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*")) (collectively, the "*Pension Plans*"), including any such Pension Plans that are "multiemployer plans" (as such term is defined in Section 4001(a)(3) of ERISA) (collectively, the "*Multiemployer Pension Plans*"), (ii) "employee welfare benefit plans" (as defined in Section 3(1) of ERISA) and all other benefit plans and (iii) other bonus, deferred compensation, severance or change in control pay, pension, profit-sharing, retirement, insurance, stock purchase, stock option, or other fringe benefit plan, arrangement or practice maintained, or contributed to, by the Company or any Subsidiary for the benefit of any current or former employees, officers or directors of the Company or any Subsidiary or with respect to which the Company, to the Knowledge of the Company, has any liability (collectively, the "*Benefit Plans*"). The Company has delivered or made available to Merger Sub correct and complete copies of (i) each Benefit Plan, (ii) the three most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Benefit Plan for which such Form 5500 is required, (iii) the most recent summary plan description for each Benefit Plan for which such summary plan description is required and (iv) each trust agreement and group annuity contract relating to any Benefit Plan.

(c) All Pension Plans intended to be qualified plans have been the subject of favorable determination letters from the Internal Revenue Service to the effect that such Pension Plans are qualified and exempt from Federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code (or such other advisory or opinion letter from the IRS with similar effect to such a determination letter) and no such letter has been revoked or is no longer in effect. To the Knowledge of the Company, there is no reasonable basis for the revocation of any such determination, advisory or opinion letter. All Pension Plans intended to be qualified plans have been operated in material compliance with the plan documents for such Pension Plans and with the requirements of Sections 401(a) and 501(a), respectively, of the Code.

(d) None of the Benefit Plans is, and none of the Company or any Subsidiary or any company or business aggregated with the Company or any subsidiary under Sections 414(b), (c), (m) or (o) of the Code ("*ERISA Affiliates*") has ever maintained or had an obligation

to contribute to (i) a "single employer plan" (as such term is defined in Section 4001(a)(15) of ERISA) subject to Section 412 of the Code or Title IV of ERISA, (ii) a "multiple employer plan" (as such term is defined in ERISA) or (iii) a funded welfare benefit plan (as such term is defined in Section 419 of the Code). There are no unpaid contributions, premiums or other payments due prior to the date hereof with respect to any Benefit Plan that are required to have been made under the terms of such Benefit Plan, any related insurance contract or any applicable law. None of the Company or any of its Subsidiaries or ERISA Affiliates has incurred any material liability or taken any action, and the Company does not have any Knowledge of, any action or event that could reasonably be expected to cause any one of them to incur any material liability (i) under Section 412 of the Code or Title IV of ERISA with respect to any "single-employer plan" (as such term is defined in Section 4001(a)(15) of ERISA), (ii) on account of a partial or complete withdrawal (as such term is defined in Sections 4203 and 4205 of ERISA, respectively) with respect to any Multiemployer Pension Plan, or (iii) on account of unpaid contributions to any Multiemployer Pension Plan. Neither the Company nor any of its Subsidiaries nor any ERISA Affiliate has any unfunded liabilities with respect to any deferred compensation, retirement or other Benefit Plan.

(e) None of the Company nor any of its Subsidiaries has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA and Section 4975 of the Code) or any other breach of fiduciary responsibility with respect to any Benefit Plan subject to ERISA that reasonably could be expected to subject the Company or any of its subsidiaries to (i) any material tax or penalty on prohibited transactions imposed by Section 4975 or (ii) any material liability under Section 502(i) or Section 502(l) of ERISA. As of the date of this Agreement, with respect to any Benefit Plan: (i) no filing, application or other matter is pending with the Internal Revenue Service, the Pension Benefit Guaranty Corporation, the United States Department of Labor or any other governmental body and (ii) there is no action, suit or claim pending, other than routine claims for benefits.

(f) None of the Company or any of its Subsidiaries has any obligation to provide any health benefits or other non-pension benefits to retired or other former employees, except as specifically required by Part 6 of Title I of ERISA ("*COBRA*").

(g) All contributions, premiums and other material payments required by Law any Benefit Plan have been made under any such plan to any fund, trust or account established thereunder or in connection therewith by the due date thereof; and any and all material contributions, premiums and other payments with respect to compensation or service before and through the Closing Date, or otherwise with respect to periods before and through the Closing Date, due form the Company or its Subsidiaries to, under or on account of each Benefit Plan shall have been paid prior to the Closing Date or shall have been fully reserved and provided for or accrued on the Company's financial statements.

(h) Neither the execution of this Agreement, nor the consummation of the Transactions will either alone or in combination with another event (including without limitation termination of employment), (i) entitle any current or former employee, consultant, director or officer of the Company or any of its Subsidiaries to severance pay, additional bonuses or equity grants, retention bonuses, parachute payments, non-competition payments, unemployment compensation or any other payment, except as expressly provided in this Agreement or as

required by applicable Law, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, consultant, director or officer, except as expressly provided in this Agreement or (iii) result in any forgiveness of indebtedness, or an obligation to fund benefits with respect to any such employee, director or officer. Neither the Company nor any of its Subsidiaries or Affiliates has made any payments, is obligated to make any payments, or is a party to any agreement, contract, arrangement, or plan that could obligate it to make or accelerate any payments, that are or could be, separately or in the aggregate, "excess parachute payments" within the meaning of Section 280G of the Code. No director, officer, employee or service provider is entitled to a gross-up, make-whole or other payment as a result of the imposition of taxes under Section 280G or 4999 of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries or Affiliates. No director, officer, employee or service provider is entitled to a gross-up, make whole or other payment as a result of the imposition of Taxes under Sections 280G, 409A, 457A or 4999 of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries or Affiliates.

Section 4.13 Intellectual Property.

(a) For the purposes of this Agreement, the following terms have the following meanings:

(i) "*Company Intellectual Property*" shall mean any Intellectual Property that is owned by, or exclusively licensed to, the Company or any of its Subsidiaries.

(ii) "*Company Owned Intellectual Property*" shall mean all Intellectual Property owned or purported to be owned by the Company or any of its Subsidiaries.

(iii) "*Company Registered Intellectual Property*" shall mean all of the Registered Intellectual Property owned by, or filed in the name of, the Company or any of its Subsidiaries.

(iv) "*Intellectual Property*" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (a) all United States, international and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (c) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology; (e) domain names, uniform resource locators ("*URLs*") and other names and locators associated with the Internet (collectively, "*Domain Names*"), (f) all industrial designs and any registrations and applications therefor throughout the world; (g) all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; (h) all moral and economic rights of authors and inventors, however denominated, throughout the world, and (i) any similar or equivalent rights to any of the foregoing anywhere in the world.

(v) "*Registered Intellectual Property*" shall mean all United States, international and foreign: (a) patents and patent applications (including provisional applications); (b) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks; (c) registered copyrights and applications for copyright registration; (d) domain name registrations; and (e) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Entity.

(vi) "*Software*" shall mean any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing and (iv) all user documentation, including user manuals and training materials, relating to any of the foregoing.

(b) Registered Intellectual Property; Proceedings. Section 4.13(b) of the Company Schedule of Exceptions sets forth (i) all Company Registered Intellectual Property and specifies, where applicable, the jurisdictions in which each such item of Company Registered Intellectual Property has been issued or registered, and (ii) all proceedings or actions currently pending before any court or tribunal (including the United States Patent and Trademark Office (the "*PTO*") or equivalent authority anywhere else in the world) related to any of the Company Registered Intellectual Property (excluding with respect to the prosecution of any Intellectual Property applications).

(c) Ownership. The Company owns or is licensed to use all Intellectual Property necessary to the conduct of its business as presently conducted, except as would not have a Company Material Adverse Effect. All Company Owned Intellectual Property was entirely created by: (i) employees of the Company within the course and scope of their duties while employed by the Company and who have a duty of assignment to the Company; or (ii) by Persons who have assigned such property to the Company or who created such property under a written work for hire agreement, in each case subject to moral rights limitations.

(d) Company Products. Section 4.13(d) of the Company Schedule of Exceptions sets forth a list of all generally commercial available products, Software or application service offerings of the Company or any of its Subsidiaries that are currently being sold by Company or any of its Subsidiaries (collectively, "*Company Products*"). The Company Products consist entirely of (i) Company Owned Intellectual Property or (ii) third party products and/or Software sold under agreements that are, to the Company's Knowledge, valid and binding, in full force and effect and enforceable against the Company in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to creditors' rights generally and to the general principles of equity.

(e) Registration. Each item of Company Registered Intellectual Property (other than such Intellectual Property intentionally abandoned by the Company or which the Company no longer wishes to protect, which Intellectual Property is set forth in Section 4.13(e) of the Company Schedule of Exceptions) is subsisting and, to the Knowledge of the Company, valid, and all necessary registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been made.

(f) Absence of Liens. The Company owns and has good and exclusive title to each item of Company Owned Intellectual Property, free and clear of any Liens (excluding non-exclusive licenses and related restrictions granted in the ordinary course of business consistent with past practice).

(g) Third-Party Development. To the extent a third party, has developed or created, independently or jointly with the Company or any of its Subsidiaries, Company Owned Intellectual Property and subject to moral rights limitations, the Company and its Subsidiaries have a written agreement with such third party providing for the assignment of such Intellectual Property to the Company or its Subsidiaries, except as would not have a Company Material Adverse Effect.

(h) Transfers. Neither the Company nor any of its Subsidiaries has transferred ownership of, nor granted any exclusive license with respect to, any Company Owned Intellectual Property to any third party.

(i) Licenses. Other than (i) "shrink wrap," or click through and similar widely available commercial non-exclusive licenses, (ii) non-exclusive licenses of Company Products and related services agreements to end-users and intermediaries pursuant to written agreements that have been entered into in the ordinary course of business, and (iii) non-disclosure employee agreements entered into in the ordinary course of business, Section 4.13(i) of the Company Schedule of Exceptions sets forth a list of all contracts, licenses and agreements currently in effect to which the Company or any of its Subsidiaries is a party (x) with respect to which Company Owned Intellectual Property material to the Company and its Subsidiaries taken as a whole is licensed or transferred to any third party, or (y) pursuant to which a third party has licensed or transferred to the Company or any of its Subsidiaries any Intellectual Property material to the Company and its Subsidiaries taken as a whole is (such listed contracts, licenses and agreements, collectively, "*Company License Agreements*"). Neither the Company nor, to the Company's Knowledge, any other Person is in material breach of or default under any Company License Agreement. Each Company License Agreement is to the Knowledge of the Company now valid and in full force and effect and will not be subject to cancellation as a result of the Transactions.

(j) No Infringement. To the Company's Knowledge, the operation of the business of the Company and its Subsidiaries as such business currently is conducted with respect to Company Products does not infringe or misappropriate the Intellectual Property of any third party or constitute unfair competition or unfair trade practices under the laws of any jurisdiction where such Company Products are manufactured, used, sold or distributed.

(k) No Notice of Infringement. Neither the Company nor any of its Subsidiaries have received written notice from any third party within the last five (5) years that the operation of the business of the Company or any of its Subsidiaries or any act, product or service of the Company or any of its Subsidiaries, infringes or misappropriates the Intellectual Property of any third party or constitutes unfair competition or unfair trade practices under the laws of any jurisdiction.

(l) No Third Party Infringement. To the Knowledge of the Company, no person has or is infringing or misappropriating any Company Owned Intellectual Property.

(m) Proprietary Information Agreements. The Company and each of its Subsidiaries has taken reasonable steps to protect the Company's and its Subsidiaries' rights in the Company's confidential information and trade secrets that it wishes to protect or any trade secrets or confidential information of third parties provided to the Company or any of its Subsidiaries under an obligation of confidentiality, and, without limiting the foregoing, each of the Company and its Subsidiaries has and enforces a policy requiring each employee to execute a proprietary information/confidentiality agreement substantially in the form provided to Parent, and all such employees have executed such an agreement, except where the failure to do so would not reasonably be expected to be material to the Company and its subsidiaries, taken as a whole.

(n) Open Source. No Company Intellectual Property included or embedded in Company Products includes open source, public source or freeware Intellectual Property in a manner that requires such Company Intellectual Property to be made generally available in source code form for free or for a nominal charge pursuant to the terms of an open source license, except as would not reasonably be expected to have a Company Material Adverse Effect.

(o) Disabling Code. To the Company's Knowledge, all Company Products and Company Owned Intellectual Property (and all parts thereof) are free of any disabling codes or instructions, timer, clock, counter or other limiting design or routing, "back door," "Trojan horse," "worm," "virus" or other software routines or hardware components that in each case permit third party access not authorized by Company (pursuant to an applicable license agreement or otherwise) or disablement or erasure not authorized by Company (pursuant to an applicable license agreement or otherwise) of such Company Product (or all parts thereof) or data or other software of users or otherwise cause them to be incapable of being used in the full manner for which they were designed ("*Contaminants*"), except to the extent such Company Products are licensed on a "test" or "trial" basis pursuant to a written agreement in which the end-user acknowledges that the contaminant is included in the Company Product or except in the case of Contaminants that would not be material to the business of the Company and its Subsidiaries taken as a whole.

(p) Privacy. The Company has complied with its internal privacy policies in all material respects and, to Company's Knowledge, with all applicable legal requirements with respect to the collection of personally identifiable information, except for noncompliance that individually or in the aggregate would not result in any material liability to the Company and its Subsidiaries taken as a whole.

(q) Information Technology. The Company has or utilizes under contract information technology systems reasonably sufficient to operate the business as it is currently conducted. The Company has, or to the Knowledge of the Company its contractors have, taken reasonable steps and implemented reasonable procedures to limit the possibility that information

technology systems used in connection with the operation of the Company are infected with Contaminants. The Company has, or to the Knowledge of the Company its contractors have, taken reasonable steps, including the implementation of a disaster recovery plan to safeguard the information technology systems utilized in the operation of the business of the Company as it is currently conducted. To the Knowledge of the Company, there have been no material unauthorized intrusions or breaches of the security of the Company's information technology systems within the past two (2) years.

Section 4.14 Environmental Matters.

(a) The Company and its Subsidiaries have at all times complied and are in compliance, in all material respects, with all Environmental Laws, which compliance has included obtaining and complying at all times, in all material respects, with all Permits required pursuant to Environmental Laws for the occupation of their facilities and properties and the operation of their respective businesses.

(b) Neither the Company nor any of its Subsidiaries has received any written notice, report or other information regarding any actual or alleged material violation by the Company or any of its Subsidiaries of, or liability of the Company or any of its Subsidiaries under, Environmental Laws with respect to their past or current operations, properties or facilities.

(c) To the Company's Knowledge, none of the following exists at any property or facility owned or operated by the Company and its Subsidiaries: (i) underground storage tanks; (ii) asbestos-containing material; (iii) materials or equipment containing polychlorinated biphenyls; or (iv) landfills, surface impoundments, or disposal areas.

(d) Neither the Company nor any of its Subsidiaries have treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any substance, including any Hazardous Substance, or owned or operated any property or facility (and, to the Company's Knowledge, no such property or facility is contaminated by any Hazardous Substance so as to create a "Recognized Environmental Condition" under ASTM 1527-05) so as to give rise to any current or future liability of the Company or any of its Subsidiaries or corrective or remedial obligation of the Company or any of its Subsidiaries under any Environmental Laws.

(e) Neither the Company nor any of its Subsidiaries have assumed, provided an indemnity with respect to, or otherwise become subject to any material liabilities of any other Person under any Environmental Law.

Section 4.15 Contracts.

(a) Except for the Benefit Plans listed on Section 4.12(b) of the Company Schedule of Exceptions, and as set forth in Section 4.15(a) of the Company Schedule of Exceptions, neither the Company nor any of its Subsidiaries is a party to or bound by, as of the date hereof, any contract (whether written or oral) (i) that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC), (ii) that purports to limit, curtail or

restrict the ability of the Company or any of its existing Subsidiaries to compete in any geographic area or line of business or restrict the Persons to whom the Company or any of its Subsidiaries may sell products or deliver services, (iii) that is a partnership or joint venture agreement for the acquisition, sale or lease of material properties or assets, including equipment (by merger, purchase or sale of stock or assets or otherwise), with a value at the time of such acquisition, sale or lease in excess of $1,000,000 and entered into since January 1, 2010, (v) with any Governmental Entity that is not a customer, client or supply franchise or any director, Executive Officer of the Company or any of its Subsidiaries or any Affiliate of the Company, (vi) that is a loan or credit agreement, mortgage, indenture, note or other contract or instrument evidencing indebtedness for borrowed money by the Company or any of its Subsidiaries or any contract or instrument pursuant to which indebtedness for borrowed money may be incurred or is guaranteed by the Company or any of its Subsidiaries having an outstanding principal amount in excess of $100,000 individually, (vii) that is a financial derivatives master agreement or confirmation, or futures account opening agreements and/or brokerage statements, evidencing financial hedging or similar trading activities, (viii) that is a voting agreement or registration rights agreement, (ix) that is a mortgage, pledge, security agreement, deed of trust or other contract granting a Lien on any material property or assets of the Company or any of its Subsidiaries, (x) that is a contract (other than customer, client, employment, consulting or supply contract) that involves cash consideration of greater than $100,000, (xi) that is a collective bargaining agreement, (xii) that is a "standstill" or similar agreement, (xiii) that is a contract that restricts or otherwise limits the payment of dividends or other distributions on equity securities, (xiv) to the extent material to the business or financial condition of the Company and its Subsidiaries, taken as a whole, that is a (A) lease or rental contract, (B) project design or development contract, (C) consulting contract, (D) indemnification contract, (E) license or royalty contract, (F) merchandising, sales representative or distribution contract or (G) contract granting a right of first refusal, offer or first negotiation, or (xv) that is a commitment or agreement to enter into any of the foregoing (the contracts and other documents described in clauses (i) through (xv) of this Section 4.15(a) and to which the Company and any of its Subsidiaries is a party to or bound by, all contracts set forth in Section 4.15(a) of the Company Schedule of Exceptions and all contracts which have been filed with the SEC prior to the date hereof and are still in effect as of the date hereof, being referred to herein as "*Material Contracts*").

