

**STOCK PURCHASE AGREEMENT**

dated as of

August 31, 2015

among

**GENIMOUS INVESTMENT CO., LTD.**

and

**RODRIGO SALES, IN HIS CAPACITY AS SELLERS'  
REPRESENTATIVE**

and

**SELLERS NAMED HEREIN**

relating to the purchase and sale

of

**the Common Stock**

of

**SPIGOT, INC.**

## TABLE OF CONTENTS

PAGE

### ARTICLE 1 DEFINITIONS

Section 1.01 . <i>Definitions.</i> .....	1
Section 1.02 . <i>Other Definitional and Interpretative Provisions.</i> .....	8

### ARTICLE 2 PURCHASE AND SALE

Section 2.01 . <i>Purchase and Sale.</i> .....	9
Section 2.02 . <i>Closing.</i> .....	9
Section 2.03 . <i>Withholding Tax.</i> .....	10
Section 2.04 . <i>Good Faith Deposit.</i> .....	10
Section 2.05 . <i>Post-Closing Contingent Payments.</i> .....	11

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS

Section 3.01 . <i>Corporate Existence and Power.</i> .....	11
Section 3.02 . <i>Legal Capacity and Authorization.</i> .....	11
Section 3.03 . <i>Governmental Authorization.</i> .....	12
Section 3.04 . <i>Noncontravention.</i> .....	12
Section 3.05 . <i>Capitalization.</i> .....	12
Section 3.06 . <i>Ownership of Shares.</i> .....	13
Section 3.07 . <i>Subsidiaries.</i> .....	13
Section 3.08 . <i>Financial Statements.</i> .....	14
Section 3.09 . <i>Absence of Certain Changes.</i> .....	14
Section 3.10 . <i>No Undisclosed Liabilities.</i> .....	14
Section 3.11 . <i>Intercompany Accounts.</i> .....	14
Section 3.12 . <i>Material Contracts.</i> .....	15
Section 3.13 . <i>Litigation.</i> .....	16
Section 3.14 . <i>Compliance with Laws and Court Orders.</i> .....	17
Section 3.15 . <i>Properties.</i> .....	17
Section 3.16 . <i>Software.</i> .....	17
Section 3.17 . <i>IT System.</i> .....	19
Section 3.18 . <i>Intellectual Property.</i> .....	19
Section 3.19 . <i>Privacy and Data Security.</i> .....	23
Section 3.20 . <i>Insurance Coverage.</i> .....	24
Section 3.21 . <i>Licenses and Permits.</i> .....	24
Section 3.22 . <i>Receivables.</i> .....	25
Section 3.23 . <i>Selling Documents.</i> .....	25
Section 3.24 . <i>Finders' Fees.</i> .....	25

Section 3.25 . <i>Employees.</i> . . . . .	25
Section 3.26 . <i>Employee Benefit Plans.</i> . . . . .	26
Section 3.27 . <i>Labor Matters.</i> . . . . .	29
Section 3.28 . <i>Tax.</i> . . . . .	29
Section 3.29 . <i>Foreign Corrupt Practices Act.</i> . . . . .	29
Section 3.30 . <i>Change of Control Agreements.</i> . . . . .	30
Section 3.31 . <i>Representations.</i> . . . . .	31

#### ARTICLE 4

##### REPRESENTATIONS AND WARRANTIES OF BUYER

Section 4.01 . <i>Existence and Power.</i> . . . . .	31
Section 4.02 . <i>Authorization.</i> . . . . .	31
Section 4.03 . <i>Governmental Authorization.</i> . . . . .	31
Section 4.04 . <i>Noncontravention.</i> . . . . .	31
Section 4.05 . <i>Purchase for Investment.</i> . . . . .	32
Section 4.06 . <i>Finders' Fees.</i> . . . . .	32

#### ARTICLE 5

##### COVENANTS OF SELLERS

Section 5.01 . <i>Conduct of the Company.</i> . . . . .	32
Section 5.02 . <i>Access to Information; Confidentiality.</i> . . . . .	35
Section 5.03 . <i>Notices of Certain Events.</i> . . . . .	36
Section 5.04 . <i>Noncompetition.</i> . . . . .	36
Section 5.05 . <i>Future Seller Acquisitions.</i> . . . . .	38
Section 5.06 . <i>Non-U.S. Business.</i> . . . . .	38

#### ARTICLE 6

##### COVENANTS OF BUYER

Section 6.01 . <i>Confidentiality.</i> . . . . .	38
Section 6.02 . <i>Special Tax Payment.</i> . . . . .	39

#### ARTICLE 7

##### COVENANTS OF BUYER AND SELLER

Section 7.01 . <i>Reasonable Best Efforts; Further Assurances.</i> . . . . .	40
Section 7.02 . <i>Certain Filings.</i> . . . . .	40
Section 7.03 . <i>Public Announcements.</i> . . . . .	41
Section 7.04 . <i>Board after the Closing Date.</i> . . . . .	41
Section 7.05 . <i>Management of the Company after the Closing Date.</i> . . . . .	41
Section 7.06 . <i>Financial Controller.</i> . . . . .	44

#### ARTICLE 8

##### CONDITIONS TO CLOSING

Section 8.01 . <i>Conditions to Obligations of Buyer and Sellers.</i> . . . . .	45
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Section 8.02 . <i>Conditions to Obligation of Buyer.</i> .....	45
Section 8.03 . <i>Conditions to Obligation of Sellers.</i> .....	46

ARTICLE 9  
SURVIVAL; INDEMNIFICATION

Section 9.01 . <i>Survival.</i> .....	48
Section 9.02 . <i>Indemnification.</i> .....	48
Section 9.03 . <i>Third Party Claim Procedures.</i> .....	48
Section 9.04 . <i>Direct Claim Procedures.</i> .....	52

ARTICLE 10  
TERMINATION

Section 10.01 . <i>Grounds for Termination.</i> .....	53
Section 10.02 . <i>Effect of Termination.</i> .....	53