(b) (i) Neither the Company nor any of its Subsidiaries, nor, to the Company's Knowledge, any other party, is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Material Contract to which it is a party, except for such defaults that would not reasonably be expected to have a Company Material Adverse Effect and (ii) to the Company's Knowledge, there has not occurred any event that, with the lapse of time or giving of notice or both, would constitute such a default that would reasonably be expected to have a Company Material Adverse Effect. All Material Contracts to which the Company or any of its Subsidiaries is a party, or by which any of their respective assets are bound, are valid and binding, in full force and effect and enforceable against the Company or any such Subsidiary, as the case may be, and to the Company's Knowledge, the other parties thereto in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to creditors' rights generally and to the general principles of equity.

(c) No Material Contract will, by its terms, terminate as a result of the Transactions or require any consent from any party thereto in order to remain in full force and effect immediately after the Effective Time.

(d) There are no contracts or agreements of the Company having terms or conditions which have had a Company Material Adverse Effect which is continuing or that materially impair the ability of the Company to conduct its business as currently conducted.

Section 4.16 Insurance. The Company and each of its Subsidiaries have policies of insurance and bonds of the type and in amounts customarily carried by persons conducting businesses or owning assets similar to those of the Company and its Subsidiaries. Section 4.16 of the Company Schedule of Exceptions contains (i) an accurate and complete list of all such policies and programs of insurance providing coverage for the Company together with its Subsidiaries, including the name of the insurer, type of insurance or coverage, policy number, and the amount of coverage and any retention or deductible of the Company or any Subsidiary. All premiums due and payable under all such policies and bonds have been paid and the Company and its Subsidiaries are otherwise in compliance in all material respects with the terms of such policies and bonds. Neither the Company nor any of its Subsidiaries maintains any material self-insurance or co-insurance programs. Neither the Company nor any of its Subsidiaries has any disputed claim or claims aggregating $100,000 or more with any insurance provider relating to any claim for insurance coverage under any policy or insurance maintained by the Company or any of its Subsidiaries. No notice of cancellation, termination or reduction in coverage has been received by the Company or any Subsidiary with respect to any policy listed in Section 4.15 of the Company Schedule of Exceptions. Neither the Company nor any Subsidiary has been refused any insurance with respect to its assets or operations, nor has its coverage been limited, by any insurance carrier to which it has applied for any such insurance or which it has carried insurance during the last three (3) years.

Section 4.17 Intentionally Omitted.

Section 4.18 Taxes.

(a) Each of the Company and its Subsidiaries has timely filed, or has caused to be timely filed on its behalf (taking into account any extension of time within which to file), all material Tax Returns required to be filed by it or on behalf of it, in all applicable jurisdictions, and all such filed Tax Returns are true, correct, complete, and in accordance with all applicable Tax Laws in all material respects. All Taxes due and owing by the Company and its Subsidiaries (whether or not shown on such Tax Returns) have been fully and timely paid.

(b) The unpaid Taxes of the Company and its Subsidiaries (i) did not, as of the date of the most recent financial statements contained in the SEC Reports, exceed the amount of Tax liability (exclusive of any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheet therein (rather than in any notes thereto) and (ii) do not and will not exceed such Tax liability amount as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Tax Returns. No deficiency with respect to Taxes has been proposed, asserted or assessed against the Company or any of its

Subsidiaries in writing, except for deficiencies that are (i) set forth on Section 4.18(b) of the Company Schedule of Exceptions, and (ii) being diligently contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP. No claim has ever been made by any Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction.

(c) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for tax-free treatment under Section 355 or Section 361 of the Code.

(d) There are not any pending or, to the Knowledge of the Company, threatened in writing, audits, examinations, investigations, actions, suits, claims or other Proceedings in respect of any material amount of Taxes nor has any deficiency for any material amount of Tax been assessed by any Governmental Entity in writing against the Company or any of its Subsidiaries.

(e) Neither the Company nor any of its Subsidiaries have made an election under Section 108(i) of the code with respect to income from the discharge of indebtedness.

(f) The Company and its Subsidiaries have complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and have duly and timely withheld and paid over to the appropriate Tax authority all amounts required to be so withheld and paid under all applicable Laws, including any Taxes in connection with any amounts paid or owing to any present or former employee, officer, director, independent contractor, creditor, stockholder or any other third party.

(g) Intentionally omitted.

(h) Neither the Company nor any of its Subsidiaries has made any payments or has been or is a party to any contract, agreement, plan or other arrangement that, individually or collectively, could give rise to the payment of any amount for which all or any part of a deduction would be disallowed by reason of Section 162(m) or Section 280G of the Code or that would be subject to withholding under Sections 409A, 457A or 4999 of the Code (whether directly under such Section or pursuant to Section 3401).

(i) The Company has made available to Parent correct and complete copies of (i) all income and franchise Tax Returns of the Company and its Subsidiaries for the preceding three taxable years, (ii) any audit report issued by any Governmental Entity within the last three years (or otherwise with respect to any audit or proceeding in progress) relating to Taxes of the Company or any of its Subsidiaries and (iii) all materials private letter rulings, closing agreements, settlement agreements, and similar documents sent to or received by the Company or any of its Subsidiaries from any Governmental Entity relating to Taxes.

(j) The Company is not, and has not been at any time within the five years prior to the closing, a "United States real property holding corporation" within the meaning of Section 897 of the Code.

(k) There are no Liens for Taxes on any of the assets of the Company or any of its Subsidiaries, other than Permitted Liens.

(l) None of the Company or any of its Subsidiaries has engaged in any "reportable transaction" within the meaning of Treasury Regulation Sections 1.6011-4(b).

(m) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(n) The Company and each of its Subsidiaries have disclosed on their federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662.

(o) Neither the Company nor any of its Subsidiaries is a party to or bound by any Tax allocation, indemnification or sharing agreement or any other agreement of a similar nature, other than commercial agreements the principal purpose of which is unrelated to Taxes and which was entered into in the ordinary course of business. Neither the Company nor any of its Subsidiaries (i) has been a member of an "affiliated group" (within the meaning of Code Section 1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (ii) has any liability or obligation for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

(p) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the day of the Effective Time; (ii) "closing agreement" as described in Code Section 7121 (or any corresponding or similar provision of state, local, or foreign income Tax law) executed on or prior to the day of the Effective Time; (iii) intercompany transaction or excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local, or foreign income Tax law); (iv) installment sale or open transaction disposition made on or prior to the day of the Effective Time; or (v) prepaid amount received on or prior to the day of the Effective Time.

(q) Except as set forth in Section 4.18(q) of the Company Schedule of Exceptions, neither the Company nor any of its Subsidiaries (i) owns any interest in any entity that is organized outside the United States, (ii) has filed a Form 8832 with the Internal Revenue Service, or otherwise made a "classification" election under Treasury Regulations Section 301.7701-3 or (iii) has, within the past 10 years, filed any Tax Returns purporting to be, or reporting as an "S corporation" (within the meaning of Code Section 1361(a)) for U.S. federal or any state or local income Tax purposes.

(r) Each of the Company and its Subsidiaries has conducted all aspects of its business in accordance in all material respects with the terms and conditions of all Tax rulings, Tax concessions and Tax holidays that were provided by any relevant tax authority.

(s) Except to the extent that there is no material Tax liability in the aggregate, the Company and its Subsidiaries do not have any nexus in any jurisdiction where they have not been filing all applicable Tax Returns, which nexus would subject the Company or its Subsidiaries to an obligation to collect or pay Taxes in such jurisdiction.

(t) For purposes of this Agreement: (i) "*Tax*" or "*Taxes*" shall mean (A) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, escheat, payroll, employment, social security, environmental, unemployment, excise, severance, windfall, profit, stamp, occupation, property and estimated taxes, custom duties, fees, assessments and charges of any kind whatsoever, (B) all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Entity in connection with any item described in clause (A), and (C) any liability in respect of any items described in clauses (A) and/or (B) payable by reason of contract, assumption, transferee liability, operation of Law, Treasury Regulations Section 1.1502-6(a) (or any predecessor or successor thereof of any analogous or similar provision under Law) or as an indemnitor, guarantor, surety or in a similar capacity under any contract, arrangement, agreement, understanding or commitment (whether oral or written) or otherwise; and (ii) "*Tax Return*" shall mean any return, report, claim for refund, estimate, information return or statement or other similar document relating to or required to be filed with any Governmental Entity or Person with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Section 4.19 Offer Documents; Schedule 14D-9; Proxy Statement. Neither the Schedule 14D-9 nor any information supplied by the Company for inclusion in the Offer Documents shall, at the times the Schedule 14D-9, the Offer Documents or any amendments or supplements thereto are filed with the SEC or are first published, sent or given to stockholders of the Company, as the case may be, and at the Acceptance Time 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 the light of the circumstances under which they were made, not misleading. Neither the proxy statement to be sent to the stockholders of the Company in connection with the Company Stockholders Meeting nor the information statement to be sent to such stockholders, as appropriate, if any required (such proxy statement or information statement, as amended or supplemented, being referred to herein as the "*Proxy Statement*"), shall, at the date the Proxy Statement (or any amendment or supplement thereto) is first mailed to stockholders of the Company and at the time of the Company Stockholders Meeting, contain any untrue statement of 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 in which they were made, not misleading. The Schedule 14D-9 and the Proxy Statement shall comply in all material respects as to form with the requirements of the Exchange Act and the rules and regulations thereunder. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to any information supplied by Parent or Merger Sub or any of their Representatives for inclusion in any of the foregoing documents or the Offer Documents.

Section 4.20 Related Party Transactions.

(a) No director, Executive Officer, or Affiliate of the Company or any of its Subsidiaries (collectively, "*Affiliated Persons*") or, to the Knowledge of the Company, its employees has borrowed any monies from or has outstanding any indebtedness or other similar obligations to the Company or any of its Subsidiaries. To the Company's knowledge, no Affiliated Persons own any direct or indirect interest of any kind in, or is a director, officer, employee, partner, affiliate or associate of, or consultant or lender to, or borrower from, or has the right to participate in the management, operations or profits of, any person or entity which is (i) a competitor, supplier, customer, distributor, lessor, tenant, creditor or debtor of the Company or any of its Subsidiaries, (ii) engaged in a business related to the business of the Company or any of its Subsidiaries, (iii) participating in any transaction to which the Company or any of its Subsidiaries is a party or (iv) otherwise a party to any contract, arrangement or understanding with the Company or any of its Subsidiaries.

(b) The contracts of the Company and its Subsidiaries do not include any material obligation or commitment between the Company and any Affiliated Person. The assets of the Company and its Subsidiaries do not include any receivable or other obligation or commitment from an Affiliated Person to the Company or any Subsidiary. The liabilities of the Company and its Subsidiaries do not include any payable or other obligation or commitment from the Company to any Affiliated Person, other than payment of compensation.

(c) To the Knowledge of the Company, no Affiliated Person of the Company is a party to any contract with any customer or supplier of the Company or any Subsidiary that affects in any material manner the business, financial condition or results of operation of the Company.

Section 4.21 Worker Safety Laws. The properties, assets and operations of the Company, together with its Subsidiaries, are in material compliance with all applicable federal, state, local and foreign laws, rules and regulations, orders, decrees, judgments, permits and licenses relating to public and worker health and safety (collectively, "*Worker Safety Laws*"). With respect to such properties, assets and operations, including any previously owned, leased or operated properties, assets or operations, to the Knowledge of the Company, there are no past or present conditions, circumstances, activities, practices, incidents, or actions of the Company or any Subsidiary that do not comply with applicable Worker Safety Laws.

Section 4.22 Substantial Customers.

(a) Section 4.22(a) of the Company Schedule of Exceptions lists the fifteen (15) largest customers of the Company (based on revenues for the 12-month period ending on the December 31, 2011), with the name of each such customer redacted, but the revenue for such 12-month period specified.

(b) As of the date hereof, no such customer described in Section 4.22(a) above has (i) ceased or materially reduced its purchases from the Company since the beginning of such 12-month period, (ii) to the Knowledge of the Company, threatened to cease or materially reduce such purchases or (iii) to the Knowledge of the Company, been threatened with bankruptcy or

insolvency. All contracts with the customers required to be set forth on Section 4.22(a) of the Company Schedule of Exceptions (the "*Substantial Customer Contracts*") are valid and in full force and effect except to the extent they have previously expired, or otherwise terminated, in accordance with their terms. Neither the Company nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a default under the provisions of, any Substantial Customer Contract, except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to result in a Company Material Adverse Effect.

Section 4.23 Opinion of Financial Advisor. The Company received the written opinion of Stifel Nicolaus Weisel ("*Stifel Nicolaus*") to the effect that, as of the date of such opinion and based upon and subject to the factors and assumptions set forth herein, the Per Share Amount to be received by the holders of Company Shares pursuant to the Offer and the Merger is fair to the Company's stockholders from a financial point of view (the "*Fairness Opinion*").

Section 4.24 Brokers. Other than Stifel Nicolaus, no broker, investment banker or other Person is entitled to any broker's, finder's or other similar fee or commission in connection with any of the Transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

Section 4.25 Section 203; No Stockholder Rights Plan. The Company and the Company Board have taken all appropriate actions so that, assuming the accuracy of the representations and warranties set forth in Section 5.11, the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby, including the Offer and the Merger. As of the date hereof, the Company does not have in effect any stockholder rights plan or "poison pill".

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 5.1 Organization and Qualification. Each of Merger Sub and Parent is a corporation duly organized, validly existing and in good standing under the laws of Delaware and each has the requisite power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each of Merger Sub and Parent is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where any failure to be so licensed or qualified would not reasonably be expected to have, when aggregated with all other such failures, a Parent Material Adverse Effect.

Section 5.2 Charter Documents and Bylaws. Parent has heretofore furnished to the Company a complete and correct copy of the certificate of incorporation and bylaws of each of

Parent and Merger Sub in full force and effect as of the date hereof. Neither Parent nor Merger Sub is in violation of any of the provisions of its certificate of incorporation or bylaws, except where any failure does not have a Parent Material Adverse Effect.

Section 5.3 Authority. Each of Merger Sub and Parent has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the Transactions. The execution and delivery of this Agreement by Merger Sub and Parent and the consummation of the Merger and the other Transactions have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of Merger Sub or Parent are necessary to authorize their execution and delivery of this Agreement or to consummate the Transactions (other than the filing and recordation of appropriate merger documents as required by the DGCL). This Agreement has been duly and validly executed and delivered by each of Merger Sub and Parent, and (assuming this Agreement constitutes a valid and binding obligation of the Company, and binding effect of this Agreement on the Company) constitutes the valid and binding obligations of each of Merger Sub and Parent, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to creditors' rights generally and to general principles of equity.

Section 5.4 No Violation; Required Filings and Consents.

(a) The execution and delivery by each of Merger Sub and Parent of this Agreement does not, and the performance of this Agreement and the consummation by each of Merger Sub and Parent of the Transactions will not, (i) conflict with or violate any provision of Parent's certificate of incorporation or bylaws or conflict with or violate any provision of the certificate of incorporation or bylaws (or equivalent organizational documents) of any subsidiary of Parent (including Merger Sub), or (ii) assuming that all consents, approvals, authorizations and other actions described in Section 4.4(b) have been obtained and all filings and obligations described in Section 4.4(b) have been made or complied with, conflict with or violate any Law applicable to Parent or any of its Subsidiaries or by which any asset of Parent or any of its Subsidiaries is bound or affected, (iii) conflict with, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or require any payment under, or give rise to a loss of any benefit to which Parent or any Subsidiary of Parent is entitled under any provision of any contract applicable to any of them or their respective properties or assets or (iv) result in the creation or imposition of a Lien on any asset of Parent or any of its subsidiaries, except in the case of clauses (ii), (iii) and (iv) of this Section 5.4(a), to the extent that any such conflict, violation, breach, default, right, loss or Lien would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) The execution and delivery by each of Merger Sub and Parent of this Agreement does not, and the performance of this Agreement and the consummation by each of Merger Sub and Parent of the Transactions will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity, except for: (i) applicable requirements, if any, of the Exchange Act, the Securities Act, the HSR Act and other applicable Antitrust Laws, NASDAQ and the rules and regulations thereunder, and filing and recordation of appropriate documents for the Merger as required by the DGCL; and (ii) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to be made or obtained would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 5.5 Litigation. There is no suit, claim, action, Proceeding or investigation pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries, at law or in equity, that, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect. Neither Parent nor any of its Subsidiaries is subject to any outstanding order, writ, injunction or decree that, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect.

Section 5.6 Brokers. Other than Merrill, Lynch, Pierce, Fenner & Smith Incorporated, no broker, investment banker or other Person is entitled to any broker's, finder's or other similar fee or commission in connection with any of the Transactions contemplated by this Agreement based upon arrangements made by, or on behalf of, Parent or Merger Sub.

Section 5.7 Financial Capability.

(a) Parent and Merger Sub will have as of the Acceptance Time and the Closing sufficient funds available to them to (a) pay the Per Share Amount for any Company Shares validly tendered and not withdrawn pursuant to the terms of the Offer Documents, (b) pay the Aggregate Merger Consideration, (c) make the deposit into the Payment Fund required by Section 3.10 and (d) pay any expenses incurred by Parent and Merger Sub in connection with the Transactions contemplated by this Agreement. Parent and Merger Sub's ability to consummate the transactions contemplated by this Agreement is not contingent on raising any equity capital, obtaining financing therefor, consent of any lender or any other matter relating to funding payments under this Agreement.

(b) Parent has delivered to the Company a true and complete copy of the fully executed commitment letter and the related fee letter (with only the fee amounts redacted therefrom) (together, the "*Commitment Letter*") dated as of the date hereof among Parent, J.P. Morgan Securities LLC, SunTrust Bank and SunTrust Robinson Humphrey, Inc. pursuant to which and subject to the terms and conditions thereof the parties thereto (other than Parent) have committed to provide the debt financing in connection with the transactions contemplated hereby (the "*Financing*").

(c) The Commitment Letter is in full force and effect and is a legal, valid and binding obligation of Parent and, to the knowledge of Parent, the other parties thereto. As of the date hereof, the Commitment Letter has not been amended or modified in any respect, and the respective commitments contained therein have not been withdrawn, rescinded or otherwise modified in any respect. As of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a material default or material breach under the Commitment Letter, and Parent has no reason to believe that it will be unable to satisfy on a timely basis, any term or condition of closing to be satisfied by it, contained in the Commitment Letter. There are no conditions precedent to the funding of the full amount of the Financing other than the conditions precedent set forth in the Commitment Letter, and Parent has no reason to believe that it will not be able to satisfy any term or condition of closing of the Financing that is required to be satisfied as a condition of the Financing, or that the Financing will not be made

available to Parent on the Closing Date. There are no other agreements, side letters, or arrangements relating to the Financing that could affect the availability of the Financing. Parent has fully paid any and all commitment fees or other fees required by the Commitment Letter to be paid by it on or prior to the date of this Agreement.

Section 5.8 Merger Sub. All of the outstanding capital stock of Merger Sub is owned directly by Parent. Merger Sub has not conducted any activities or operations other than in connection with its organization, the negotiation and execution of this Agreement and the consummation of the Transactions, and activities related thereto, including acquisition of the capital stock of the Company. Merger Sub does not have any Subsidiaries.

Section 5.9 Offer Documents; Proxy Statement; Schedule 14D-9. The Offer Documents shall not, at the time the Offer Documents are filed with the SEC or are first published, sent or given to stockholders of the Company, as the case may be, and at the Acceptance Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The information supplied by Parent for inclusion in the Schedule 14D-9 and Proxy Statement, if any, shall not, at the date first mailed to stockholders of the Company, and at the time of the Company Stockholders Meeting, if any, 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 were made, not false or misleading, or necessary to correct any statement in any earlier communication with respect to the solicitation of proxies for the Company Stockholders Meeting which shall have become false or misleading. Notwithstanding the foregoing, Parent and Merger Sub make no representation or warranty with respect to any information supplied by the Company or any of its representatives for inclusion in any of the foregoing documents or the Offer Documents. The Offer Documents shall comply in all material respects as to form with the requirements of the Exchange Act and the rules and regulations thereunder.

Section 5.10 Vote Required. No vote of the holders of any of the outstanding shares of capital stock of Parent is necessary to approve this Agreement and the Transactions.

Section 5.11 Ownership and Affiliation. Neither of Parent and Merger Sub is, nor at any time during the last three years has either of them been, an “interested stockholder” (as defined in Section 203 of the DGCL) of the Company. None of Parent, Merger Sub and to Parent’s knowledge the other Affiliates of Parent beneficially owns any shares of Company Common Stock. Neither Parent nor Merger Sub has entered into any contract with any officer or director of the Company in connection with the Transactions.

Section 5.12 Representations and Warranties. Each of the representations and warranties contained in this Article V will be true and correct as of the Closing Date, except for (A) changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by the Company and (B) those representations and warranties which address matters only as of a particular date, in which case, those shall be true and correct as of such date.

ARTICLE VI

COVENANTS

Section 6.1 Conduct of Business Prior to the Effective Time. Except as expressly permitted herein, set forth in Section 6.1 of the Company Schedule of Exceptions, or required by Law, from the Execution Date through the Effective Time or the termination of this Agreement pursuant to its terms, the Company shall, and cause its Subsidiaries to, conduct its business in all material respects in the ordinary course of its business consistent with past practice and, to the extent consistent therewith, use its reasonable best efforts to maintain and preserve substantially intact its business organization and the goodwill of those having business relationships with it. Without limiting the foregoing, and except as otherwise expressly contemplated by this Agreement or as set forth in Section 6.1 of the Company Schedule of Exceptions, or required by Law, from the Execution Date through the Effective Time or the termination of this Agreement pursuant to its terms, the Company shall not, nor shall it permit any of its Subsidiaries to, without the prior written consent of Parent (not to be unreasonably withheld or delayed):

(a) Declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, other than any such transaction by a wholly-owned Subsidiary of it that remains a wholly-owned Subsidiary of it after consummation of such transaction in the ordinary course of business; *provided, however*, that nothing herein shall be construed as prohibiting the Company from granting any Ordinary Course Grants (as defined below);

(b) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of its capital stock or the capital stock of its Subsidiaries, other than net issuances of Company RSUs upon the vesting thereof, repurchases of unvested shares at cost or for *de minimis* consideration in connection with either the termination of the employment relationship with any employee or upon the resignation of any director or consultant, in each case, pursuant to stock option, RSU or purchase agreements in effect on the date hereof;

(c) Issue, deliver, sell, authorize, pledge or otherwise encumber any shares of capital stock, or subscriptions, rights, warrants or options to acquire any shares of capital stock or any securities convertible into shares of capital stock, or enter into other agreements or commitments obligating it to issue any such securities or rights, other than: (A) issuances of Company Common Stock upon the exercise of Company Options, the vesting of Company RSUs, the exercise of Company Warrants or other rights of the Company existing on the date hereof in accordance with their present terms or granted pursuant to clauses (B), (C) or (D) hereof, (B) grants of Company Options with Ordinary Course Pricing (as defined below) or Company RSUs made in the ordinary course of business consistent with past practice and with Ordinary Course Vesting (as defined below) to new Company employees under the Company's Amended and Restated 2009 Stock Incentive Plan (the "*2009 Plan*"), (C) grants of Company Options with Ordinary Course Pricing (as defined below) or Company RSUs to existing Company employees (other than to (i) directors, (ii) executive officers and (iii) disqualified individuals within the meaning of Section 280G of the Code if the issuance to such persons

would result in a corresponding deduction to be disallowed under Section 280G), under the 2009 Plan to retain with the Company, and induce continued services from, such persons as employees and (D) grants of Company Options with Ordinary Course Pricing or Company RSUs to existing Company employees (other than to (i) directors, (ii) executive officers and (iii) disqualified individuals within the meaning of Section 280G of the Code if the issuance to such persons would result in a corresponding deduction to be disallowed under Section 280G), under the 2009 Plan with Ordinary Course Vesting and in the ordinary course of business consistent with past practice in connection with annual compensation reviews or ordinary course promotions (the grants described, and subject to the limitations, in clauses (B), (C) and (D), the "*Ordinary Course Grants*"); *provided, however*, that the Company Options and Company RSUs granted pursuant to clauses (C) and (D) shall not exceed grants to acquire 350,000 shares of Company Common Stock in the aggregate, and for purposes of this Section 6.1, "*Ordinary Course Vesting*" shall mean Company Options and Company RSUs with a vesting schedule no more favorable than one-quarter (1/4) on the one-year anniversary of the date of grant, and one-forty-eighth (1/48) on each monthly anniversary of the date of grant thereafter and "*Ordinary Course Pricing*" shall mean Company Options with a per share exercise price at the time of grant that is no less than the greater of $16 per share of Company Common Stock and the fair market value of a share of Company Common Stock as determined in the 2009 Plan;

(d) Cause, permit or propose any amendments to the Company Certificate or Company Bylaws (other than as contemplated by this Agreement);

(e) Sell, lease, license, encumber or otherwise dispose of any properties or assets except (A) sales of inventory that are in the ordinary course of business consistent with past practice, (B) the sale, lease or disposition (other than through licensing) of property or assets which are not material, individually or in the aggregate to the business of the Company and its Subsidiaries, taken as a whole, (C) perpetual licenses of the Company Products in the ordinary course of business consistent with past practice having no material support, maintenance or service obligations other than those obligations that are terminable by the Company or any of its Subsidiaries upon no more than one year notice without liability or financial obligation to the Company or its Subsidiaries or (D) for the provision of the Company Products on a hosted services basis in the ordinary course of business consistent with past practice;

(f) Make any loans, advances or capital contributions to, or investments in, any other Person, other than (A) loans or investments by it or a Subsidiary of it to or in it or any Subsidiary of it, (B) employee loans in the ordinary course of business consistent with past practices or (C) otherwise in the ordinary course of business consistent with past practices;

(g) Except for any change required by GAAP or by reason of a change in the rules and regulations of the PCAOB or SEC, make any material change in its methods or principles of accounting.

(h) Make or change any material Tax election, adopt or change any material Tax accounting method, enter into any closing agreement with respect to material Taxes, settle or compromise any material Tax liability, file any amended Tax Return, consent to any extension or waiver of any limitation period with respect to Taxes, prepare any Tax Returns in a manner that is not consistent in all material respects with the past practice of the Company and its Subsidiaries, or fail to withhold, accrue or pay when due any payroll Taxes and penalties.

(i) Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any material assets other than in the ordinary course of business consistent with past practice;

(j) Adopt or put into effect a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries (other than in connection with the Transactions);

(k) Enter into or adopt any, materially amend or terminate any existing, severance plan, agreement or arrangement or enter into or materially amend any Benefit Plan or employment, retention or consulting agreement or other similar agreement or arrangement, other than in the ordinary course of business;

(l) Increase the compensation payable or to become payable to its directors, officers or employees (except for increases in the ordinary course of business consistent with past practice) or grant any severance or termination pay to, any director or officer of the Company, or establish, adopt, enter into, or, except as may be required to comply with applicable law, amend in any material respect or take action to enhance in any material respect or accelerate any rights or benefits under, any labor, collective bargaining, bonus, profit sharing, thrift, compensation, stock option, pension, retirement, deferred compensation, employment, termination, severance, retention or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee; *provided*, *however*, that nothing herein shall be construed as prohibiting the Company from granting any Ordinary Course Grants; *provided*, *further, however*, that nothing herein shall limit the Company's ability to amend Company Employee Plans, Employee Agreements, employment, severance, termination or indemnification agreements to the extent necessary (A) to bring such plans or agreements into compliance with Sections 409A and 457A of the Code or to secure an exemption from Sections 409A and 457A of the Code, or (B) to reduce or prevent the imposition on any employee or other "disqualified individual" (as defined in Code Section 280G and the regulations thereunder) of excise taxes pursuant to Section 4999 of the Code with respect to payments or benefits thereunder;

(m) Enter into, amend or terminate any material agreement or contract with any customer, supplier, sales representative, agent or distributor other than in the ordinary course of business;

(n) Grant any exclusive rights with respect to any Company Intellectual Property;

(o) Enter into, or renew, any contracts containing, or otherwise subject the Surviving Corporation or Parent to, any non-competition, exclusivity or other material restrictions on the Company or the Surviving Corporation or Parent, or any of their respective businesses, which is material to the business of the Company and its Subsidiaries, taken as a

whole; *provided*, *however*, that the Company may renew such contracts for a period of one year or less on the same terms in place prior to the date of this Agreement so long as none of Parent nor any of its Subsidiaries (other than, following the Closing, the Surviving Corporation or any of its Subsidiaries) are, or following the Closing would be subject to, any such non-competition, exclusivity or other restrictions provided therein;

(p) Pay, discharge or satisfy any claims, liabilities or obligations (whether or not absolute, accrued, asserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities adequately reflected or reserved against in, the most recent financial statements (or the notes thereto) of the Company or incurred in the ordinary course of business consistent with past practice that would not otherwise have a Company Material Adverse Effect on the Company; or

(q) Authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

Section 6.2 Stockholders Meeting.

(a) If the adoption of this Agreement by the Company's stockholders is required by Law, the Company shall, as soon as practicable following the Acceptance Time (*provided*, *however*, that the Minimum Condition has been satisfied), in accordance with applicable Law and the Company Certificate and Company Bylaws, duly call, give notice of, convene and hold a special meeting of its stockholders (the "*Company Stockholders Meeting*") for the purpose of considering and voting upon the approval and adoption of this Agreement, the Merger and such other matters as may be necessary to effectuate the Transactions. The Company Board shall, subject to Section 6.10, (i) recommend to the stockholders of the Company the approval and adoption of this Agreement and the Merger, (ii) include in the Proxy Statement such favorable recommendation of the Company Board that the stockholders of the Company vote in favor of the approval and adoption of this Agreement and the Merger, and (iii) take all lawful action to solicit such approval from the stockholders of the Company.

(b) If the adoption of this Agreement by the Company's stockholders is required by Law, the Company shall, as soon as practicable following the Acceptance Time (*provided*, *however*, that the Minimum Condition has been satisfied), (i) promptly prepare and file with the SEC (but in no event later than thirty (30) days after the date hereof), use its commercially reasonable efforts to have cleared by the SEC and thereafter mail to its stockholders as promptly as practicable the Proxy Statement and all other proxy materials required in connection with such meeting, (ii) notify Merger Sub and Parent of the receipt of any comments of the SEC with respect to the Proxy Statement and of any requests by the SEC for any amendment or supplement thereto or for additional information and shall provide to Merger Sub and Parent copies of all correspondence between the Company or any representative of the Company and the SEC, (iii) subject to the terms of Section 6.10, use its commercially reasonable efforts to obtain the necessary approvals by its stockholders of this Agreement and the Merger, and (iv) use its commercially reasonable efforts otherwise to comply with all legal requirements applicable to such meeting. The Company, Parent and Merger Sub shall cooperate with each

other in the preparation of the Proxy Statement. Parent, Merger Sub and their counsel shall be given a reasonable opportunity to review and comment upon the Proxy Statement and any amendments or supplements thereto (and shall provide any comments thereon as soon as practicable, but in no event later than three (3) Business Days after being asked to comment) prior to the filing thereof with the SEC. Each of the Company and Parent further agrees that if such party shall become aware prior to the Effective Time of any information furnished by such party that would cause any of the statements in the Proxy Statement to be false or misleading with respect to any material fact, or to omit to state any material fact necessary to make the statements therein not false or misleading, to promptly inform the other parties thereof and to take the necessary steps to correct the Proxy Statement. Notwithstanding the foregoing, if Merger Sub or any other subsidiary of Parent shall acquire at least ninety percent (90%) of the outstanding shares of Company Common Stock with or without exercising its rights under the Top-Up Option, the Parties shall take all necessary and appropriate action to cause the Merger to become effective as soon as practicable after the expiration of the Offer without a stockholders meeting in accordance with Section 253 of the DGCL.

(c) Parent shall cause all shares of Company Common Stock purchased pursuant to the Offer and all other shares of Company Common Stock owned by Merger Sub or any other subsidiary of Parent to be voted in favor of the approval and adoption of this Agreement.

Section 6.3 Filings and Consents.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use its reasonable best efforts (i) to cooperate with one another in determining which filings are required to be made by each party prior to the Effective Time with, and which consents, approvals, permits or authorizations are required to be obtained by each party prior to the Effective Time from, Governmental Entities (including such filings as are required under the HSR Act and other Antitrust Laws, and payment of fees thereunder, which shall be paid by Parent) or other third parties in connection with the execution and delivery of this Agreement and the consummation of the Transactions and (ii) to assist the other party in timely making all such filings and timely seeking all such consents, approvals, permits, authorizations and waivers required to be made and obtained by the other party

(b) The Parties agree to cooperate and to use their reasonable best efforts to obtain all permits, authorizations, consents, clearances, approvals, waivers, actions or non-actions required for Closing from a Governmental Entity under any Antitrust Law (collectively the "*Antitrust Consents*") as soon as reasonably possible, to respond promptly to any requests from any Governmental Entity for information under any Antitrust Law relating to the Offer, the Top-Up Option, or the Merger (including without limitation a "second request" under the HSR Act), and to contest and resist any administrative or judicial action by any Governmental Entity (an "*Antitrust Action*") that seeks to restrict, prevent or prohibit the consummation of the Offer, the Top-Up Option or the Merger or any other transactions contemplated by this Agreement under any Antitrust Law; provided, however, that Parent shall not be required to have vacated, lifted, reversed or overturned any order, decree, judgment or permanent injunction (an "*Antitrust Order*") that prevents or prohibits the consummation of the Offer, the Top-Up Option or the Merger. The Parties will consult and cooperate with one another, and consider in good faith the

views of one another, in connection with, and provide to the other Parties in advance with reasonable time for review, any analyses, appearances, presentations, memoranda, briefs, arguments, opinions, proposals or other communications prepared for submission to a Governmental Entity under any Antitrust Law in connection with the Offer, the Top-Up Option or the Merger and made or submitted by or on behalf of any Party hereto in connection with proceedings under or relating to any Antitrust Law. Subject to the relevant Governmental Entity's consent, each Party will provide the other Parties advance notice of, and permit representatives of the other Parties to attend and participate in, all meetings with a Governmental Entity relating to the Offer, the Top-Up Option, or the Merger under any Antitrust Law.

(c) For the avoidance of doubt, "*reasonable best efforts*" for purposes of this Section 6.3 shall include the obligation by Parent, Merger Sub, and any of their Subsidiaries to negotiate and consent to, and thereafter to implement, any of the following measures if doing so would enable the Parties to obtain the Antitrust Consents or resolve any Antitrust Action under Section 6.3(b): (i) sell, license, assign, transfer, divest, hold separate or otherwise dispose of any assets, business or portion of business of the Company, the Surviving Corporation, Parent, Merger Sub or any of their respective Subsidiaries, (ii) conduct, restrict, operate, invest or otherwise change the assets, business or portion of business of the Company, the Surviving Corporation, Parent, Merger Sub or any of their respective Subsidiaries in any manner, or (iii) impose any restriction, requirement or limitation on the operation of the business or portion of the business of the Company, the Surviving Corporation, Parent, Merger Sub or any of their respective Subsidiaries; *provided*, *however*, that "reasonable best efforts" shall not require Parent, Merger Sub, or any of their respective Subsidiaries to take any action described in subsections (i) – (iii) above if doing so would be materially adverse to the business, financial condition or results of operations of Parent, the Surviving Corporation and their Subsidiaries taken as a whole and, *provided further*, that if requested by Parent, the Company will become subject to, consent to, or offer or agree to, or otherwise take any action with respect to, any such requirement, condition, limitation, understanding, agreement or order provided that such requirement, condition, limitation, understanding, agreement or order is only binding on the Company in the event the Closing occurs.

Section 6.4 Public Announcements. The initial press release regarding the Transactions shall be a joint press release with respect to the execution of this Agreement and thereafter. Prior to the Closing, the Parties will not issue any press release with respect to the Transactions contemplated by this Agreement or otherwise issue any written public statements with respect to such Transactions without the prior written consent of the other party, except as may be required by applicable law or regulation, in which case the party making such disclosure will first provide to the other party the text of the proposed disclosure, the reasons such disclosure is required and the time and manner in which the disclosure is intended to be made.