ARTICLE 11  
MISCELLANEOUS

Section 11.01 . <i>Notices.</i> .....	54
Section 11.02 . <i>Amendments and Waivers.</i> .....	55
Section 11.03 . <i>Disclosure Schedule References.</i> .....	56
Section 11.04 . <i>Expenses.</i> .....	56
Section 11.05 . <i>Sellers' Representative.</i> .....	56
Section 11.06 . <i>Successors and Assigns.</i> .....	58
Section 11.07 . <i>Governing Law.</i> .....	58
Section 11.08 . <i>Arbitration.</i> .....	58
Section 11.09 . <i>Counterparts; Effectiveness; Third Party Beneficiaries.</i> .....	58
Section 11.10 . <i>Entire Agreement.</i> .....	59
Section 11.11 . <i>Severability.</i> .....	59
Section 11.12 . <i>Specific Performance.</i> .....	59

Annexes

Annex A	Sellers and Shares to Be Sold
Annex B	List of Key Employees
Annex C	Form of Proprietary Information and Inventions Agreement

Exhibits

Exhibit A	Post-Closing Contingent Payments and Transactions
Exhibit B	Form of Legal Opinion

## STOCK PURCHASE AGREEMENT

This AGREEMENT (this “**Agreement**”) is entered into as of August 31, 2015 among Genimous Investment Co., Ltd., a company incorporated under the laws of the PRC with its stocks listed in the Shenzhen Stock Exchange (“**Buyer**”), Rodrigo Sales, in his capacity as Sellers’ Representative (as defined below), and the stockholders of the Company set forth on Annex A hereto (collectively, the “**Sellers**”, and, each, a “**Seller**”).

### W I T N E S S E T H:

WHEREAS, Sellers own, of record and beneficially, all of the issued and outstanding shares of capital stock of Spigot, Inc., a Nevada corporation (“**Company**”); and

WHEREAS, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers the Shares upon the terms and subject to the conditions hereinafter set forth.

The parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* (a) The following terms, as used herein, have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that neither the Company nor any Subsidiary shall be considered an Affiliate of any Seller. For purposes of this definition, “**control**” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “**controlling**” and “**controlled**” have correlative meanings.

“**Applicable Law**” means, with respect to any Person, any transnational, domestic or foreign (including Romania and England and Wales) federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise. Notwithstanding the foregoing, as used in Sections 3.04 and 3.19(e), Applicable Law shall not include any law (statutory, common or otherwise), constitution, treaty, convention, ordinance,

code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority in the People's Republic of China.

“**Balance Sheet**” means the unaudited consolidated balance sheet of the Company and the Subsidiaries as of June 30, 2015.

“**Balance Sheet Date**” means June 30, 2015.

“**Business**” shall mean the creation, development, operation or monetization of browser add-ons and extensions solely for purposes of offering monetization and distribution solutions for software developers and content publishers.

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

“**Closing Date**” means the date of the Closing.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and any rules or regulations promulgated thereunder.

“**Code**” means the Internal Revenue Code of 1986, as amended, and any rules or regulations promulgated thereunder.

“**Collective Bargaining Agreement**” means any written or oral agreement, memorandum of understanding or other contractual obligation between the Company or any of its Subsidiaries and any labor organization or other authorized employee representative representing Service Providers.

“**Common Stock**” means the common stock, par value \$ 0.0001 per share, of the Company.

“**Company**” means Spigot, Inc., a Nevada corporation.

“**Company Employee**” means an employee of the Company or any of its Subsidiaries.

“**Company Plan**” means any Employee Plan that is sponsored, maintained or entered into by the Company or any of its Subsidiaries.

“**Company Products**” means all proprietary Software products and related services of the Company and its Subsidiaries that (a) are currently offered, licensed, sold, distributed, hosted, maintained, supported or otherwise provided or made available by or on behalf of the Company or any of its Subsidiaries, or (b) are currently under development by or for the Company or any of its Subsidiaries.

“**Company System**” means all Software, and computer hardware, servers, networks, platforms, peripherals, data communication lines and other information technology equipment and related systems, including any outsourced systems and processes, that are owned or used by the Company or any of its Subsidiaries.

“**Employee Plan**” means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA, (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers’ compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case whether or not written (x) that is sponsored, maintained, administered, contributed to or entered into by the Company or any of its Affiliates for the current or future benefit of any current or former Service Provider or (y) for which the Company or any of its Subsidiaries has any direct or indirect liability. For the avoidance of doubt, a Collective Bargaining Agreement shall constitute an agreement for purposes of clauses (ii) and (iii).

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

“**ERISA Affiliate**” with respect to an entity means any other entity that, together with such first entity, would be treated as a single employer under Section 414 of the Code.

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied with the past practices of the Company.

“**Governmental Authority**” means any transnational, domestic or foreign (including Romania and England and Wales) federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“**IFRS**” means the International Financial Reporting Standards, as issued by the International Accounting Standards Board, consistently applied.

“**Intellectual Property Rights**” means (i) inventions, whether or not patentable, reduced to practice or made the subject of one or more pending patent applications, (ii) national and multinational statutory invention registrations, patents and patent applications (including all reissues, divisionals, provisionals, continuations, continuations-in-part, extensions, substitutions, renewals and

reexaminations thereof) registered or applied for in the United States and all other nations throughout the world, all improvements to the inventions disclosed in each such registration, patent or patent application, (iii) trademarks, service marks, brands, certification marks, trade dress, logos, domain names and social media account or user names (including “handles”), all associated web addresses, trade names and corporate names (whether or not registered) in the United States and all other nations throughout the world, including all renewals, registrations and applications for registration of the foregoing and all goodwill associated therewith, (iv) copyrights and works of authorship (whether or not registered) and registrations and applications for registration thereof in the United States and all other nations throughout the world, including all derivative works, moral rights, renewals, extensions, reversions or restorations associated with such copyrights, now or hereafter provided by law, regardless of the medium of fixation or means of expression, (v) computer software (including all source code, object code, firmware, operating systems, application programming interfaces, data files, databases, protocols, specifications and other documentation thereof), (vi) trade secrets and, whether or not confidential, business information (including pricing and cost information, business and marketing plans and customer and supplier lists), know-how, technology and technical information (including manufacturing and production processes and techniques and research and development information), tools, methods, processes and other confidential and proprietary information and all rights therein, (vii) industrial designs (whether or not registered), (viii) databases and data collections, (ix) copies and tangible embodiments of any of the foregoing, in whatever form or medium, (x) all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, (xi) all rights in all of the foregoing provided by treaties, conventions and common law and (xii) all rights to sue or recover and retain damages and costs and attorneys’ fees for past, present and future infringement or misappropriation of any of the foregoing.