Section 6.5 Access to Information. From the date of this Agreement until the earlier of Effective Time and the date this Agreement is properly terminated in accordance with Article VIII, the Company will, and will cause each of its Subsidiaries and its and their affiliates, and each of their respective officers, directors, employees, agents, counsel, accountants, investment bankers, financial advisors and representatives (collectively, the "*Company Representatives*") to, give Merger Sub and Parent and their respective officers, directors, employees, agents, counsel, accountants, investment bankers, financial advisors, representatives, consultants and financing

sources (collectively, the "*Parent Representatives*") access, upon reasonable notice and during normal business hours, to the offices and other facilities and to the books and records and personnel of the Company and each of its Subsidiaries and will cause its Subsidiaries and the Company Representatives to furnish Parent, Merger Sub and the Parent Representatives with such financial and operating data and such other information with respect to the business and operations of the Company and its subsidiaries as Parent, Merger Sub or the Parent Representatives may from time to time reasonably request. Neither the Company nor any of its Subsidiaries shall be required to provide access to, or disclose, information to the extent such access or disclosure would jeopardize or violate any attorney-client privilege or contravene any law, rule, regulation, order, judgment, decree or binding agreement entered into prior to the date of this Agreement (it being agreed that the parties shall use their reasonable best efforts to cause such information to be provided in a manner that would not result in such jeopardy or contravention). The Company makes no representation or warranty as to the accuracy of any information provided pursuant to this Section 6.5, and neither Merger Sub nor Parent may rely on the accuracy of any such information, in each case other than as expressly set forth in the Company's representations and warranties contained in Article IV. The information provided pursuant to this Section 6.5 will be used solely for the purpose of effecting the Transactions and each of Parent and Merger Sub will, and will cause the Parent Representatives to, treat any such information in accordance with the terms and conditions of that certain Mutual Nondisclosure Agreement dated November 7, 2011 between the Company and Parent (the "*Confidentiality Agreement*") and those certain Letter Agreements, dated December 22, 2011, December 23, 2011, December 27, 2011 and December 30, 2011, between the Company and Parent (collectively, the "*Diligence Agreements*").

Section 6.6 Notification of Certain Matters. Parent shall use its reasonable best efforts to give notice as promptly as practicable to the Company, and the Company shall use its reasonable best efforts to give notice as promptly as practicable to Parent, of: (a) the occurrence or non-occurrence of any event or circumstance, of which the Parent or Company (as applicable) is aware, and which causes (i) the representations or warranties contained in this Agreement and made by it to fail to be true and correct in all material respects or (ii) the covenants, conditions or agreements contained in this Agreement and made by it not to be complied with or satisfied in all material respects; (b) any failure of any of Parent, Merger Sub, or the Company, as the case may be, to comply in all material respects in a timely manner with or satisfy its respective covenants, conditions or agreements to be complied with or satisfied by it hereunder; (c) in the case of the Company, a Company Material Adverse Effect; and (d) in the case of the Parent, a Parent Material Adverse Effect. Notwithstanding anything in the Agreement to the contrary, (A) the failure of any Party to provide a notice required under this Section 6.6 shall not constitute a failure of a condition to the obligations of any Party in this Agreement or Annex A nor shall such failure affect the right of any Party to terminate in accordance with Article VIII, unless in any case the event or circumstance relates to a Company Material Adverse Effect (in the case of the Company) or a Parent Material Adverse Effect (in the case of Parent) and (B) the notice obligations under this Section 6.6 shall not modify or reduce the representations, warranties or covenants of any Party or the conditions to the obligations of any Party hereunder, nor shall it limit or otherwise affect the remedies available hereunder to the Party receiving such notice.

Section 6.7 Indemnification of Directors and Officers.

(a) The certificate of incorporation and the bylaws of the Surviving Corporation shall contain provisions with respect to indemnification, advancement of expenses and director exculpation, as are set forth in the Company Certificate and Company Bylaws as in effect at the date hereof (to the extent consistent with applicable Law), which provisions shall not be amended, repealed or otherwise modified for a period of six (6) years after the Effective Time in any manner that would adversely affect the rights thereunder of the persons who at any time prior to the Effective Time were entitled to indemnification, advancement of expenses or exculpation under the Company Certificate and Company Bylaws in respect of actions or omissions occurring at or prior to the Effective Time (including, without limitation, the Transactions), unless otherwise required by applicable Law.

(b) From and after the Effective Time and until the expiration of any applicable statutes of limitation, the Surviving Corporation shall indemnify, defend and hold harmless the present and former officers, directors, employees and agents of the Company and its subsidiaries (collectively, the "*Indemnified Parties*") against all losses, claims, damages, expenses (including reasonable attorneys' fees), liabilities or amounts that are paid in settlement of, or otherwise ("*Losses*"), in connection with any claim, action, suit, Proceeding or investigation, whether civil, criminal, administrative or investigative and including all appeals thereof (a "*Claim*") to which any Indemnified Party is or may become a party to by virtue of his or her service as a present or former director, officer, fiduciary or employee of the Company or any of its Subsidiaries or his or her serving at the request of the Company or its Subsidiaries as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, and arising out of actual or alleged events, actions or omissions occurring or alleged to have occurred at or prior to the Effective Time (including, without limitation, matters related to the negotiation, execution and performance of this Agreement or consummation of the Transactions), in each case to the fullest extent permitted and provided in the Company Certificate and Company Bylaws as in effect at the date hereof and as permitted under the DGCL.

(c) Prior to the Effective Time, (i) the Company shall obtain "tail" insurance policies with a claims period of six (6) years from the Effective Time with respect to directors' and officers' liability insurance in an amount and scope no less favorable than the existing policy of the Company for claims arising from facts or events that occurred on or prior to the Effective Time at a cost that is reasonable and customary for tail insurance policies with its existing directors' and officers' liability policy insurer or an insurer with a comparable insurer financial strength rating as the Company's existing directors' and officers' liability policy insurer; or (ii) if the Company shall not have obtained such tail policy, the Surviving Corporation will provide for a period of not less than six (6) years after the Effective Time the directors and officers who are insured under the Company's directors' and officers' insurance policy with an insurance policy that provides coverage for events occurring at or prior to the Effective Time (the "*D&O Insurance*") that is not less favorable taken as a whole than the existing policy of the Company or, if substantially equivalent insurance coverage is unavailable, the best available coverage; *provided*, *however*, that the Surviving Corporation shall not be required to pay an aggregate premium for the D&O Insurance in excess of 300% of the annual premium currently paid by the Company for such insurance; *provided further, however*, that if the annual premium of such

coverage exceeds such amount, the Surviving Corporation shall use its commercially reasonable efforts to obtain a policy with the greatest coverage available for a cost not exceeding such amount. The Company shall use commercially reasonable efforts to obtain competitive quotes (from insurance providers with comparable ratings) for such insurance coverage in an effort to reduce the cost thereof.

(d) The obligations under this Section 6.7 shall not be terminated or modified in such a manner as to affect adversely any Indemnified Party to whom this Section 6.7 applies without the consent of such affected Indemnified Party (it being expressly agreed that the Indemnified Parties to whom this Section 6.7 applies and their respective heirs, successors and assigns shall be express third-party beneficiaries of this Section 6.7). This Section 6.7 shall survive the consummation of the Merger and is intended to be for the benefit of, and shall be enforceable by, the Indemnified Parties referred to herein, their heirs and personal representatives and shall be binding on the Surviving Corporation and its successors and assigns.

(e) If the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each case, to the extent necessary, proper provision shall be made so that the successors and assigns of the Surviving Corporation shall assume the obligations set forth in this Section 6.7.

Section 6.8 Employee Benefit Matters.

(a) From and after the Effective Time, Company Benefit Plans in effect as of the date of this Agreement shall remain in effect with respect to employees of the Company (or their Subsidiaries) covered by such plans at the Effective Time until such time as Parent shall, subject to applicable Law, the terms of this Agreement and the terms of such plans, adopt new benefit plans with respect to employees of the Company and its Subsidiaries (the "*New Benefit Plans*"). Prior to the Effective Time, Parent and the Company shall cooperate in reviewing, evaluating and analyzing Company Benefit Plans with a view towards developing appropriate New Benefit Plans for the employees covered thereby. At such time as any New Benefit Plans are implemented, Parent will, and will cause its Subsidiaries to, with respect to all New Benefit Plans, (i) provide each employee of the Company or its Subsidiaries with service or other credit for all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to employees of the Company or its Subsidiaries under any New Benefit Plan that is a welfare plan that such employees may be eligible to participate in after the Effective Time, to the extent that such employee would receive credit for such conditions under the corresponding welfare plan in which any such employee participated immediately prior to the Effective Time, (ii) provide each employee of the Company or its Subsidiaries with credit for any co-payments and deductibles paid in satisfying any applicable deductible or out-of-pocket requirements under any New Benefit Plan that is a welfare plan that such employees are eligible to participate in after the Effective Time, (iii) provide each employee with credit for all service for purposes of eligibility, vesting and benefit accruals (but not for benefit accruals under any defined benefit pension plan) with the Company and its Subsidiaries, under each employee benefit plan, program, or arrangement of Parent or its Subsidiaries in which such employees are eligible to participate after the Effective Time, and (iv)

provide benefits under medical, dental, vision and similar health and welfare plans that are in the aggregate no less favorable than those provided to similarly situated employees of Parent and its Subsidiaries; *provided*, *however*, that in no event shall the employees be entitled to any credit to the extent that it would result in a duplication of benefits with respect to the same period of service. Notwithstanding anything to the contrary in this Section 6.8, Parent shall have no obligation to provide any credit for service, co-payments, deductibles paid, or for any purpose, unless and until Parent has received such supporting documentation as Parent may reasonably deem to be necessary in order to verify the appropriate credit to be provided.

(b) If requested by Parent at least seven (7) days prior to the Effective Time, the Company shall terminate any and all Company Benefit Plans intended to qualify under Section 401(k) of the Code, effective not later than the last business day immediately preceding the Effective Time. In the event that Parent requests that such 401(k) plan(s) be terminated, the Company shall provide Parent with evidence that such 401(k) plan(s) have been terminated pursuant to resolution of the Company's Board (the form and substance of which shall be subject to review and approval by Parent) not later than the day immediately preceding the Effective Time.

(c) The foregoing notwithstanding, Parent shall, and shall cause its Subsidiaries to, honor in accordance with their terms all benefits accrued through the Effective Time under Company Benefit Plans or under other contracts, arrangements, commitments, or understandings described in the Company Schedule of Exceptions.

Section 6.9 Further Assurances; Reasonable Efforts. Upon the terms and subject to the conditions set forth in this Agreement, prior to the Effective Time, each of the Parties agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement.

Section 6.10 No Solicitation.

(a) Company Takeover Proposal.

(i) The Company shall not, nor shall it authorize or permit any Company Subsidiary to, nor shall it authorize or permit any Company Representatives to, directly or indirectly, (i) solicit, initiate or encourage the submission of, any Company Takeover Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or take any other action to facilitate knowingly the making of any inquiry or any proposal that constitutes, or would reasonably be expected to lead to, any Company Takeover Proposal or (iii) make or authorize any statement, recommendation or solicitation in respect of any Company Takeover Proposal (except as permitted by Section 6.10(b)).

(ii) The Company shall, and shall cause each of the Company Subsidiaries and each Company Representative to, (A) immediately cease and cause to be terminated all discussions or negotiations with any person conducted heretofore with respect to

any proposal that constitutes or would reasonably be expected to lead to a Company Takeover Proposal and (B) request the prompt return or destruction of all confidential information previously furnished. The Company shall, and shall cause each Company Subsidiary to, enforce (and not release any person from any obligations under) any confidentiality, standstill or similar agreement to which the Company or any Company Subsidiary is a party.

(iii) Notwithstanding the foregoing, at any time prior to the acceptance for payment of shares of Company Common Stock pursuant to the Offer, the Company may, in response to a Company Takeover Proposal that the Company Board determines in good faith after consultation with outside counsel and an independent financial advisor of nationally recognized reputation is or is reasonably likely to result in a Superior Company Proposal that was not solicited by the Company or Company Representatives and that did not otherwise result from a breach of this Section 6.10(a), and subject to providing prior written notice of its decision to take such action to Parent and compliance with Section 6.10(c): (A) furnish information with respect to the Company and the Company Subsidiaries to the person making such Company Takeover Proposal pursuant to a confidentiality agreements not less restrictive of the other party than the Confidentiality Agreement (as defined in Section 6.5), provided that all such information not previously provided to Parent is provided or made available on a substantially concurrent basis to Parent and (B) participate in discussions or negotiations with the person making such Company Takeover Proposal regarding such Company Takeover Proposal.

(b) Change in Recommendation.

(i) Neither the Company nor the Company Board nor any committee thereof shall (A) (1) withdraw or modify, or propose to withdraw or modify the approval or recommendation by the Company Board or any such committee of this Agreement, the Offer or the Merger or (2) approve or recommend, or propose to approve or recommend, any Company Takeover Proposal (either (1) or (2) being a "*Change in Recommendation*") or (B) approve, cause or permit the Company or any Company Subsidiary to enter into any letter of intent, agreement in principle, acquisition agreement or similar agreement (each, an "*Acquisition Agreement*") relating to any Company Takeover Proposal.

(ii) Notwithstanding the foregoing, the Company may, to the extent that the Company Board determines after consultation with outside counsel that a failure to do so would be inconsistent with the fiduciary obligations of the Company Board under applicable Laws, (A) make a Change in Recommendation or (B) at any time prior to the acceptance for payment of shares of Company Common Stock pursuant to the Offer, in response to a Superior Company Proposal that was not solicited by or on behalf of the Company or any Company Subsidiary and did not otherwise result from a breach of Section 6.10(a), terminate this Agreement pursuant to Section 8.1(e) so long as concurrently with or immediately after such termination, the Company Board causes the Company to accept such Superior Company Proposal and enter into an Acquisition Agreement with respect thereto; *provided*, *however*, that such determination shall not be made prior to the fifth Business Day following receipt by Parent of a Superior Proposal Notice. A "*Superior Proposal Notice*" means a written notice to Parent from the Company advising Parent that the Company Board is prepared to make a Change in Recommendation or accept a Superior Company Proposal, specifying the terms and conditions of such Superior Company Proposal and identifying the person making such Superior Company

Proposal (it being understood and agreed that any material amendment to the price or any other material term of such Superior Company Proposal shall require a new Superior Proposal Notice and a new five (5) Business Day period, as provided above). During the three (3) Business Day period following receipt of the Superior Company Proposal (the "*Negotiation Period*"), the Company shall negotiate in good faith with Parent to make such revisions to the terms and conditions of this Agreement as would permit the Company Board not to make a Change in Recommendation or accept a Superior Company Proposal; provided that, in the event the Person making a Superior Company Proposal revises such Superior Company Proposal in response to revisions proposed by Parent, the Company shall notify and provide a copy to Parent of such revised Superior Company Proposal within 24 hours of receipt thereof and the Parent and Company shall enter into a Negotiation Period during the two (2) Business Day period following delivery of such revised Superior Company Proposal to Parent. If Parent proposes no such revisions during such period as would permit the Company Board not to make a Change in Recommendation, then the Company and the Company Board may take such actions described in (A) and (B) above if after consultation with the Company's financial advisors and outside legal counsel, the Company Board shall have determined in good faith that the third party's proposal remains a Superior Company Proposal (even in light of any of Parent's revised proposals) and that, after consultation with its outside legal counsel, the failure to make a Change in Recommendation would be inconsistent with its fiduciary duties under applicable law.

(c) Company Takeover Proposal Information. The Company shall promptly, but in any event within forty-eight (48) hours, advise Parent orally and in writing of any Company Takeover Proposal (including any change to the terms of any such Company Takeover Proposal) and the identity of the person making any such Company Takeover Proposal. The Company shall (i) keep Parent fully informed of the status of any such Company Takeover Proposal, and (ii) promptly advise Parent of any material amendments to the terms of any such Company Takeover Proposal. The Company shall not take any actions whether contractually or otherwise to limit its ability to comply with its obligations hereunder; provided, that the failure to take any such action would not be inconsistent with the fiduciary obligations of the Company Board.

Section 6.11 Section 16 Matters. Prior to the Effective Time, the Company Board, or an appropriate committee of non-employee directors thereof, shall duly adopt a resolution that the disposition by any officer or director of the Company who is a covered Person of the Company for purposes of Section 16 of the Exchange Act and the rules and regulations thereunder of Shares, Company Options, Company RSUs pursuant to this Agreement, and the Offer and the Merger shall be an exempt transaction for purposes of Section 16 of the Exchange Act.

Section 6.12 Rule 14d-10(d) Matters. Prior to the Expiration Date, the Company (acting through the compensation committee of the Company Board) shall take all such steps as may be required to cause each agreement and arrangement entered into by the Company or a Subsidiary of the Company on or after the date hereof with any of its officers, directors or employees pursuant to which consideration is paid to such officer, director or employee to be approved as an "employment, compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(1) under the Exchange Act and to satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d-10(d) under the Exchange Act.

Section 6.13 Obligations of Merger Sub. Prior to the earlier of the Effective Time or the termination of this Agreement in accordance with its terms:

(a) Merger Sub shall not, and Parent shall cause Merger Sub not to, undertake any business or activities other than in connection with this Agreement and engaging in the Merger and the other Transactions.

(b) Parent shall take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger and the other Transactions on the terms and subject to the conditions set forth in this Agreement.

(c) Parent and Merger Sub shall not engage in any action or enter into any transaction or permit any action to be taken or transaction to be entered into that would reasonably be expected to materially delay the consummation of, or otherwise adversely affect, the Merger or any of the other Transactions. Without limiting the generality of the foregoing, Parent shall not, and shall cause its Subsidiaries not to, acquire (whether via merger, consolidation, stock or asset purchase or otherwise), or agree to so acquire, any material amounts of assets of or any equity in any Person or any business or division thereof, unless that acquisition or agreement would not (i) impose any delay in the obtaining of, or increase the risk of not obtaining, any authorizations, consents, orders, declarations or approvals of any Governmental Entity necessary to consummate the Merger or the other Transactions or the expiration or termination of any waiting period under applicable Law, or (ii) increase the risk of any Governmental Entity entering an order prohibiting the consummation of the Merger, or the other Transactions or increase the risk of not being able to remove any such order on appeal or otherwise.

Section 6.14 Rights Agreements. The Company covenants and agrees that it will not adopt a stockholder rights plan or "poison pill."

Section 6.15 Fairness Opinion. As soon as practicable following the date of this Agreement, the Company shall deliver a written copy of the Fairness Opinion to Parent solely for informational purposes.

Section 6.16 Tax Matters. During the period from the date of this Agreement to the date of the Effective Time, (i) the Company and each of its Subsidiaries shall timely file all Tax Returns required to be filed by each such entity during such period (after taking into account any extensions) (each, a "*Post-Signing Return*"), which Post-Signing Returns shall be complete and correct in all respects and, except as otherwise required by Law, shall be prepared on a basis consistent with the past practice of the Company; *provided*, *however*, that no material Post-Signing Returns shall be filed with any Governmental Entity without Parent's written consent, which consent shall not be unreasonably withheld or delayed; (ii) the Company and each of its Subsidiaries shall timely pay all Taxes due and payable with respect to the Tax periods covered by such Post-Signing Returns; (iii) the Company shall accrue a liability in its books and records and financial statements in accordance with GAAP and past practice for all Taxes payable by the Company or any of its Subsidiaries for which no Post-Signing Return is due prior to the day of the Effective Time; (iv) the Company and each of its Subsidiaries shall promptly notify Parent of any suit, claim, action, investigation, proceeding or audit pending against or with respect to the

Company or any of its Subsidiaries in respect of any material amount of Tax and will not settle or compromise any such suit, claim, action, investigation, proceeding or audit without Parent's prior written consent, which consent shall not be unreasonably withheld or delayed; and (v) the Company and each of its Subsidiaries shall retain all books, documents and records necessary for the preparation of Tax Returns and reports and Tax audits consistent with its standard policy.

Section 6.17 Intentionally Omitted.

Section 6.18 Stockholder Litigation. The Company shall keep Parent reasonably informed regarding the defense or settlement of any stockholder litigation against the Company and/or its directors relating to the Transactions; provided, however, that nothing in this Section 6.18 shall (i) give Parent the right to participate in or control any such defense or settlement or (ii) require the Company to provide any information or make any disclosures to Parent that might jeopardize or violate the attorney-client privilege or contravene any law, rule, regulation, order, judgment, decree or agreement. Notwithstanding the foregoing, no settlement shall be agreed to without Parent's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed) if Parent is a party to any such litigation and such settlement contains any stipulations of fact related to the merits of the claims against Parent that would reasonably be expected to be adverse to the Parent's defense of such litigation.

Section 6.19 Financing.

(a) Parent and Merger Sub shall use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange and obtain the Financing on the terms and conditions described in the Commitment Letter as promptly as practicable after the date hereof, including their reasonable best efforts to (i) maintain in effect the Commitment Letter, (ii) negotiate and enter into, and keep in effect, definitive agreements with respect thereto on the terms and conditions contained in the Commitment Letter (including the flex provisions) or on other terms no less favorable to Parent and Merger Sub, provided such terms do not contain any additional conditions to funding and would not otherwise reasonably be expected to impair or delay the consummation of the Financing, (iii) satisfy on a timely basis all conditions applicable to Parent and Merger Sub in the Commitment Letter that are within their control, (iv) consummate the Financing at or prior to the Closing, including using their reasonable best efforts to cause the financing sources to fund the Financing at or prior to the Closing, (v) to take each of the actions required of the Company and its Subsidiaries in paragraphs (b)(i) through (b)(v) below with respect to themselves and their Subsidiaries, and (vi) enforce their rights under the Commitment Letter (including by taking such action necessary to cause each other party thereto to specifically perform their obligations in accordance with the terms thereof). In the event of any termination of the Commitment Letter or the receipt by Parent of written notice that the counterparty to the Commitment Letter no longer intends to provide the Financing, (A) Parent shall promptly notify the Company (such notice being a "*Financing Termination Notice*") and (B) Parent and Merger Sub shall arrange and obtain financing from alternative sources (the "*Alternative Financing*") as promptly as practicable following the occurrence of such event. Parent shall provide the Company regular updates regarding its progress in obtaining such Alternative Financing and shall deliver to the Company true and complete copies of all agreements related to such Alternative Financing (excluding fee letters and engagement letters to the extent Parent is prohibited from providing

such letters) promptly upon the execution thereof. In furtherance of the provisions of this Section 6.18, the Commitment Letter may be amended, restated, supplemented or otherwise modified or superseded at the option of Parent after the date of this Agreement but prior to the Effective Time by instruments (the "*New Commitment Letters*") that replace the existing Commitment Letter or contemplate financing from one or more other or additional parties; provided that the terms of the New Commitment Letters shall not (1) expand upon the conditions precedent to the Financing as set forth in the existing Commitment Letter, (2) reasonably be expected to, directly or indirectly, prevent, impede, delay or hinder the Closing or (3) reduce the aggregate amount of available Financing. In such event, the term "Commitment Letter" as used herein shall be deemed to include the Commitment Letter that are not so superseded at the time in question and the New Commitment Letters to the extent then in effect. Parent shall deliver to the Company true and complete copies of all agreements related to such New Commitment Letters (excluding fee letters and engagement letters to the extent Parent is prohibited from providing such letters) promptly upon the execution thereof.

(b) The Company shall use its commercially reasonable efforts to, and shall cause the Company Subsidiaries and their respective Representatives to use their reasonable best efforts to, provide all cooperation in connection with the arrangement of the Financing as may be reasonably requested by Parent (provided that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and the Company Subsidiaries), including (i) making senior management of the Company available to participate in meetings, due diligence sessions, presentations, "road shows" and sessions with rating agencies, (ii) assisting with the preparation of customary materials for rating agency presentations, offering documents, private placement memoranda, bank information memoranda, prospectuses and similar documents required in connection with the Financing, (iii) furnishing Parent and its financing sources with customary financial and other pertinent information regarding the Company and the Company Subsidiaries (the "*Required Information*"), including financial statements, pro forma financial information, financial data, audit reports and other information of the and form customarily included in such documents, (iv) assisting Parent in obtaining accountants' comfort letters, legal opinions, surveys and title insurance and (v) executing and delivering any commitment letters, underwriting or placement agreements, registration statements, pledge and security documents, other definitive financing documents or other requested certificates or documents, including a customary solvency certificate by the Chief Financial Officer of the Company (provided that (A) none of the letters, agreements, registration statements, documents and certificates shall be executed, delivered or filed except upon the occurrence of the Closing and (B) the effectiveness thereof shall be conditioned upon, or become operative after, the occurrence of the Closing). Notwithstanding the foregoing, in the case of each of clauses (i) through (v) above of the prior sentence, (A) none of the Company or any of its Subsidiaries shall be required to pay any commitment or other fee, provide any security or incur any other liability or obligation in connection with the Financing prior to the Closing, and (B) (I) all non-public or other confidential information provided by the Company or any of its representatives pursuant to this Section 6.18 shall be kept confidential in accordance with the Confidentiality Agreement, except that Parent shall be permitted to disclose such information to potential lending syndicate members during syndication, subject to customary confidentiality undertakings by such potential syndicate members and (II) the Company shall be permitted a reasonable period to comment on any documents or other information circulated to potential financing sources that contain or are based upon any such non-public or other confidential information. Parent shall indemnify and

hold harmless the Company, its Subsidiaries and the Company's Representatives from and against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties suffered or incurred by them in connection with the arrangement of the Financing (including any action taken in accordance with this Section 6.18(b)) and any information utilized in connection therewith. Parent shall, promptly upon request by the Company, reimburse the Company for all documented and reasonable out-of-pocket costs incurred by the Company, its Subsidiaries and the Company's Representatives in connection with this Section 6.18(b). The Company hereby consents to the reasonable use of its and its Subsidiaries' logos in connection with the Financing in a manner customary for similar financing transactions. Parent acknowledges and agrees that the Company and its Affiliates and employees have no responsibility for any financing that Parent may raise in connection with the transactions contemplated hereby.

(c) Parent and Merger Sub acknowledge and agree that their obtaining of the Financing is not a condition to the Closing, and reaffirm their obligations to consummate the Transactions contemplated hereby, irrespective and independently of the availability of the Financing or the completion of such issuance.

ARTICLE VII

CONDITIONS PRECEDENT TO THE MERGER

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Stockholder Approval. If required by Law, this Agreement shall have been duly approved by the requisite vote of the stockholders of the Company in accordance with applicable Law and the Company Charter and Company Bylaws.

(b) Approvals. The waiting periods applicable to the Merger under the HSR Act and other applicable Antitrust Laws shall have expired or been terminated, and all Antitrust Consents applicable to the Merger shall have been obtained. All other authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity that are necessary to effect the Merger or any of the Transactions contemplated hereby shall have been obtained, shall have been made or shall have occurred.

(c) No Order. No court or other Governmental Entity having jurisdiction over the Company or Parent, or any of their respective Subsidiaries, shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the Merger or any of the Transactions contemplated hereby illegal.

(d) Offer. Merger Sub shall have purchased all Company Shares validly tendered and not withdrawn pursuant to the Offer; *provided, however*, that this condition shall not be applicable to the obligations of Parent or Merger Sub if, in breach of this Agreement or

the terms of the Offer, Merger Sub fails, or Parent fails to cause Merger Sub, to purchase any Company Shares validly tendered and not withdrawn pursuant to the Offer, notwithstanding the satisfaction or waiver by Merger Sub of all of the conditions to the Offer set forth in Annex A attached hereto.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

Section 8.1 Termination. Subject in all cases to Section 8.3 below, this Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after any requisite approval of the stockholders of the Company:

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

(b) by Parent prior to the acceptance of shares of Company Common Stock for payment pursuant to the Offer, if the representations and warranties made by the Company in this Agreement shall not be true and correct in all material respects, or if the Company breaches or fails to perform in any material respect its covenants or agreements contained in this Agreement, which failure to be true and correct, breach or failure to perform (i) would give rise to the failure of a condition set forth in Annex A and (ii) cannot be or has not been cured prior to the Outside Date; provided that Parent shall have given the Company written notice, delivered at least ten (10) Business Days prior to such termination, stating Parent's intention to terminate this Agreement pursuant to this Section 8.1(b) and the basis for such termination;

(c) by the Company prior to the acceptance of shares of Company Common Stock for payment pursuant to the Offer, if the representations and warranties made by Parent or Merger Sub in this Agreement shall not be true and correct in all material respects, or if either Parent or Merger Sub breaches or fails to perform in any material respect its respective covenants or agreements contained in this Agreement, which failure to be true and correct, breach or failure to perform (i) would give rise to a Parent Material Adverse Effect and (ii) cannot be or has not been cured prior to the Outside Date; provided that the Company shall have given Parent written notice, delivered at least ten (10) Business Days prior to such termination, stating the Company's intention to terminate this Agreement pursuant to this Section 8.1(c) and the basis for such termination;

(d) by either Parent or the Company if:

(i) if any Governmental Entity issues an order, decree or ruling or takes any other action permanently enjoining, restraining or otherwise prohibiting the acceptance for payment of, or payment for, shares of Company Common Stock pursuant to the Offer or the Merger and such order, decree, ruling or other action shall have become final and nonappealable; *provided, however*, that the right to terminate this Agreement pursuant to this subsection (i) shall not be available to any Party whose breach of any provision of this Agreement has been the cause of, resulted in, or contributed to, such order, decree, ruling or other action; or

(ii) if as the result of the failure of any of the conditions set forth in Annex A to this Agreement, the Offer shall have terminated or expired in accordance with its

terms (including after giving effect to any extensions) without Merger Sub having purchased any shares of Company Common Stock pursuant to the Offer prior to the Outside Date; *provided*, *however*, that the right to terminate this Agreement pursuant to this subsection (ii) shall not be available to any Party (A) whose failure to fulfill its obligations contained in this Agreement has been the cause of, resulted in, or contributed to, the failure of any such condition to have occurred on or prior to the aforesaid date or (B) who has failed to comply in all material respects with its covenants or agreements contained in this Agreement, which failure to comply has not been cured;

(e) by the Company, prior to the acceptance for payment of shares of Company Common Stock pursuant to the Offer, in accordance with Section 6.10(b); *provided*, *however*, that, in order for the termination of this Agreement pursuant to this subparagraph to be effective, the Company shall have complied with all of the provisions of Section 6.10, including the notice provisions therein, and with all applicable requirements of Section 8.3 including payment of the Company Termination Fee; or

(f) by Parent if the Minimum Condition shall not have been met by Outside Date; *provided*, *however*, that Parent's right to terminate this Agreement pursuant to this subsection (f) shall not be available if Parent or Merger Sub (A) has failed to fulfill any of its obligations contained in this Agreement and such failure has been the cause of, resulted in, or contributed to, the failure of the Minimum Condition to have been met on or prior to the aforesaid date or (B) has failed to comply in all material respects with any of its covenants or agreements contained in this Agreement, which failure to comply has not been cured.

Section 8.2 Effect of Termination. In the event of termination of this Agreement by either Parent or the Company, as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability hereunder on the part of the Company, Parent, Merger Sub or their respective officers or directors (except for the last sentence of Section 6.5 and the entirety of this Section 8.2, Section 8.3 and Article IX, which shall survive the termination); *provided*, *however*, that nothing contained in this Section 8.2 shall relieve any party hereto from any liability for any willful and material breach of a representation, warranty or covenant contained in this Agreement.

Section 8.3 Fees and Expenses.

(a) General. Except as set forth in Section 6.3 and this Section 8.3, all fees and expenses incurred in connection with this Agreement and the Transactions contemplated hereby shall be paid by the party incurring such expenses whether or not the Merger is consummated.

(b) Company Termination Fee. In the event that:

(i) This Agreement is terminated by the Company pursuant to Section 8.1(e); or

(ii) (A) the Company has knowledge of a Company Takeover Proposal and such Company Takeover Proposal shall have not been withdrawn, (B) a Company Takeover Proposal shall have been made directly to holders of Company Common Stock and such

Company Takeover Proposal shall have not been withdrawn or (C) any Person has publicly announced an intention (whether or not conditional), and not withdrawn its intent, to make a Company Takeover Proposal, and thereafter this Agreement is terminated pursuant to Section 8.1(d)(ii), or Section 8.1(f), and within twelve (12) months of such termination the Company either enters into an Acquisition Agreement or consummates a Company Takeover Proposal involving the Person who made the Company Takeover Proposal;

then in the case of (i) or (ii) above, the Company shall promptly, but in no event later than the date of the earliest such event, pay to Parent a fee equal to (A) Eleven Million Dollars ($11,000,000) plus (B) all reasonable, documented out-of-pocket Parent expenses relating hereto up to, but not exceeding, One and a Half Million Dollars ($1,500,000) in the aggregate ((A) and (B) collectively, the "*Company Termination Fee*"), payable by wire transfer of same day funds.

(iii) The Company acknowledges that the agreements contained in this Section 8.3(b) are an integral part of the Transactions, and that, without these agreements, Parent and Merger Sub would not enter into this Agreement. Accordingly, if the Company fails promptly to make a payment due pursuant to this Section 8.3(b), and, in order to obtain such payment, Parent or Merger Sub commences a suit that results in a judgment against the Company, the Company shall pay to Parent and Merger Sub their reasonable costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount set forth in this Section 8.3(b) at the prime rate of Wells Fargo and Company in effect on the date such payment was required to be made. Notwithstanding the foregoing, the parties hereto acknowledge and agree that in any proceeding by Parent or Merger Sub alleging breach of the Company's obligations under this Agreement, the amount of any Company Termination Fee previously paid by Company shall be credited against any damages that the Parent or Merger Sub may be entitled to receive.

(iv) In no event shall more than one Company Termination Fee be payable hereunder.

(c) Parent Termination Fee. If this Agreement is terminated (i) pursuant to Section 8.1 (other than subsections 8.1(b), 8.1(d)(i), 8.1(d)(ii) in respect of Annex A condition (a) and/or (c)(i), (ii), (iii) and/or (iv), and 8.1(e)) and there then exists any Antitrust Action, any Antitrust Consent has not been obtained or any Antitrust Order has not been vacated, lifted, reversed, or overturned or (ii) pursuant to Section 8.1(d)(i) or 8.1(d)(ii) in respect of Annex A condition (c)(i), (ii) or (iii) on account the existence of any Antitrust Action, the failure to obtain any Antitrust Consent or the failure to have vacated, lifted, reversed, or overturned any Antitrust Order, then Parent shall promptly, but in no event later than two (2) days after the date of such termination, pay to the Company a fee equal (A) Eleven Million Dollars ($11,000,000) plus (B) all reasonable, documented out-of-pocket Company expenses relating hereto up to, but not exceeding, One and a Half Million Dollars ($1,500,000) in the aggregate ((A) and (B) collectively, the "*Parent Termination Fee*"), payable by wire transfer of same day funds. For the avoidance of doubt, any payment to be made by Parent under this Section 8.3(c) shall be payable only once to Company with respect to this Section 8.3(c) and not in duplication even though such payment may be payable under one or more provisions hereof. Provided that Parent and Merger Sub have complied in all material respects with their obligations under this Agreement and have taken all actions required to be taken by Parent and Merger Sub pursuant to Section 6.3,

the Company's receipt of the Parent Termination Fee shall be the sole and exclusive remedy of the Company (and any of its stockholders, partners, members, Affiliates, directors, officers, employees, representatives or agents) in connection with this Section 8.3(c) whether at law or equity, in contract, tort or otherwise. Parent and Merger Sub acknowledge that the agreements contained in this Section 8.3(c) are an integral part of the Transactions, and that, without these agreements, Company would not enter into this Agreement. Accordingly, if the Parent fails promptly to make a payment due pursuant to this Section 8.3(c), and, in order to obtain such payment, Company commences a suit that results in a judgment against Parent or Merger Sub, Parent shall pay to Company its reasonable costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount set forth in this Section 8.3(c) at the prime rate of Wells Fargo and Company in effect on the date such payment was required to be made. Notwithstanding the foregoing, the parties hereto acknowledge and agree that in any proceeding by the Company alleging breach of Parent's or Merger Sub's obligations under this Agreement, the amount of any Parent Termination Fee previously paid by Parent shall be credited against any damages that the Company may be entitled to receive.

Section 8.4 Amendment. This Agreement may be modified or amended by the Parties hereto, by or pursuant to action taken by their respective boards of directors, in the case of Merger Sub or the Company, or Parent, at any time before or after approval of the matters presented in connection with the Merger by the stockholders of the Company, but, after any such approval, no modification or amendment shall be made which by law requires further approval by such stockholders without such further approval; *provided*, *however*, that no modification or amendment of this Agreement or of any provision of this Agreement shall be valid or enforceable unless in writing duly executed by each of the Parties hereto.