“**International Plan**” means any Employee Plan that is not a US Plan.

“**IRS**” means the United States Internal Revenue Service.

“**Key Employee**” means each employee of the Company or any Subsidiary set forth on Annex B hereto.

“**knowledge**” of any Person (i) that is not an individual means the knowledge of such Person’s officers after reasonable inquiry, and (ii) that is an individual means the knowledge of such Person after reasonable inquiry in such Person’s capacity as the Company’s officer or director, if applicable.

“**Licensed Intellectual Property Rights**” means all Intellectual Property Rights owned by a third party and licensed or sublicensed to either the Company or any Subsidiary.



“**Lien**” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

“**Management Sellers**” means, out of the Sellers, Mr. Rodrigo Sales, Mr. Ryan Stephens, Ms. Celeste Sales and their respective trusts, if any.

“**Material Adverse Effect**” means a material adverse effect on (i) the condition (financial or otherwise), business, assets or results of operations of the Company and its Subsidiaries, taken as a whole, excluding any effect resulting from (A) changes in the general economic or political conditions not having a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industry in which the Company and its Subsidiaries operate, (B) changes (including changes of Applicable Law) or conditions generally affecting the industry in which the Company and its Subsidiaries operate and not specifically relating to or having a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, (C) acts of war, sabotage or terrorism or natural disasters not having a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industry in which such the Company and its Subsidiaries operate, or (ii) the Company’s ability to consummate the transactions contemplated by this Agreement.

“**Multiemployer Plan**” means a “multiemployer plan” as defined in Section 3(37) of ERISA.

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

“**Open Source Software**” means any Software that is distributed as “free software,” “open source software” or pursuant to any license identified as an “open source license” by the Open Source Initiative ([www.opensource.org/licenses](http://opensource.org/licenses)) or other license that substantially conforms to the Open Source Definition (<http://opensource.org/osd>) (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), GNU Affero General Public License (AGPL), MIT License (MIT), Apache License, Artistic License and BSD Licenses).

“**Owned Intellectual Property Rights**” means all Intellectual Property Rights owned by either the Company or any Subsidiary.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

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

“**Pre-Closing Tax Period**” means any Tax period ending on or before the Closing Date; and, with respect to a Tax period that begins on or before the Closing Date and ends thereafter, the portion of such Tax period ending on the Closing Date.

“**Seller Plan**” means any Employee Plan that is sponsored, maintained or entered into by Seller or any of its Affiliates other than the Company or any of its Subsidiaries.

“**Service Provider**” means any director, officer, employee or individual independent contractor of the Company or any of its Subsidiaries.

“**Shares**” means 14,487,644 shares of Common Stock.

“**Software**” means any and all computer software and code, including all new versions, updates, revisions, improvements and modifications thereof, whether in source code, object code, or executable code format, including systems software, application software (including mobile apps), firmware, middleware, programming tools, scripts, routines, interfaces, libraries, and databases, and all related specifications and documentation, including developer notes, comments and annotations, user manuals and training materials relating to any of the foregoing.

“**Subsidiary**” means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company.

“**Tax**” means (i) any tax, governmental fee or other like assessment or charge (including, but not limited to, withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any governmental authority (domestic or foreign) responsible for the imposition of any such tax (a “**Taxing Authority**”) and (ii) any liability for the payment of any amount of the type described in the immediately preceding clause (i) as a result of the Company being a member of an affiliated, consolidated or combined group with any other corporation at any time on or prior to the Closing Date.

“**Tax Law**” means any Applicable Law relating to the Tax.

“**Title IV Plan**” means any Employee Plan (other than any Multiemployer Plan) that is subject to Title IV of ERISA.

“**US Plan**” means any Employee Plan that covers Service Providers located primarily within the United States.

“**VK Agreement**” means the agreement entered into between the Company and Vision Knight Capital Management Company Limited on May 5, 2014, as amended by the First Amendment to Agreement dated May 5, 2015.

“**WARN**” means the Worker Adjustment and Retraining Notification Act and any comparable foreign, state or local law.

(a) Each of the following terms is defined in the Section set forth opposite such term:

<b><u>Term</u></b>	<b><u>Section</u></b>
Actual Net Profit	Exhibit A
Agreement	Preamble
Auditor	Exhibit A
Board	Section 5.05
Board and Stockholder Approvals	Section 4.02
Buyer	Preamble
Buyer Earnout Payment	Exhibit A
Buyer Indemnified Party/Parties	Section 9.02(a)(i)
Closing	Section 2.02
Company	Preamble
Company Securities	Section 3.05(b)
CEO Director	Section 7.04
Damages	Section 9.02(a)(i)
e-mail	Section 11.01
Earnout Indemnification Obligation	Section 9.02(a)(iii)
Earnout Notice	Exhibit A
Earnout Objection Notice	Exhibit A
Earnout Period	Exhibit A
Earnout Target	Exhibit A
Employment Agreement	Section 8.02(l)
Extended Earnout Year	Exhibit A
Extended Earnout Year Sellers Earnout	Exhibit A
Indemnification Amount	
Extended Earnout Year Target	Exhibit A
Final Net Profit	Exhibit A
Financial Controller	Section 7.06
Good Faith Deposit	Section 2.04
HKIAC	Section 11.08
Indemnification Cap	Section 9.02(a)(iii)
Indemnified Party	Section 9.02(a)(i)
Indemnifying Party	Section 9.02(a)(i)