Section 8.5 Waiver. At any time prior to the Effective Time, the Parties hereto may (i) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (ii) waive any inaccuracies in the other Parties' representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the other Parties' agreements or conditions contained herein which may legally be waived. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. No failure of any Party to exercise any power given such Party hereunder or to insist upon strict compliance by any party with its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of that Party's right to demand exact compliance with the terms hereof. Any waiver shall not obligate that Party to agree to any further or subsequent waiver or affect the validity of the provision relating to any such waiver.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Non-Survival of Representations and Warranties. The representations, warranties and covenants of the Company, Parent and Merger Sub contained in this Agreement, or any instrument delivered pursuant to this Agreement, shall terminate at the Effective Time, except that the covenants that by their terms survive the Effective Time and this Article IX shall survive the Effective Time.

Section 9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (i) on the date of delivery if delivered personally, (ii) on the date of confirmation of receipt (or, the first Business Day following such receipt if such date is not a Business Day) of transmission by facsimile (but only if followed by transmittal by a nationally recognized overnight carrier for delivery on the next Business Day), or (iii) on the date of confirmation of receipt (or, the first Business Day following such receipt if such date is not a Business Day) if delivered by a nationally recognized overnight courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent, Merger Sub, or the Surviving Corporation, to:

BLACKBAUD, INC.
2000 Daniel Island Drive
Charleston, South Carolina
Attention: President
Facsimile No.: (843) 216-3676

with copies to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607
Attention: Donald R. Reynolds, Esq.
Facsimile No.: (919) 781-4865

If to the Company, to:

CONVIO, INC.
11501 Domain Drive, Suite 200
Austin, Texas 78758
Attention: President and Chief Executive Officer
Facsimile No.: (512) 652-2691

with copies to:

DLA Piper LLP (US)
401 Congress Avenue, Suite 2500
Austin, Texas 78701-3799
Attention: John J. Gilluly III, Esq.
Facsimile No.: (512) 457-7001

Section 9.3 Interpretation; Other Remedies. When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The table of contents, captions and headings contained in this Agreement are solely for convenience of reference and shall not be used to interpret or construe this Agreement. Any references in this Agreement to “herein,” “hereto,” “herewith” or “hereunder” shall be to this Agreement as a whole. Whenever the words “include,” “includes” or “including” are used in

this Agreement, they shall be deemed to be followed by the words "without limitation." The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. 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.

Section 9.4 Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 9.5 Entire Agreement; Third-Party Beneficiaries. This Agreement and all exhibits and attachments hereto, including the Company Schedule of Exceptions, the Confidentiality Agreement and the Diligence Agreements (i) 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, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement and (ii) are not intended to confer upon any other Person any rights or remedies hereunder, except (A) as specifically provided, following the Effective Time, in Sections 3.7, 3.8, 6.7 and 6.8 and (B) this Section 9.5 and Sections 9.10, 9.11 and 9.12 shall inure to the benefit of the Debt Financing Sources all of whom are intended to be third-party beneficiaries thereof (and those Sections shall not be amended or otherwise modified so as to adversely affect such Debt Financing Sources without the prior written consent of such Debt Financing Sources).

Section 9.6 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. Any purported assignment in violation of this Section 9.6 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 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 invalid, 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 hereto. The Parties further agree to negotiate in good faith to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

Section 9.8 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (a) each Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement

and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity, and this right shall include the right of the Company to cause Parent and Merger Sub to cause the Offer and the Merger to be consummated and (b) the parties shall waive, in any action for specific performance, the defense of adequacy of a remedy at Law. Each Party further agrees that no Party nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.8, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 9.9 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 9.10 Jurisdiction. Each of the Parties hereto irrevocably and unconditionally agrees that any legal action or Proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other Party hereto or its successors or assigns, shall be brought and determined exclusively in any court within the State of Delaware. Each of the Parties hereto hereby irrevocably submits with regard to any such action or Proceeding for itself and in respect of its property, generally and unconditionally, to the exclusive personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the Transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or Proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason, (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) to the fullest extent permitted by applicable Law, any claim that (A) the suit, action or Proceeding in such court is brought in an inconvenient forum, (B) the venue of such suit, action or Proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the Parties agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in Law or in equity, whether in contract or in tort or otherwise, against the Debt Financing Sources in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including, but not limited to any dispute arising out of or relating in any way to the Commitment Letter or the performance thereof against the Debt Financing Sources, in any forum other than the federal and New York State courts located in the City of New York, Borough of Manhattan (and appellate courts thereof).

Section 9.11 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore it hereby irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement and any of the agreements delivered by the Parties in connection herewith or the

Transactions contemplated hereby or thereby. Each Party certifies and acknowledges 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 either of such waivers, (b) it understands and has considered the implications of such waivers, (c) it makes such waivers 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.

Section 9.12 No Recourse to Debt Financing Sources. Notwithstanding anything herein to the contrary, the Company (on behalf of itself, its Subsidiaries and any of their respective stockholders, partners, members, Affiliates, directors, officers, employees, agents and representatives) hereby waives any rights or claims against any Debt Financing Source in connection with this Agreement, any Financing or the Commitment Letter, whether at Law or equity, in contract, in tort or otherwise and the Company (on behalf of itself, its Subsidiaries and any of their respective stockholders, partners, members, Affiliates, directors, officers, employees, agents and representatives) agrees not to commence any action or proceeding against any Debt Financing Source in connection with this Agreement, the Offer or the Merger (including any action or proceeding relating to any Financing or the Commitment Letter) and agrees to cause any such action or proceeding asserted by the Company (on behalf of itself, its Subsidiaries and any of their respective stockholders, partners, members, Affiliates, directors, officers, employees, agents and representatives) in connection with this Agreement, the Offer or the Merger (including any action or proceeding relating to any Financing or the Commitment Letter) to be dismissed or otherwise terminated. In furtherance and not in limitation of the foregoing waiver, it is acknowledged and agreed that no Debt Financing Source shall have any liability for any claims, losses, settlements, liabilities, damages, costs, expenses, fines or penalties to the Company or its Subsidiaries (or any of their respective stockholders, partners, members, Affiliates, directors, officers, employees, agents and representatives) in connection with this Agreement or the transactions contemplated hereby. Nothing in this Section 9.12 shall in any way expand or be deemed or construed to expand or limit the circumstances in which the Parent or Merger Sub may be liable under this Agreement (including as a result of the Financing).

[*Remainder of Page Intentionally Left Blank*]

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

BLACKBAUD, INC.

By:	/s/ Marc E. Chardon
Print Name:	Marc E. Chardon
Title:	President and Chief Executive Officer

CARIBOU ACQUISITION CORPORATION

By:	/s/ Marc E. Chardon
Print Name:	Marc E. Chardon
Title:	President and Chief Executive Officer

CONVIO, INC.

By:	/s/ Gene Austin
Print Name:	Gene Austin
Title:	Chief Executive Officer

ANNEX A

CONDITIONS TO THE OFFER

Notwithstanding any other provision of the Offer, neither Parent nor Merger Sub shall be required to accept for payment or, subject to any applicable rules and regulations of the SEC including Rule 14e-1(c) promulgated under the Exchange Act, pay for any Company Shares tendered pursuant to the Offer, and, subject to Section 2.1, may extend, terminate or amend the Offer in accordance with the Agreement if, the following conditions are not met:

(a) *Accuracy of Representations and Warranties and Covenant Compliance*

(i) The representations and warranties of the Company contained in the Agreement shall be true and correct at and as of the time Merger Sub accepts for purchase the Company Shares validly tendered pursuant to the Offer as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, result in a Company Material Adverse Effect; and

(ii) The Company shall have performed in all material respects all of its obligations required to be performed by it under the Agreement at or prior to the time Merger Sub accepts for purchase the Company Shares validly tendered pursuant to the Offer.

(b) *Minimum Tender*

There shall have been validly tendered and not properly withdrawn prior to the Outside Date, a number of Company Shares which, together with any shares of Company Common Stock Parent or Merger Sub beneficially owns, will constitute at least a majority of the total number of outstanding Company Shares as of the date that Merger Sub accepts the Company Shares for purchase, assuming all vested options and other rights to purchase shares of Company Common Stock for the Per Share Amount or less have been exercised (the "*Minimum Condition*").

(c) *Certain Other Conditions*

(i) No temporary restraining order, preliminary or permanent injunction or other order or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the completion of the Offer or the Merger shall be in effect; *provided*, *however*, that in the event of a temporary restraining order or preliminary injunction, Merger Sub shall, and Parent shall cause Merger Sub to extend the Offer until the earlier of the Outside Date or such time as such injunction is either lifted or finally determined to be permanent.

(ii) No statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any court, administrative agency or commission or other Governmental Entity that prohibits or makes illegal the completion of the Offer or the Merger;

(iii) There shall not be pending any suit, action or proceeding by any Governmental Entity: (A) seeking to prohibit the completion of the Offer; (B) seeking to prohibit the ownership or operation by the Company or Parent or any of their respective Subsidiaries of any material business or assets of the Company or Parent; or (C) seeking to prohibit Parent from effectively controlling in any material respect the business or operations of the Company;

(iv) As of the date that Merger Sub is scheduled to accept the Company Shares for purchase (as extended by Merger Sub from time to time), there shall not be any continuing Company Material Adverse Effect; and

(v) The waiting periods applicable to the Merger under the HSR Act and other applicable Antitrust Laws shall have expired or been terminated, and all Antitrust Consents applicable to the Merger shall have been obtained.

The foregoing conditions are for the sole benefit of Merger Sub and Parent and may be asserted by Merger Sub or Parent regardless of the circumstances giving rise to such condition or may be waived by Merger Sub and Parent in whole or in part at any time and from time to time in their sole discretion; *provided*, *however*, that the Minimum Condition may not be waived and, *provided further*, that Merger Sub and Parent may not assert the conditions described above if the failure of Merger Sub or Parent to fulfill its obligations contained in this Agreement has been the cause of, resulted in, or contributed to the failure of any such condition to have been satisfied. The failure by Parent, Merger Sub or any other affiliate of Parent at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right, the waiver of any such right with respect to particular facts and circumstances shall not be deemed a waiver with respect to any other facts and circumstances and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time.

EXHIBIT A

TENDER AND SUPPORT AGREEMENT

EXHIBIT B

COMPANY WARRANTS

EXHIBIT C

CERTIFICATE OF OWNERSHIP AND MERGER
(SHORT-FORM MERGER)

EXHIBIT D

CERTIFICATE OF MERGER
(LONG FORM MERGER)

Exhibit 10.52

TENDER AND SUPPORT AGREEMENT

This Tender and Support Agreement (this "Agreement"), is dated as of January 12, 2012, by and among Blackbuad, Inc., a Delaware corporation ("Parent"), and the stockholders of Convio, Inc., a Delaware corporation (the "Company"), listed on the signature pages hereto (each, a "Stockholder" and, collectively, the "Stockholders").

W I T N E S S E T H:

WHEREAS, Parent, Caribou Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of Parent (the "Purchaser"), and the Company are entering into an Agreement and Plan of Merger, dated as of the date hereof (as it may be amended from time to time in accordance with its terms, the "Merger Agreement"), providing for, among other things, Purchaser to commence a cash tender offer (the "Offer") to acquire all of the outstanding shares of common stock, par value $0.001 per share, of the Company (the "Company Common Stock") followed by the subsequent merger of Purchaser with and into the Company with the Company surviving the merger as a wholly owned subsidiary of Parent, in each case, on the terms and subject to the conditions set forth therein (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Merger Agreement);

WHEREAS, as of the date hereof, each Stockholder is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of the number of issued shares of Company Common Stock set forth on *Attachment A* hereto (the "Owned Shares"); and

WHEREAS, as a condition to Parent and Purchaser's willingness to enter into and perform its obligations under the Merger Agreement, Parent and Purchaser have required that each Stockholder agree, and each Stockholder has agreed, while this Agreement is in effect, to tender in the Offer (and not withdraw) all of such Stockholder's Owned Shares as well as any shares of Company Common Stock acquired by such Stockholder after the execution of this Agreement (all of which, after so acquired, shall constitute "Owned Shares");

NOW, THEREFORE, in consideration of the foregoing premises and the benefit to the parties of Parent's and the Company's entering into the Merger Agreement, the receipt of which is hereby acknowledged, the parties agree as follows:

1. *Agreement to Tender and Vote; Irrevocable Proxy.*

1.1 *Agreement to Tender.* Each Stockholder hereby agrees, while this Agreement is in effect, that promptly after the commencement of the Offer, but in any event no later than 5:00 p.m. New York, New York local time on the second Business Day before the initially scheduled expiration of the Offer, such Stockholder shall tender into the Offer all of such Stockholder's Owned Shares. No Stockholder shall, while this Agreement is in effect, withdraw any of such Stockholder's Owned Shares previously tendered. If the Offer is terminated or withdrawn by Purchaser, or the Merger Agreement is terminated prior to the purchase of the Owned Shares in the Offer, Parent shall promptly return, and shall cause any depository acting on behalf of Parent to return, all Owned Shares tendered by such Stockholder in the Offer to Stockholder.

1.2 *Agreement to Vote.* Each Stockholder hereby agrees that, while this Agreement is in effect, at any meeting of the stockholders of the Company, however called, or any adjournment or postponement or written consent in lieu thereof, such Stockholder shall be present (in person or by proxy) and vote (or cause to be voted) all of his, her or its Owned Shares (a) in favor of the adoption of the Merger Agreement and (b) against any alternative Company Takeover Proposal, or any other action that would impede, interfere with, delay, postpone, discourage or adversely affect the Offer, the Merger or any other transactions contemplated by the Merger Agreement.

1.3 *Irrevocable Proxy.* Solely with respect to the matters described in Section 1.2, while this Agreement is in effect, each Stockholder hereby irrevocably appoints Parent (or any nominee of Parent) as its attorney-in-fact and proxy with full power of substitution and resubstitution, to the full extent of such Stockholder's voting rights with respect to such Stockholder's Owned Shares (which proxy is irrevocable and which appointment is coupled with an interest, including for purposes of Section 212 of the DGCL to vote all such Stockholder's Owned Shares solely on the matters described in Section 1.2, and in accordance therewith). Each Stockholder hereby revokes any proxies previously granted that would otherwise conflict with the proxy contemplated pursuant to this Section 1.3 and agrees to execute any further agreement or form reasonably necessary or appropriate to confirm and effectuate the grant of the proxy contained herein. Such proxy shall automatically terminate upon the termination of this Agreement.

1.4. *Agreement Not to Exercise Appraisal Rights.* Each Stockholder hereby agrees that, while this Agreement is in effect, such Stockholder shall not exercise any rights (including, without limitation, under Section 262 of the DGCL) to demand appraisal of any Owned Shares in connection with the Merger.

1.5 *Fiduciary Duties*. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall limit or prevent any Stockholder from acting in his or her capacity as an officer or director of the Company in accordance with his or her fiduciary duties.

2. *Representations and Warranties of Stockholders.* Each Stockholder hereby represents and warrants to Parent, on a several and not joint basis, as follows:

2.1 *Due Organization.* Such Stockholder, if a corporation or other entity, has been duly organized, is validly existing and is in good standing under the laws of the state of its formation or organization.

2.2 *Power; Due Authorization; Binding Agreement.* Such Stockholder has full legal capacity, power and authority to execute and deliver this Agreement, to perform his, her or its obligations hereunder and to consummate the transactions contemplated hereby.

This Agreement has been duly and validly executed and delivered by such Stockholder and constitutes a valid and binding agreement of such Stockholder, enforceable against such Stockholder in accordance with its terms, except to the extent that enforceability may be subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors rights generally and to general principles of equity.

2.3 *Ownership of Shares.* On the date hereof, the Owned Shares set forth opposite such Stockholder's name on *Attachment A* hereto are owned of record or beneficially (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) by such Stockholder and include all of the Owned Shares owned of record or beneficially (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) by such Stockholder.

2.4 *No Conflicts.* The execution and delivery of this Agreement by such Stockholder does not, and the performance of the terms of this Agreement by such Stockholder will not, (a) require such Stockholder to obtain the consent or approval of, or make any filing with or notification to, any Governmental Authority (other than as contemplated by the Merger Agreement or required by SEC rules and regulations), (b) require the consent or approval of any other Person pursuant to any agreement, obligation or instrument binding on such Stockholder or his, her or its properties and assets or (c) conflict with or violate any organizational document or law, rule, regulation, order, judgment or decree applicable to such Stockholder or pursuant to which any of his, her or its properties or assets are bound. The Owned Shares are not, with respect to the matters contemplated by this Agreement, subject to any other agreement, including any voting agreement, stockholders agreement, irrevocable proxy or voting trust.

3. *Certain Covenants of the Stockholders.* Each Stockholder hereby covenants and agrees with Parent as follows:

3.1 *Restriction on Transfer.* Each Stockholder hereby agrees, while this Agreement is in effect, except as otherwise contemplated by the Merger Agreement, the Offer or Section 1.1 above, not to, other than as may be specifically required by a court order, (a) assign or otherwise dispose of (including, without limitation, by gift, merger, consolidation or reorganization), or enter into any contract, option or other agreement providing for the sale, transfer, pledge, encumbrance, assignment or other disposition of, or limitation on the voting rights of, any of the Owned Shares (any such action, a "Transfer") or (b) grant any proxies or powers of attorney, deposit any Owned Shares into a voting trust or enter into a voting agreement with respect to any Owned Shares. The foregoing restrictions on Transfer shall not prohibit the exercise by such Stockholder of any options or warrants to purchase Owned Shares and shall not prohibit any Transfers for estate planning or charitable purposes provided the transferee and such Stockholder expressly agree to be bound by the provisions of this Agreement with respect to such transferred Owned Shares in a written instrument reasonably satisfactory to Parent. If any involuntary Transfer of any of the Owned Shares shall occur (including, but not limited to, a sale by a Stockholder's trustee in any bankruptcy, or a sale to a purchaser at any

creditor's or court sale or any sale or transfer by operation of law, including, without limitation, by will or intestacy), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Owned Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement.

3.2 *Additional Shares.* Each Stockholder hereby agrees, while this Agreement is in effect, that any shares of Company Common Stock acquired by such Stockholder after the date hereof shall be subject to the terms of this Agreement as though owned by such Stockholder on the date hereof.

3.3 *No Limitations on Actions.* Each Stockholder signs this Agreement solely in his, her or its capacity as the owner of the Owned Shares; any trustee who signs this Agreement on behalf of a Stockholder that is a trust is signing only in his, her or its fiduciary capacity and not as an individual; this Agreement shall not limit or otherwise affect the actions of such Stockholder or any affiliate, employee or designee of such Stockholder or any of his, her or its affiliates in any other capacity, including such person's capacity, if any, as an officer of the Company or a member of the board of directors of the Company; and nothing herein shall limit or affect the Company's rights in connection with the Merger Agreement.

4. *Miscellaneous.*

4.1 *Termination of this Agreement.* This Agreement and the proxy granted under Section 1.3 shall terminate and shall have no further force or effect as of the earliest of: (a) the Outside Date; (b) the amendment of the Merger Agreement (including but not limited to the conditions and other terms of the Offer) to provide that the consideration for the purchase of the Stockholders' Owned Shares will be less than $16 per share or will not be paid all in cash; (c) any other modification or amendment of the Merger Agreement (including but not limited to the conditions and other terms of the Offer) in a manner that is adverse to the interests of the Stockholders or any of them under the Merger Agreement (including but not limited to not only their interests as stockholders, but also their interests under Section 6.7 of the Merger Agreement as officers and directors to the extent any of them are serving or have served in such capacities), without regard to the limitation on third-party beneficiary rights in Section 9.5 of the Merger Agreement; or (d) termination of the Merger Agreement. Notwithstanding the foregoing, nothing set forth in this Section or elsewhere in this Agreement shall relieve any party hereto from liability, or otherwise limit the liability of either party hereto, for any material breach of this Agreement.

4.2 *Entire Agreement; Assignment.* This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person or entity not a party hereto any right,

benefit or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement shall not be assigned by operation of law or otherwise and shall be binding upon and inure solely to the benefit of each party hereto.

4.3 *Amendments; Waiver.* This Agreement may be amended by each of the parties hereto only by an instrument signed by each of the parties hereto. Compliance with this Agreement may be waived only by an instrument signed on behalf of the party waiving compliance. Any amendment or waiver not affected in accordance with this Section 4.3 shall be null and void.

4.4 *Notices.* Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission (provided that any notice received by facsimile transmission or otherwise at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day), by reliable overnight delivery service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

If to the Stockholders:

To the respective addresses and fax numbers shown on the signature pages for each Stockholder

with copies to:

DLA Piper LLP (US)
401 Congress Avenue, Suite 2500
Austin, Texas 78701
Facsimile: (512) 721-2290
Attention: John J. Gilluly III

If to Parent:

Blackbaud, Inc.
2000 Daniel Island Drive
Charleston, South Carolina 29492
Facsimile: (843) 216-3676
Attention: President

with copies to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607
Facsimile: (919) 781-4865
Attention: Donald R. Reynolds

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered as of the date so telecommunicated, personally delivered or received. Any party to this Agreement may notify any other party of any changes to the address or any of the other details specified in this paragraph; provided, however, that such notification shall only be effective on the date specified in such notice or two Business Days after the notice is given, whichever is later. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

4.5 *Governing Law; Waiver of Jury Trial.* This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to conflicts of laws principles that would result in the application of the Law of any other state. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

4.6 *Specific Performance.* The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached. Each Stockholder agrees that, in the event of any breach or threatened breach by such Stockholder of any covenant or obligation contained in this Agreement, Parent shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to seek (a) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, and (b) an injunction restraining such breach or threatened breach. Each Stockholder further agrees that neither Parent nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section, and each Stockholder irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

4.7 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission.

4.8 *Rules of Construction.* The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

4.9 *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

4.10 *No Obligation to Exercise Options.* Notwithstanding any provision in this Agreement to the contrary, nothing in this Agreement shall obligate any Stockholder to exercise any option or other right to acquire shares of Company Common Stock.

[The next page is the signature page]

IN WITNESS WHEREOF, the parties hereto have caused this Tender and Support Agreement to be duly executed as of the day and year first above written.

PARENT:

Blackbaud, Inc.

By: _____
President

STOCKHOLDER:

_____
(Print signatory name)

_____
(Signature)

_____
(Title, if applicable)

Address:

Fax:

ATTACHMENT A- Details of Ownership

Entity or Individual Name	Shares

Exhibit 99.1

Blackbaud, Inc. Announces Agreement to Acquire Convio

- *Combining strengths will provide a comprehensive and compelling set of multi-channel supporter engagement solutions to nonprofit organizations of all sizes*
- *Combined company has over $440 million in trailing twelve months pro-forma revenue (9/30/11)*
- *Acquisition expected to be accretive to Blackbaud's 2012 non-GAAP EPS and contribute to substantial free cash flow*

Charleston, S.C. and Austin, TX – January 17, 2012 – Blackbaud, Inc. (NASDAQ: BLKB), the leading provider of software and related services designed for nonprofit organizations, announced today that it has entered into a definitive merger agreement with Convio, Inc. (NASDAQ: CNVO), a leading provider of on-demand constituent engagement solutions that enable nonprofit organizations to more effectively raise funds, advocate for change and cultivate relationships.

Blackbaud and Convio share the belief that fully engaged supporters drive maximum value for nonprofit organizations. The acquisition of Convio will combine the two companies' strengths to accomplish a common mission – making multi-channel supporter engagement a reality – at a faster pace than either company could achieve on its own. With nonprofit supporters acting across multiple channels, including receiving messages, donating, and advocating, across websites, social networks, email, mobile, events and direct mail, solutions must be designed to deliver optimum engagement across channels. Convio's strength in online and social is a perfect complement to Blackbaud's expertise, and its addition will enable Blackbaud to better serve nonprofit organizations.

Under the terms of the agreement, Blackbaud will acquire all outstanding shares of common stock of Convio for $16.00 per share, representing a premium of 49% compared to Convio's recent closing price and an enterprise value of approximately $275 million (based on fully diluted shares). Blackbaud will finance the deal through a combination of cash and debt. In addition to providing meaningful and immediate value for Convio's shareholders, the transaction is expected to be accretive to Blackbaud's non-GAAP financial results for the full year 2012 and increasingly so in future years.

The board of directors of both companies have unanimously approved the transaction. The acquisition is structured as a cash tender offer followed by a merger, and is expected to close during the first quarter of 2012. All Convio directors and officers and certain of its affiliates (representing over 30% of Convio's total outstanding shares) have agreed to tender all of their respective shares subject to tender and support agreements. The consummation of the tender offer is subject to various conditions, including a minimum tender of at least a majority of outstanding Convio shares on a fully diluted basis, the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, and other customary conditions.

Marc Chardon, Blackbaud's President and CEO, said, "We are extremely excited to announce our agreement to acquire Convio, which is a significant event for both companies. We fully expect that Convio's best-in-class, SaaS-based capabilities for large events, advocacy and federated organizations will enable Blackbaud to offer the industry's most diverse and flexible set of online capabilities on a global basis. Moreover, the addition of Convio will broaden Blackbaud's application portfolio, enabling the combined company to offer a comprehensive set of multi-channel supporter engagement solutions to nonprofit organizations of all sizes."

Chardon added, "Combining Convio and Blackbaud is expected to help create one of the largest SaaS vendors with over $440 million in trailing twelve months pro forma revenue. The strength and complementary nature of our combined value proposition will position Blackbaud well to capitalize on the large and underpenetrated market for delivering innovative solutions to the nonprofit industry."

Convio's products enable nonprofit organizations to harness the full potential of the Internet and social media as new channels for constituent engagement and fundraising. Convio has over 1,500 customers in the U.S., Canada and the U.K., including 29 of the top 50 U.S. charities. In 2010 alone, Convio's U.S. clients used its software and services to raise more than $1.3 billion online, send more than 4 billion emails, power more than 32 million advocacy actions and manage relationships with more than 248 million constituents.

Gene Austin, Convio's President and CEO, said, "We expect the combination of Convio and Blackbaud to provide large nonprofit organizations with the best of both worlds, the industry's strongest online fundraising solution along with market leading CRM capabilities. Our respective solutions, areas of vertical expertise and customer bases are highly complementary, and we have received many customer requests to integrate our capabilities over the years. We will now be able to meet this market demand and provide both of our customer bases with access to a broad and deep application suite designed specifically for nonprofit organizations."

After the acquisition closes, Austin will take on a leadership role at Blackbaud, reporting to Marc Chardon.

BofA Merrill Lynch is acting as the exclusive financial advisor with Wyrick Robbins Yates & Ponton LLP and Davis Polk & Wardell LLP serving as the legal advisors to Blackbaud. JPMorgan Chase Bank, N.A., SunTrust Bank and BofA Merrill Lynch are providing financing to Blackbaud for this transaction. J.P. Morgan Securities LLC is acting as lead arranger and lead bookrunner, with SunTrust Robinson Humphrey, Inc. acting as a joint lead arranger and joint bookrunner. Stifel, Nicolaus & Company, Incorporated is acting as the exclusive financial advisor with DLA Piper LLP (US) serving as the legal advisors to Convio.

Financial overview of transaction and combined company

Pro Forma Combined Company Financial Profile (trailing twelve months ended 9/30/2011, non- GAAP, unaudited)

- $440 million in revenue
- $94.9 million in adjusted EBITDA
- Free cash flow of $66.5 million*

* *Cash from operations of $83.0 million less capital expenditures of $16.5 million*

The acquisition of Convio will be funded by a combination of Blackbaud's existing cash balance, expansion and extension of the company's current debt facility, as well as newly issued syndicated debt. After closing the acquisition, the combined company is expected to have net debt of approximately $240 million, which represents approximately 2.5x proforma consolidated adjusted EBITDA for the twelve months ended September 30, 2011.

Tony Boor, Blackbaud's Senior Vice President and Chief Financial Officer, stated, "In addition to the strategic reasons supporting the acquisition of Convio, we believe it is also highly attractive from a financial perspective. We expect the transaction to have an accretive impact on our non-GAAP diluted earnings per share for the full year 2012, and even more so in future years as we realize efficiencies from integrating our companies. The addition of Convio will also significantly increase the size of Blackbaud's subscription revenue and further strengthen our SaaS and transactional offerings."

Boor added, “We are very confident in the company’s ability to service its new debt balance due to our free cash flow being much greater than our expected cash interest expense, in addition to the fact that we expect further enhancements of our cash flow following the acquisition and integration of Convio.”

Conference Call Details

Blackbaud will host a conference call today, January 17, 2012, at 8:15 a.m. (Eastern Time) to discuss the acquisition. To access this call, dial 877-857-6149 (domestic) or 719-325-4894 (international). A replay of the conference call will be available through January 24, 2012 at 877-870-5176 (domestic) or 858-384-5517 (international). The replay passcode is 3746993. A live webcast of this conference call will be available on the “Investor Relations” page of the Company’s website at www.blackbaud.com/investorrelations, and a replay will be archived on the website as well.

About Blackbaud

Serving the nonprofit and education sectors for 30 years, Blackbaud (NASDAQ: BLKB) combines technology and expertise to help organizations achieve their missions. Blackbaud works with more than 25,000 customers in over 60 countries that support higher education, healthcare, human services, arts and culture, faith, the environment, independent K-12 education, animal welfare, and other charitable causes. The company offers a full spectrum of cloud-based and on-premise software solutions and related services for organizations of all sizes including: fundraising, eMarketing, social media, advocacy, constituent relationship management (CRM), analytics, financial management, and vertical-specific solutions. Using Blackbaud technology, these organizations raise more than $100 billion each year. Recognized as a top company by Forbes, InformationWeek, and Software Magazine and honored by Best Places to Work, Blackbaud is headquartered in Charleston, South Carolina and has employees throughout the US, and in Australia, Canada, Hong Kong, Mexico, the Netherlands, and the United Kingdom. For more information, visit www.blackbaud.com**.**

About Convio

Convio is a leading provider of on-demand constituent engagement solutions that enable nonprofit organizations to maximize the value of every relationship. With Convio constituent engagement solutions, nonprofits can more effectively raise funds, advocate for change and cultivate relationships with donors, activists, volunteers, event participants, alumni and other constituents. Convio offers two open, cloud-based constituent engagement solutions: Convio Common Ground CRM™ for small- and mid-sized nonprofits and Convio Luminate™ for enterprise nonprofits. Headquartered in Austin, Texas with offices across the United States and United Kingdom, Convio serves more than 1,500 nonprofit organizations globally. Convio is listed on the NASDAQ Global Market under the symbol CNVO. For more information, please visit www.convio.com.

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SOURCE: Blackbaud, Inc.

Forward-looking Statements

Except for historical information, all of the statements, expectations, and assumptions contained in this news release are forward-looking statements that involve a number of risks and uncertainties. Although we attempt to be accurate in making these forward-looking statements, it is possible that future circumstances might differ from the assumptions on which such statements are based. In addition, other important factors that could cause results to differ materially include the following: risks that the Convio merger will not close or that its expected benefits will not be achieved (including risks that the tender offer is not successful or that the related debt financing, regulatory approvals and consents are not obtained); general economic risks; uncertainty regarding increased business and renewals from existing customers; continued success in sales growth; management of integration of acquired companies and other risks associated with acquisitions; risks associated with successful implementation of multiple integrated software products; the ability to attract and retain key personnel; risks related to our dividend policy and share repurchase program, including potential limitations on our ability to grow and the possibility that we might discontinue payment of dividends; risks relating to restrictions imposed by the credit facility; risks associated with management of growth; lengthy sales and implementation cycles, particularly in larger organizations; technological changes that make our products and services less competitive; and the other risk factors set forth from time to time in the SEC filings for Blackbaud and Convio, copies of which are available free of charge at the SEC's website at www.sec.gov or upon request from Blackbaud's investor relations department (with respect to Blackbaud filings) or upon request from Convio's investor relations department (with respect to Convio filings).

Non-GAAP Financial Measures

Blackbaud has provided in this release financial information that has not been prepared in accordance with GAAP. This information includes non-GAAP adjusted EBITDA and free cash flow. Blackbaud uses these non-GAAP financial measures internally in analyzing its financial results and believes they are useful to investors, as a supplement to GAAP measures, in evaluating Blackbaud's ongoing operational performance. Blackbaud believes that the use of these non-GAAP financial measures provides an additional tool for investors to use in evaluating ongoing operating results and trends and in comparing its financial results with other companies in Blackbaud's industry, many of which present similar non-GAAP financial measures to investors. The non-GAAP financial results discussed above exclude the following from net income: interest, taxes, depreciation and amortization, stock-based compensation, acquisition related costs and certain non-cash and non-recurring items.

Securities Law Disclosure

The tender offer for the outstanding common stock of Convio has not yet commenced. This press release is for informational purposes only and is not an offer to buy or the solicitation of an offer to sell any securities. The solicitation and the offer to buy shares of Convio common stock will be made only pursuant to an offer to purchase on Schedule TO and related materials that Blackbaud intends to file with the SEC. Convio also intends to file a solicitation/recommendation statement on Schedule 14D-9 with respect to the offer. Convio stockholders and other investors should read these materials carefully when they become available because they will contain important information, including the terms and conditions of the offer. Convio stockholders and other investors will be able to obtain copies of these materials without charge from the SEC through the SEC's website at www.sec.gov, from Georgeson Inc., the information agent for the offer, toll-free at (800) 868-1391 (banks and brokers call (212) 440-9800), from Blackbaud (with respect to documents filed by Blackbaud with the SEC) by going to the Investor Relations section of Blackbaud's website at www.blackbaud.com, or from Convio (with respect to documents filed by Convio with the SEC) by going to the Investor Relation's section of Convio website at www.Convio.com. Stockholders and other investors are urged to read those materials carefully prior to making any decisions with respect to the offer.

Blackbaud, Inc.
Reconciliation of GAAP to Non-GAAP financial measures
(Unaudited)

(in thousands)	Twelve months ended September 30, 2011		
	Blackbaud	Convio	Pro Forma Combined Total
GAAP revenue	$363,165	$76,933	$ 440,098
Reconcilation of net income to adjusted EBITDA:			
GAAP net income	$ 34,817	$ 2,441	$ 37,258
Non-GAAP adjustments:			
Add: Interest expense (income), net	(106)	(89)	(195)
Add: Income tax expense	17,562	214	17,776
Add: Depreciation expense	9,058	2,274	11,332
Add: Amortization of intangibles from business combinations and capitalized software costs	7,336	1,675	9,011
Add: Stock-based compensation expense	14,732	2,815	17,547
Add: Acquisition-related expenses	2,054	702	2,756
Less: Gain on sale of assets	(550)	—	(550)
Total Non-GAAP adjustments	50,086	7,591	57,677
Non-GAAP adjusted EBITDA	$ 84,903	$10,032	$ 94,935
GAAP cash flow from operating activities	$ 74,764	$ 8,234	$ 82,998
Non-GAAP adjustments:			
Less: Capital expenditures	(13,160)	(3,295)	(16,455)
Free cash flow	$ 61,604	$ 4,939	$ 66,543

Exhibit 99.2

Blackbaud, Inc.
Script for Conference Call held January 17, 2012

Tony Boor - ***Blackbaud, Inc.*** - ***SVP, CFO***

Thank you (operator). Good afternoon everyone, and thank you for joining us today as we discuss the planned acquisition of Convio, which we announced in a press release before the market opened this morning.

With me on the call is Marc Chardon, President and Chief Executive Officer of Blackbaud. Before we begin, let me make a couple of general comments, starting with the fact that the tender offer for the outstanding stock of Convio has not yet commenced. This teleconference, therefore, is for informational purposes only and is not an offer to buy or the solicitation of an offer to sell any securities. The solicitation and offer to buy shares of Convio common stock will be made only pursuant to an offer to purchase on Schedule TO and related materials that Blackbaud intends to file with the SEC.

Convio also intends to file a solicitation recommendation statement on Schedule 14D9 with respect to the offer. Convio stockholders and other investors will be able to obtain copies of these materials without charge from the SEC through the SEC's website, from Georgeson, Inc., the information agent for the offer, from Blackbaud, with respect to documents that we will file with the SEC by going to the Investor Relations section of our website, or from Convio with respect to documents they will file with the SEC by going to the Investor Relations section of Convio's website. Stockholders and other investors are urged to read those materials carefully prior to making any decisions with respect to the offer.

Also, please note that our remarks today contain forward-looking statements. These statements are based solely on present information and are subject to risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements. These risks and uncertainties include risks that the transaction doesn't close, management of the integration of acquired companies and other risks associated with acquisitions, uncertainty regarding increased business and renewals from existing customers, continued success in sales growth, general economic risks, risk associated with successful implementation of multiple integrated software products, the ability to attract and retain key personnel, risks related to restrictions imposed by the credit facility, and risks associated with management of growth.