<u><b>Term</b></u>	<u><b>Section</b></u>
Initial Earnout Year	Exhibit A
Management-Appointed Directors	Section 7.04
Net Profit	Exhibit A
Net Profit Target Bonus	Exhibit A
Noncompete Consideration	Section 5.04(d)
Non-Compete Period	Section 5.04(a)
Opportunity	Section 5.05
Outstanding Indebtedness	Section 2.02(a)(iii)
Permits	Section 3.21
Pledged Shares	Exhibit A
PRC Regulatory Approvals	Section 4.03
Pro Rata Portion	Section 2.02(a)(i)
Purchase Price	Section 2.01
Returns	Section 3.28
Seller/Sellers	Preamble
Seller Tax Payment	Section 6.02
Sellers Earnout Indemnification Amount	Exhibit A
Sellers Earnout Indemnification Shortfall	Exhibit A
Sellers Earnout Payment	Exhibit A
Sellers Indemnification Cap	Exhibit A
Sellers' Representative	Section 11.05
Seller's Representative Account	Section 2.02(a)(i)
Share Proceeds	Section 2.02(a)(i)
Shortfall Year	Exhibit A
Stock Pledge Agreement	Exhibit A
Subsidiary Securities	Section 3.07(b)
Threshold	Section 9.02(a)(iv)
Transition Period Profit	Section 6.02
Third Party Claim	Section 9.02(a)(i)
Unpaid Portion of Sellers Earnout Indemnification Shortfall	Exhibit A
Warranty Breach	Section 9.02(a)(i)
Yearly Earnout Installment	Exhibit A

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Annexes, Articles, Sections, Exhibits and Schedules are to Articles, Annexes, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Annexes, Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Annex, Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this

Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law”, “laws” or to a particular statute or law shall be deemed also to include any and all Applicable Law.

## ARTICLE 2 PURCHASE AND SALE

Section 2.01. *Purchase and Sale.* Upon the terms and subject to the conditions of this Agreement, each Seller agrees to sell to Buyer, and Buyer agrees to purchase from each Seller, the Shares set forth opposite such Seller’s name on Annex A hereto at the Closing. The aggregate consideration to be paid by Buyer hereunder shall be an amount equal to the sum of (i) \$118,000,000 in cash (the “**Purchase Price**”) and (ii) up to a total amount of \$133,696,710 additional earnout payments to Sellers, if any, provided for in Exhibit A hereto.

Section 2.02. *Closing.* The closing (the “**Closing**”) of the purchase and sale of the Shares hereunder shall take place at the offices of MagStone Law, LLP, 4633 Old Ironsides Drive, Suite 106, Santa Clara, California as soon as possible, but in no event later than 10 Business Days, after satisfaction or, to the extent permissible, waiver by the party or parties entitled to the benefit of the conditions set forth in Article 8 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing), or at such other time or place as Buyer and Sellers’ Representative may agree. At the Closing:

- (a) Buyer shall:
  - (i) deliver (A) \$116,000,000 *less* the Good Faith Deposit, including any interest credited thereon, and *further less* the sum of all of the payables for and on behalf of the Company under Section 2.02(a)(ii)-(v) (such amount, collectively with the Good Faith Deposit, being referred to herein as the “**Share Proceeds**”), and (B) the Noncompete

Consideration to Sellers' Representative in immediately available funds by wire transfer to an account with a bank in the United States designated by Sellers's Representative (the "**Seller's Representative Account**"), by notice to Buyer, which notice shall be delivered not later than three Business Days prior to the Closing Date; which Share Proceeds and Noncompete Consideration shall be distributed by the Sellers' Representative to the Sellers with each Seller receiving a portion of the Share Proceeds and Noncompete Consideration equal to (1) the sum of (x) the amount of the aggregate Share Proceeds plus (y) the Noncompete Consideration (2) multiplied by a fraction (the "**Pro Rata Portion**"), the numerator of which is the number of shares of the Common Stock owned by such Seller immediately prior to the Closing and the denominator of which is the total number of shares of the Common Stock outstanding immediately prior to the Closing;

(ii) deliver \$2,067,103, for and on behalf of the Company, to Vision Knight Capital Management Company Limited in immediately available funds by wire transfer to an account designated by Sellers' Representative, by notice to Buyer, which notice shall be delivered not later than three Business Days prior to the Closing Date;

(iii) deliver \$425,000 and \$925,000, together with accrued interest thereon (collectively, the "**Outstanding Indebtedness**"), for and on behalf of the Company, to Mr. Michael Levit and Ms. Celeste Sales, respectively, in immediately available funds by wire transfer to accounts designated by Sellers' Representative, by notice to Buyer, which notice shall be delivered not later than three Business Days prior to the Closing Date;

(iv) deliver \$6,440,500, for and on behalf of the Company, to the Sellers' Representative in immediately available funds by wire transfer to the Sellers' Representative's Account, which amount shall be allocated by the Sellers' Representative, at the instruction of the Company's senior management, among certain employees and consultants of the Company; and

(v) deliver, for and on behalf of the Company, to Silicon Legal Strategy, a Professional Corporation, and Vinson & Elkins L.L.P., a Limited Liability Corporation, all legal fees and expenses incurred by the Company and Sellers in connection with this Agreement.

(b) Sellers' Representative shall deliver to Buyer certificates for the Shares duly endorsed or accompanied by stock powers duly endorsed in blank, with any required transfer stamps affixed thereto.

Section 2.03. *Withholding Tax.* Buyer shall be entitled to deduct and withhold from the Purchase Price, any Buyer Earnout Payment and any other

payment to any Person under this Agreement (including Exhibit A), but excluding any payment under any Employment Agreement, all Taxes that Buyer and the Company is required to deduct and withhold under any Tax Law. To the extent they are paid to the appropriate Taxing Authority, all such withheld amounts shall be treated as delivered to Sellers hereunder. Any Tax refunds or credits attributable to (i) any Pre-Closing Tax Period shall be paid to the Sellers' Representative for distribution to Sellers, subject to the last sentence of Section 6.02, or (ii) any post-Closing tax period shall be for the account of the Company and for the benefit of Buyer and such other persons as are holders of Company Securities at the time such refunds or credits are received.

Section 2.04. *Good Faith Deposit.* Within 15 Business Days following the execution of this Agreement, Buyer shall pay to the Sellers' Representative on behalf of Sellers cash in the amount of \$5,000,000 (the "**Good Faith Deposit**") by wire transfer of immediately available funds into an account designated by the Sellers' Representative. If the Closing occurs, the Good Faith Deposit and the interest accrued at a floating rate per annum equal to the effective interest rate per annum on 90-day U.S. Treasury bills to the Closing Date shall be credited against the payment made pursuant to Section 2.02(a)(i)(A). If the Closing does not occur and this Agreement is terminated pursuant to Section 10.01, the Good Faith Deposit and any interest credited thereon shall be returned to Buyer promptly in accordance with Section 10.02.

Section 2.05. *Post-Closing Contingent Payments.* After the Closing, the Buyer Earnout Payment and the Sellers Earnout Payment, as applicable, shall be made upon the terms and subject to the conditions set forth in Exhibit A hereto. Buyer, the Company and Sellers intend to treat all Buyer Earnout Payments as consideration to Sellers in exchange for the Common Stock and not as compensation for services, and further agree that they shall file all reports, Tax or otherwise, consistently with such intent.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to Section 11.03, except as set forth in the Seller Disclosure Schedule, Sellers, severally but not jointly, represent and warrant to Buyer as of the date hereof and as of the Closing Date that:

Section 3.01. *Corporate Existence and Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Nevada and has all corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the failure to so qualify would have a Material Adverse Effect. Sellers have heretofore delivered to Buyer true and complete copies of the certificate of incorporation and bylaws of the Company as currently in effect.

Section 3.02. *Legal Capacity and Authorization.* Each Seller has the legal capacity and right to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby without the need for consent or authorization of any other Person. This Agreement constitutes a valid and binding agreement of each Seller enforceable against such Seller in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by each Seller of this Agreement and the consummation of the transactions contemplated hereby require no action by or in respect of, or filing with, any Governmental Authority located in any jurisdiction other than the People's Republic of China.

Section 3.04. *Noncontravention.* The execution, delivery and performance by each Seller of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate the certificate of incorporation or bylaws or similar organizational documents, as applicable, of such Seller or the Company or any Subsidiary, (ii) assuming compliance with the matters referred to in Section 3.03, violate any Applicable Law, (iii) require any consent or other action by any Person under, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of such Seller or the Company or any Subsidiary or to a loss of any benefit to which such Seller or the Company or any Subsidiary is entitled under any provision of any agreement or other instrument binding upon such Seller or the Company or any Subsidiary or (iv) result in the creation or imposition of any Lien on any asset of the Company or any Subsidiary.

Section 3.05. *Capitalization.*

(a) The authorized capital stock of the Company consists of 20,000,000 shares of Common Stock. As of the date hereof, there are outstanding 14,487,644 shares of Common Stock.

(b) All outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth in this Section 3.05, there are no outstanding (i) shares of capital stock or voting securities of the Company, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (iii) options or other rights to acquire from the Company, or other obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company (the items in Sections 3.05(a) and 3.05(b) being referred to collectively as the "**Company Securities**"). There are no outstanding obligations



of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any Company Securities.

Section 3.06. *Ownership of Shares.* Each Seller is the record and beneficial owner of the Shares set forth opposite such Seller's name on Annex A hereto, free and clear of any Lien and any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of the Shares), except for restrictions on transfer under applicable federal and state securities laws, and will transfer and deliver to Buyer at the Closing valid title to the Shares free and clear of any Lien and any such limitation or restriction.

Section 3.07. *Subsidiaries.*

(a) Each Subsidiary is duly formed, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has all powers (corporate or otherwise) and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the failure to so qualify would have a Material Adverse Effect. All Subsidiaries and their respective jurisdictions of incorporation or organization are identified on Schedule 3.07.

(b) All of the outstanding capital stock or other voting securities of each Subsidiary is owned by the Company, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities), except for restrictions on transfer under applicable federal and state securities laws,. There are no outstanding (i) securities of the Company or any Subsidiary convertible into or exchangeable for shares of capital stock or voting securities of any Subsidiary or (ii) options or other rights to acquire from the Company or any Subsidiary, or other obligation of the Company or any Subsidiary to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of any Subsidiary (the items in this Section 3.07 (b)(i) and Section 3.07 (b)(ii) being referred to collectively as the "**Subsidiary Securities**"). There are no outstanding obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

(c) Other than the Subsidiaries set forth on Schedule 3.07, the Company does not presently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. Except for strategic relationships to promote the Company's products and services, which relationships are conducted through contractual relationships between the Company and its strategic partners, but do not involve any equity interest of the Company in any separate legal entities, the Company is not a participant in any joint venture, partnership, or similar arrangement.

(d) Spigot, Inc. incorporated in the State of Delaware was dully dissolved in accordance with the Applicable Law and any and all of its liabilities of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, has been duly discharged or settled in accordance with the Applicable Law. None of the Company, any of its Subsidiaries and any Seller has received any claim in relation thereof, including any such claim relating to the Tax.