Please refer to our SEC filings, including our most recent annual report on Form 10-K and the risk factors contained therein, as well as our periodic reports under the Securities Act of 1934 for more information on these risks and uncertainties and on the limitations that apply to our forward-looking statements.

Also, please note that a webcast of today's call will be available in the Investor Relations section of our website.

In terms of the structure of this call, Marc will provide a brief overview of the strategic rationale for this acquisition and then I will review the key financial aspects of the deal. We will then open the call to address questions.

So, with that, let me turn it over to our CEO, Marc Chardon.

Marc Chardon - ***Blackbaud, Inc.*** - ***President, CEO***

Thank you Tony, and thanks to everyone on the call for joining us on relatively short notice to discuss the exciting news announced before the market opened this morning – our agreement to acquire Convio, a leading provider of on-demand constituent engagement solutions to the nonprofit market. For the customer, we expect the combination of our two companies to enable Blackbaud to offer a comprehensive set of multi-channel supporter engagement solutions to nonprofit organizations of all sizes and across verticals. For our investors, our combination will create one of the largest and most profitable SaaS vendors.

For those of you not familiar with Convio, they were founded in 1999 and became a publicly traded company in April, 2010. Similar to Blackbaud, they have been focused exclusively on serving the nonprofit market since their founding.

Blackbaud and Convio share the belief that fully engaged supporters drive maximum value for nonprofit organizations. The acquisition of Convio combines the two companies' strengths to accomplish a common mission – making multi-channel support engagement a reality – at a faster pace than either company could achieve on its own. We believe strongly that nonprofit supporters are multi-channel by nature, including receiving messages, donating and advocating across websites, social networks, email, mobile, events and direct mail. Convio's strength in online and social is a perfect complement to Blackbaud's expertise, and its addition will enable us to better serve nonprofit organizations.

Convio has over 1,500 customers in the U.S., Canada and the U.K., including 29 of the top 50 U.S. charities. Convio has also established a strong development partnership with Salesforce.com in addition to nearly 100 go-to-market and technology partnerships.

In 2010 alone, Convio's U.S. clients used its software and services to raise more than $1.3 billion online, send more than 4 billion emails, power more than 32 million advocacy actions and manage relationships with more than 248 million constituents. We believe we are still at the early stages of nonprofit organizations moving to innovative solutions to automate and optimize their fundraising and overall business processes. We also believe that the addition of Convio will significantly enhance our ability to capitalize on this large and under penetrated market opportunity.

I would like to focus on several of the key strategic reasons that we believe the acquisition of Convio is a perfect fit for Blackbaud.

- First, our solutions and market focus are highly complementary. We have discussed many times in the past that online fundraising was a key area of focus for Blackbaud. It is the fastest growing channel for donations from an industry perspective and, as a result, it has been the fastest growing segment of technology adoption among nonprofit organizations as well. SaaS-based, online fundraising is a core competency of Convio – particularly with large enterprises and advocacy-based organizations. The growth of Blackbaud's online fundraising solutions, on the other hand, has been driven primarily by our focus on mid-market nonprofit organizations.

  From Convio's perspective, they were looking to expand their product footprint increasingly beyond online fundraising, including an enterprise CRM offering – where Blackbaud has already spent a number of years and significant resources to establish a strong position across vertical markets. The addition of Convio will enable Blackbaud to

effectively serve the online fundraising needs of the smallest to the largest nonprofit organizations, and we will have a compelling, best of both world's offering for large nonprofit organizations that combines industry leading online fundraising with the strongest CRM capabilities.

- The second reason supporting the acquisition of Convio is that we believe it opens up a significant cross-sell opportunity. Many of Convio's customers are new to Blackbaud, which provides an opportunity to cross-sell our much broader suite of solutions. In addition, many of Blackbaud's upper-mid market and enterprise customers have still not deployed online fundraising or business intelligence solutions in a big way, and Convio has best-in-class platforms to meet the needs of these organizations.
- Third, the addition of Convio brings significant domain expertise, innovation and thought leadership to Blackbaud in online fundraising and scaling a software-as-a-service business model.
- Fourth, we have made great progress evolving our business to subscription-based and software-as-a-service offerings, and the acquisition of Convio accelerates this process dramatically. At the end of the September quarter, our combined company had a pro forma annualized subscription and usage revenue run rate of nearly $170 million, and an annualized total recurring revenue run rate of nearly $300 million.
- Finally, as Tony will discuss in more detail in a moment, we expect the transaction to be accretive to our non-GAAP EPS during 2012, and increasingly so in future years.

As you can tell, we are extremely excited about the prospects for our combined company. We are addressing a very large market opportunity that is underpenetrated, and our combined value proposition is both highly complementary and one that will enable us to better serve nonprofit organizations. We believe that $500 million in revenue is well within our sights, and we have significantly improved our position to ultimately scale Blackbaud to our longer-term goal of $1 billion and greater in annual revenue.

With that, let me turn it over to Tony.

Tony Boor - ***Blackbaud, Inc.*** - ***SVP, CEO***

Thanks, Marc. In addition to the compelling, strategic rationale of the Convio acquisition, we believe it is also highly attractive from a financial perspective, and it is consistent with our goal to invest our strong cash flow to improve long-term shareholder value.

Under the terms of the agreement, Blackbaud will acquire all outstanding shares of common stock of Convio for $16.00 per share, representing a premium of approximately 49% compared to Convio's recent closing price and an enterprise value of approximately $275 million. Blackbaud will finance the deal through a combination of cash and debt.

In addition to providing meaningful and immediate value for Convio's shareholders, the transaction is expected to be accretive to Blackbaud's non-GAAP financial results for 2012 and increasingly so in future years. In addition to standard items excluded from our non-GAAP results, our preliminary estimate of non-GAAP EPS accretion also excludes non-recurring deal costs and related charges, and assumes a certain level of already identified synergies as we bring our two organizations together.

The boards of directors of both companies have unanimously approved the transaction. The acquisition is structured as a cash tender offer, and is expected to close during the first quarter of 2012. Blackbaud has been informed that all Convio directors and their affiliates, officers and other insiders (representing over 30% of the outstanding shares in total) have agreed to tender all of their respective shares subject to tender and support agreements. The consummation of the tender offer is subject to various conditions, including a minimum tender of at least a majority of outstanding Convio shares on a fully diluted basis, the expiration or termination of the waiting period under the Hart Scott Rodino Antitrust Improvements Act, and other customary conditions.

From a revenue perspective, Convio generated revenue of approximately $77 million for the twelve months ended September 30, 2011. As such, the transaction is priced at approximately 3.6x enterprise value to trailing twelve months revenue.

Over 75% of Convio's revenue comes from a combination of recurring subscription fees with contracts that generally range from 1 to 3 years, along with transaction fees that include a percentage of funds raised for special events such as runs or walks. Less than 25% of Convio's revenue relates to services.

From a profitability perspective, Convio generated adjusted EBITDA of approximately $10 million for the trailing twelve months ended September 30, 2011.

On a pro forma basis, the following are metrics that reflect the scale of our combined company. Each metric is based on trailing twelve months ended September 30, 2011:

- $440 million in revenue
- $94.8 million in adjusted EBITDA
- Free cash flow of $66.5 million, which is based on combined pro forma cash from operations of $83.0 million less capital expenditures of $16.5 million.

In addition, as I mentioned a moment ago, we expect a level of synergy to be realized as we complete the acquisition integration process. Any such benefits are not included in the just mentioned trailing twelve month adjusted EBITDA or free cash profile.

Turning to the balance sheet for our combined company - the acquisition of Convio will be funded by a combination of Blackbaud's existing cash balance, expansion and extension of the company's current debt facility, as well as newly issued syndicated debt. After closing the acquisition, the combined company is expected to have net debt of approximately $240 million, which will represent approximately 2.5x pro forma consolidated adjusted EBITDA for the 12 months ended September 30, 2011.

We are very confident in the company's ability to service its new debt balance due to our free cash flow being much greater than our expected cash interest expense, in addition to the fact that we expect further enhancements of our cash flow following the acquisition and integration of Convio.

As I wrap up my remarks, it is important to state that any commentary regarding the expected impact of the Convio transaction are on a preliminary non-GAAP basis. We think this analytical approach helps us and investors understand the fundamentals of the transaction, but non-GAAP numbers are not a substitute for GAAP numbers. In addition, we have not yet completed our analysis related to the determination of the deferred revenue write-down, final valuation of the acquired assets including goodwill and intangibles, the amount of in-process R&D, if any, and the anticipated amortization charges that we would expect to take through the P&L.

In closing, we are very excited by today's announcement. The acquisition of Convio will enable Blackbaud to offer a comprehensive set of multi-channel supporter engagement solutions to nonprofit organizations of all sizes and across verticals. It also materially accelerates our recurring revenue and is expected to be accretive to our non-GAAP operating results for 2012 and beyond. The strategic and financial rationales for the acquisition are compelling, and we are excited about the prospects for our combined company moving forward.

Before we open up the call for questions, I wanted to highlight that the focus of the call and questions is on our acquisition of Convio. As we are still in the quiet period and in the process of completing our year-end close, we are going to hold questions related to the fourth quarter and our 2012 guidance until we get together for our regularly scheduled financial results call. We appreciate your understanding in this regard.

With that, let me turn it over to the operator to begin the Q&A session. Operator?

Exhibit 99.3

Blackbaud Announces Agreement to Acquire Convio

Accelerates Multi-Channel Supporter Engagement

January 17, 2012

blackbaud™
your passion ➤ our purpose

Forward-Looking Statements

This presentation contains "forward-looking statements" relating to the acquisition of Convio by Blackbaud and the companies' potential combined business. Those forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and actual outcomes and results could differ materially. Among other risks, there can be no guarantee that the acquisition will be completed, or if it is completed, that it will close within the anticipated time period or that the expected benefits of the acquisition and combined business will be realized. These forward-looking statements should be evaluated together with the risk factors and uncertainties that affect Blackbaud's and Convio's businesses, particularly those identified in their Annual Reports on Form 10-K and other filings with the U.S. Securities and Exchange Commission, or SEC. Except as might be required by law, neither company undertakes any obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise.

Additional Information

The tender offer for Convio stock has not yet commenced, and this presentation is neither an offer to purchase nor a solicitation of an offer to sell securities. At the time the tender offer is commenced, Blackbaud's wholly owned subsidiary Caribou Acquisition Corporation will file with the SEC a tender offer statement on Schedule TO. Investors and Convio stockholders should read the tender offer statement (including an offer to purchase, letter of transmittal and related tender offer documents) and the related solicitation/recommendation statement on Schedule 14D-9 that will be filed by Convio with the SEC, because they will contain important information. These documents will be available at no charge on the SEC's website at www.sec.gov. In addition, a copy of the offer to purchase, letter of transmittal and other related tender offer documents may be obtained free of charge from Blackbaud at www.blackbaud.com or its Office of the [Investor Relations], 2000 Daniel Island Drive, Charleston, SC 29492. Convio will make available to all its stockholders a copy of the tender offer statement and the solicitation/recommendation statement free of charge at www.convio.com or you can get one by contacting Convio [Investor Relations] at 11501 Domain Drive, Suite 200, Austin, TX 78758**,** phone 888-528-9501.

In addition to the offer to purchase, the related letter of transmittal and other offer documents, as well as the solicitation/recommendation statement, Blackbaud and Convio file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any of these reports, statements or other information in the EDGAR database at the SEC website, www.sec.gov, or at the SEC public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room.

WHO IS BLACKBAUD?

- Leading supplier of software and services to the non profit sector
- Founded 1981
- IPO 2004
- 25,000+ nonprofit customers in 60 countries

- 2,200+ employees worldwide
- 12 global offices
- Headquarters in Charleston, SC

- TTM revenue ended 9/30/11:
  - ~$363 million
- TTM EBITDA ended 9/30/11 (1)
  - ~$85 million

Blackbaud's Purpose

To power the business of philanthropy from fundraising through outcomes

(1) Non-GAAP , unaudited

ACQUISITION STRATEGIC RATIONALE

Highly complementary solutions

- Convio's SaaS-based capabilities for large events, advocacy and federated organizations complement our current solutions
- Enables us to offer a comprehensive set of multi-channel supporter engagement solutions to nonprofit organizations

Enhances ability to deliver value to customers

- Brings significant domain expertise, innovation and thought leadership, especially in online, advocacy and social
- Valuable experience in effectively scaling a SaaS business

Significant cross-sell opportunity

- Convio has over 1,500 customers, many that are new to Blackbaud's 25,000+ customer base
- Integration of specific Blackbaud and Convio offerings will provide seamless solutions

Accelerates Blackbaud's SaaS expansion

- Significant addition to our growing subscription and transactional revenue base
- Combined pro forma subscription and usage revenue annualized run rate of ~$170 million & total recurring revenue run rate of ~$300 million *(Quarter ended 9/30/11, non-GAAP, unaudited)*

Attractive financial impact

- Transaction is expected to be accretive to non-GAAP EPS in 2012 and beyond

KEY TRANSACTION TERMS

Transaction

- On January 16, 2012, Blackbaud entered into a definitive merger agreement to acquire Convio
- The acquisition is structured as a cash tender offer
- All Convio directors and officers and certain of its affiliates (representing over 30% of the outstanding shares in total) have agreed to tender all of their respective shares subject to tender and support agreements

Purchase Price

- Blackbaud will acquire all outstanding shares of common stock of Convio for $16.00 per share in cash, or an enterprise value of approximately $275 million (based on fully diluted shares and net of approximately $50 million of cash and debt[1])
- The per share price represents a premium of 49% over Convio's January 13th closing price

Timing

- The acquisition is expected to close during the first quarter of 2012
- The consummation of the tender offer is subject to various conditions, including a minimum tender of at least a majority of outstanding Convio shares on a fully diluted basis, the expiration or termination of the waiting period under the Hart Scott Rodino Antitrust Improvements Act and other customary conditions. The board of directors of both companies have unanimously approved the transaction

Financing

- The transaction will be financed through a combination of existing cash and newly-issued syndicated debt

(1) *Net cash balance of $50 million based on Convio's public filings as of [September 30, 2011].*

CONVIO OVERVIEW

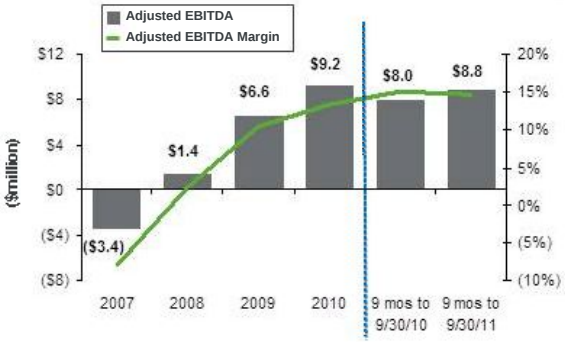
Convio at a Glance [1]

- Convio provides on-demand constituent engagement solutions that enable non-profit organizations to raise funds, advocate for change and cultivate relationships with donors, activists, volunteers, alumni and other constituents
- Serves more than 1,500 nonprofits of all sizes, including 29 of the top 50 US charities
- Convio was founded in 1999 and is headquartered in Austin, TX
- Convio went public in April 2010

Revenue [1]

YoY Growth:	100%	32%	11%	11%		14%

Adjusted EBITDA [1] [2] [3]



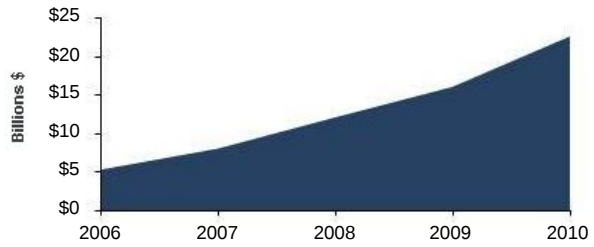
Facilities

(1) Source: CNVO Public filings.
(2) Excludes stock-based compensation and acquisition-related transaction costs.
(3) See the non-GAAP disclosure and reconciliation at the end of this presentation.

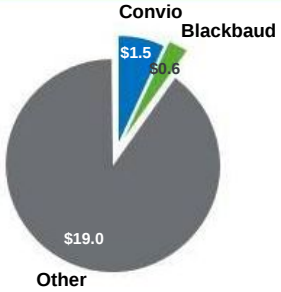
blackbaud

WELL POSITIONED IN LARGE AND GROWING SEGMENT

Online Giving Rapidly Growing [1]



Significant Opportunity in Online Fundraising ($bn) [1]



- **New fundraising and communication channels** are expanding, not replacing traditional channels
- Online fundraising and advocacy are important and growing components of the **total supporter journey**
- **Nonprofit supporters engage across multiple channels** and expect cross-channel consistency

(1) Sourced from various industry and internal sources. Represents estimate of 2010 market size.

blackbaud

APPENDIX

RECONCILIATION OF GAAP TO NON-GAAP FINANCIAL MEASURES

Blackbaud, Inc.
Reconciliation of GAAP to Non-GAAP financial measures
(Unaudited)

(in thousands)	Twelve months ended September 30, 2011		
	Blackbaud	**Convio**	**Pro Forma Combined Total**
GAAP revenue	$ 363,165	$ 76,933	$ 440,098
Reconcilation of net income to adjusted EBITDA:			
GAAP net income	$ 34,817	$ 2,441	$ 37,258
Non-GAAP adjustments:			
Add: Interest expense (income), net	(106)	(89)	(195)
Add: Income tax expense	17,562	214	17,776
Add: Depreciation expense	9,058	2,274	11,332
Add: Amortization of intangibles from business combinations and capitalized software costs	7,336	1,675	9,011
Add: Stock-based compensation expense	14,732	2,815	17,547
Add: Acquisition-related expenses	2,054	702	2,756
Less: Gain on sale of assets	(550)	-	(550)
Total Non-GAAP adjustments	50,086	7,591	57,677
Non-GAAP adjusted EBITDA	$ 84,903	$ 10,032	$ 94,935
GAAP cash flow from operating activities	$ 74,764	$ 8,234	$ 82,998
Non-GAAP adjustments:			
Less: Capital expenditures	(13,160)	(3,295)	(16,455)
Free cash flow	$ 61,604	$ 4,939	$ 66,543