Section 3.08. *Financial Statements.* The reviewed but unaudited consolidated balance sheets as of December 31, 2012, 2013 and 2014 and the related reviewed but unaudited consolidated statements of income and cash flow charts for each of the years ended December 31, 2012, 2013 and 2014 and the unaudited interim consolidated balance sheets as of March 31, 2015 and June 30, 2015 and the related unaudited interim consolidated statements of income and cash flow charts for the three months ended March 31, 2015 and for the six months ended June 30, 2015 of the Company and the Subsidiaries fairly present, in conformity with GAAP applied on a consistent basis (except as may be indicated in the notes thereto), the consolidated financial position of the Company and the Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal year-end adjustments in the case of any unaudited interim financial statements).

Section 3.09. *Absence of Certain Changes.*

(a) Since the Balance Sheet Date, the business of the Company and its Subsidiaries has been conducted in the ordinary course consistent with past practices and there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) From the Balance Sheet Date until the date hereof, there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Closing Date without Buyer's consent, would constitute a breach of Section 5.01.

Section 3.10. *No Undisclosed Liabilities.* There are no liabilities of the Company or any Subsidiary of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than (i) liabilities provided for in the Balance Sheet or disclosed in the notes thereto, or (ii) liabilities incurred after the Balance Sheet Date in the ordinary course of the Company's business that are not individually, or, if paid or payable to the same Person, in aggregate within one month, in excess of \$500,000.

Section 3.11. *Intercompany Accounts.* Schedule 3.11 contains a complete list of all intercompany balances as of the Balance Sheet Date between any Seller

and its Affiliates, on the one hand, and the Company and the Subsidiaries, on the other hand. Since the Balance Sheet Date there has not been any accrual of liability by the Company or any Subsidiary to such Seller or any of its Affiliates or other transaction between the Company or any Subsidiary and such Seller and any of its Affiliates, except with respect to the period prior to the date of this Agreement, in the ordinary course of business of the Company and the Subsidiaries consistent with past practice, and thereafter, as provided in Schedule 3.11.

Section 3.12. *Material Contracts.*

- (a) Other than those set forth on Schedule 3.12, neither the Company nor any Subsidiary is a party to or bound by:
- (i) any lease (whether of real or personal property) providing for annual rentals of \$100,000 or more;
  - (ii) any agreement for the purchase of materials, supplies, goods, services, equipment or other assets providing or for the license of any Intellectual Property Rights for either (A) annual payments by the Company and the Subsidiaries of \$500,000 or more or (B) aggregate payments by the Company and the Subsidiaries of \$500,000 or more;
  - (iii) any sales, distribution, licensing or other similar agreement providing for the sale by the Company or any Subsidiary of materials, supplies, goods, services, equipment, Intellectual Property Rights or other assets that provides for either (A) annual payments to the Company and the Subsidiaries of \$500,000 or more or (B) aggregate payments to the Company and the Subsidiaries of \$500,000 or more;
  - (iv) any partnership, joint venture or other similar agreement or arrangement;
  - (v) any agreement relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);
  - (vi) any agreement relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset), except any such agreement (A) with an aggregate outstanding principal amount not exceeding \$100,000 and which may be prepaid on not more than 30 days' notice without the payment of any penalty and (B) entered into subsequent to the date of this Agreement as permitted by Section 5.01(h);
  - (vii) any franchise or similar agreement;

(viii) any agency, dealer, sales representative, marketing or other similar agreement;

(ix) any agreement that limits the freedom of the Company or any Subsidiary to compete in any line of business or with any Person or in any area or which would so limit the freedom of the Company or any Subsidiary after the Closing Date;

(x) any agreement with (A) any Seller or any of its Affiliates, (B) any Person directly or indirectly owning, controlling or holding with power to vote, 5% or more of the outstanding voting securities of such Seller or any of its Affiliates, (C) any Person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such Seller or any of its Affiliates or (D) any director or officer of such Seller or any of its Affiliates or any “associates” or members of the “immediate family” (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the 1934 Act) of any such director or officer;

(xi) any agreement with any director or officer of the Company or any Subsidiary or with any “associate” or any member of the “immediate family” (as such terms are respectively defined in Rules 12b-2 and 16a-1 of the 1934 Act) of any such director or officer; or

(xii) any other agreement, commitment, arrangement or plan not made in the ordinary course of business that is material to the Company and the Subsidiaries, taken as a whole.

(b) Each agreement, contract, plan, lease, arrangement or commitment disclosed in any Schedule to this Agreement or required to be disclosed pursuant to this Section is a valid and binding agreement of the Company or a Subsidiary, as the case may be, and is in full force and effect, and none of the Company, any Subsidiary or, to the knowledge of any Seller, any other party thereto is in default or breach in any material respect under the terms of any such agreement, contract, plan, lease, arrangement or commitment, including any exclusivity provision contained therein, and, to the knowledge of such Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute any event of default thereunder. True and complete copies of each such agreement, contract, plan, lease, arrangement or commitment have been delivered to Buyer.

Section 3.13. *Litigation.* There is no action, suit, investigation or proceeding (or any basis therefor) pending against, or to the knowledge of such Seller, threatened in writing against or affecting, such Seller, the Company or any Subsidiary or any of their respective properties before (or, in the case of threatened actions, suits, investigations or proceedings, would be before) any Governmental Authority or arbitrator which is material to the business of the Company and its Subsidiaries or which in any manner challenges or seeks to

prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 3.14. *Compliance with Laws and Court Orders.* Neither the Company nor any Subsidiary is in material violation of, and has not since January 1, 2010 violated in any material respects, and to the knowledge of each Seller is not under investigation with respect to and has not been threatened to be charged with or given notice of any violation of, any Applicable Law. There is no judgment, decree, injunction, rule or order of any arbitrator or Governmental Authority outstanding against the Company or any of its Subsidiaries that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company or that in any manner seeks to prevent, enjoin, alter or materially delay the consummation of the transactions contemplated by this Agreement.

Section 3.15. *Properties.*

(a) The Company and the Subsidiaries do not own any real property. The Company and the Subsidiaries have good and marketable, indefeasible, fee simple title to, or in the case of leased property and assets have valid leasehold interests in, all property and assets (whether real, personal, tangible or intangible) reflected on the Balance Sheet or acquired after the Balance Sheet Date, except for properties and assets sold since the Balance Sheet Date in the ordinary course of business consistent with past practices. None of such property or assets is subject to any Lien.

(b) All leases of such real property and personal property are in good standing and are valid, binding and enforceable in accordance with their respective terms and there does not exist under any such lease any default or any event which with notice or lapse of time or both would constitute a default.

(c) The property and assets owned or leased by the Company or any Subsidiary, or which they otherwise have the right to use, constitute all of the property and assets used or held for use in connection with the businesses of the Company or any Subsidiary and are adequate to conduct such businesses as currently conducted and as planned to be conducted by Buyer.

Section 3.16. *Software.*

(a) Proprietary Software. (i) Schedule 3.16(a)(i) contains a correct, current and complete list of all Company Products, identifying for each item all previous major releases, and all other material proprietary Software of the Company and its Subsidiaries used in or in connection with the operation of their businesses. (ii) Schedule 3.16(a)(ii) identifies, with respect to each Company Product and each other item of material proprietary Software, all Licensed Intellectual Property (A) used in the development, maintenance, use or support of such Company Product, (B) incorporated in or distributed or licensed with such

Company Product or otherwise provided by or on behalf of the Company or any of its Subsidiaries in any manner for use in connection with such Company Product, or (C) used to deliver, host or otherwise provide services with respect to such Company Product, and for each identified item of Licensed Intellectual Property, the Company IP Agreement relating to the Company's or its Subsidiary's use of such Licensed Intellectual Property.

(b) Source Code. (i) The Company and its Subsidiaries are in actual possession of and have exclusive control over a complete and correct copy of the source code for all proprietary components of the Company Products, including all previous major releases and all other material proprietary Software of the Company and its Subsidiaries used in or in connection with the operation of their businesses. (ii) The Company and its Subsidiaries have not disclosed, delivered, licensed or otherwise made available, and do not have a duty or obligation (whether present, contingent or otherwise) to disclose, deliver, license or otherwise make available, any source code for any Company Product to any escrow agent or any other Person, other than (A) an employee, independent contractor or consultant of the Company or its Subsidiaries pursuant to a valid and enforceable written agreement prohibiting use or disclosure except in the performance of services for the Company or its Subsidiaries, or (B) an independent third-party escrow agent pursuant to a valid and enforceable written source code escrow agreement providing for limited release only upon the occurrence of specified release events, and no such release event has occurred, and no circumstance or condition exists that would reasonably be expected to result in the occurrence of any such release event. Without limiting the foregoing, neither the execution of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will, or would reasonably be expected to, result in the release from escrow or other delivery to any Person of any source code for any Company Product. (iii) As of the date hereof, there has been no unauthorized theft, reverse engineering, decompiling, disassembling or other unauthorized disclosure of or access to any source code for any Company Product.

(c) Open Source Software. (i) Schedule 3.16(c)(i) sets forth a correct, current and complete list of each item of Open Source Software that is or has been used by the Company or any of its Subsidiaries in the development of or incorporated into, combined with, linked with or to, called to or from, distributed with, provided to any Person as a service, provided via a network as a service or application, or otherwise made available in any form with, any Company Product, and for each such item of Open Source Software, (A) the applicable Company Product, and (B) the name and version number of the applicable license agreement. (ii) The Company and its Subsidiaries have materially complied with all notice, attribution and other requirements of each license applicable to the Open Source Software required to be disclosed in Schedule 3.16(c)(i). (iii) The Company and its Subsidiaries have not used any Open Source Software in a manner that does, will or would reasonably be expected to, require the (A) disclosure or distribution of any Company Product or any other proprietary Software in source code form, (B) license or other provision of any Company Product or any other proprietary

Software on a royalty-free basis, or (C) grant of any patent license, non-assertion covenant or other rights under any Company Intellectual Property or rights to modify, make derivative works based on, decompile, disassemble or reverse engineer any Company Product or any other proprietary Software.

(d) Conformance with Specifications; Defects; Malicious Code. (i) All Company Products (A) materially comply with all Applicable Laws and industry standards, including with respect to security and (B) conform to all applicable contractual commitments, express and implied warranties (to the extent not subject to legally effective express exclusions thereof), representations and claims in packaging, labeling, advertising and marketing materials, and applicable specifications, user manuals, training materials and other documentation. (ii) None of the Company Products contain any bug, defect or error that adversely affects, or could reasonably be expected to adversely affect, the use, functionality or performance of such Company Product.

#### Section 3.17 *IT System.*

(a) The Company Systems are reasonably sufficient for the immediate and anticipated needs of the business of the Company and its Subsidiaries, including as to capacity, scalability, and ability to process current and anticipated peak volumes in a timely manner. The Company Systems are in sufficiently good working condition to perform all information technology operations and include sufficient licensed capacity (whether in terms of authorized sites, units, users, seats or otherwise) for all Software, in each case as necessary for the conduct of the business of the Company and its Subsidiaries as currently conducted or contemplated to be conducted.

(b) There has been no unauthorized access, use, intrusion or breach of security, or failure, breakdown, performance reduction or other adverse event affecting any Company Systems, that has caused or could reasonably be expected to cause any: (i) substantial disruption of or interruption in or to the use of such Company Systems or the conduct of the business of the Company or any of its Subsidiaries; (ii) loss, destruction, damage or harm of or to the Company or any of its Subsidiaries or its operations, personnel, property or other assets; or (iii) material liability of any kind to the Company or any of its Subsidiaries. The Company and its Subsidiaries have taken all reasonable actions, consistent with applicable prevailing industry practices, to protect the integrity and security of the Company Systems and the data and other information stored thereon.

(c) The Company and its Subsidiaries maintain commercially reasonable back-up and data recovery, disaster recovery and business continuity plans, procedures and facilities, act in compliance therewith, and test such plans and procedures on a regular basis, and such plans and procedures have been proven effective upon such testing.

#### Section 3.18 *Intellectual Property.*

(a) Schedule 3.18(a) (i) contains a true, current and complete list of each of the registrations and applications for registrations and other material Intellectual Property Rights included in the Owned Intellectual Property Rights, including without limitation, registered trademarks, domain names and copyrights, issued and reissued patents, and pending applications for any of the foregoing and specifying as to each, as applicable: the nature of the Intellectual Property Rights therein; the title, mark or design; the owner and inventor, if any; the jurisdiction by or in which it has been issued or registered or in which an application for such issuance or registration has been filed; the registration or application serial number; and the registration or application date; and material Software, used in the Company's and its Subsidiaries' current, or necessary for the Company's and its Subsidiaries' planned, businesses, and including, in each case, a brief description of the Intellectual Property Rights therein and specifying its owner, jurisdiction, title, design, inventor or date, as applicable. Schedule 3.18(a)(ii) contains a true, current and complete list of all material agreements (whether written or otherwise, including all licenses, sublicenses, research agreements, development agreements, distribution agreements, settlement agreements, coexistence agreements, consent to use agreements, covenants not to sue, waivers, releases and permissions) to which the Company or any of its Subsidiaries is a party or otherwise bound, granting or restricting any right to use, exploit or practice any Intellectual Property Rights, except for licenses to the Company of generally commercially available "off the shelf" third party products. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and accurate written description) of all these Agreements, including all modifications, amendments and supplements thereto and waivers thereunder.

(b) The Licensed Intellectual Property Rights and the Owned Intellectual Property Rights together constitute all the Intellectual Property Rights necessary to, or used or held for use in, the conduct of the business of the Company and its Subsidiaries as currently conducted and as currently proposed by the Company or any of its Subsidiaries to be conducted. There exist no material restrictions on the disclosure, use, license or transfer of the Owned Intellectual Property Rights. The consummation of the transactions contemplated by this Agreement will not alter, encumber, impair, extinguish, incur payment of any additional amount with respect to, or require the consent of any third party in respect of any Owned Intellectual Property Rights or Licensed Intellectual Property Rights. Without limiting the generality of the foregoing, the Company or one of its Subsidiaries has entered into binding, written agreements with every current and former employee of the Company and its Subsidiaries, and with every current and former independent contractor, whereby such employees and independent contractors: (A) enter into an enforceable "work-made-for-hire" arrangement or written agreement with the Company or one of its Subsidiaries or assign to the Company or one of its Subsidiaries any ownership interest and right they may have in the Owned Intellectual Property Rights; and (B) acknowledge the Company's or one of its Subsidiaries' exclusive ownership of all Owned Intellectual Property Rights.



(c) None of such Seller, the Company and any Subsidiary has given to any Person an indemnity in connection with any Intellectual Property Right, other than indemnities (i) that, individually or in the aggregate, could not reasonably be expected to result in liability to the Company in excess of \$100,000 or (ii) that arise under a standard form sales contract of the Company or a Subsidiary, a copy of which is attached in Schedule 3.18(c).

(d) None of the Company and its Subsidiaries has infringed, misappropriated or otherwise violated any Intellectual Property Right of any third person. There is no claim, action, suit, investigation or proceeding pending against, or, to the knowledge of such Seller, threatened in writing against or affecting, the Company, any of its Subsidiaries, any present or former officer, director or employee of the Company or any of its Subsidiaries (i) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any Subsidiary in any of the Owned Intellectual Property Rights and the Licensed Intellectual Property Rights, (ii) alleging that the use of the Owned Intellectual Property Rights or the Licensed Intellectual Property Rights or any services provided, processes used or products manufactured, used, imported or sold by the Company or any Subsidiary do or may conflict with, misappropriate, infringe or otherwise violate any Intellectual Property Right of any third party or (iii) alleging that the Company or any of its Subsidiaries have infringed, misappropriated or otherwise violated any Intellectual Property Right of any third party. Except as set forth in Schedule 3.18(d), none of the Company and any Subsidiary has received from any third party alleging infringement an offer to license any Intellectual Property Rights of such third party.

(e) None of the Owned Intellectual Property Rights and Licensed Intellectual Property Rights material to the operation of the business of the Company and its Subsidiaries has been adjudged invalid or unenforceable in whole or part, and, to the knowledge of such Seller, all such Owned Intellectual Property Rights and Licensed Intellectual Property Rights are valid, subsisting and enforceable.

(f) The Company and its Subsidiaries hold all right, title and interest in and to all Owned Intellectual Property Rights and all of the Company's and its Subsidiaries' licenses under the Licensed Intellectual Property Rights, free and clear of any Lien or obligation to grant licenses to any third party. In each case where a patent or patent application, trademark registration or trademark application, service mark registration or service mark application, or copyright registration or copyright application included in the Owned Intellectual Property is held by assignment, the assignment has been duly recorded with the Governmental Authority from which the patent or registration issued or before which the application or application for registration is pending. The Company and its Subsidiaries have taken all actions necessary to maintain and protect the Owned Intellectual Property Rights and their rights in the Licensed Intellectual Property Rights, including payment of applicable maintenance fees and filing of applicable statements of use.

(g) To the knowledge of such Seller, no Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating any Owned Intellectual Property Right or Licensed Intellectual Property Right. The conduct of the Company's and its Subsidiaries' businesses as currently and formerly conducted and as currently proposed to be conducted, and the products, processes and services of the Company and its Subsidiaries, have not infringed, misappropriated, diluted or otherwise violated, and do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person.

(h) The Company and its Subsidiaries have taken reasonable steps in accordance with normal industry practice to maintain the confidentiality of all confidential Intellectual Property Rights, including requiring all Persons having access to such confidential Intellectual Property Rights to execute written non-disclosure agreements.

(i) The Company and its Subsidiaries have taken reasonable steps in accordance with normal industry practice to preserve and maintain reasonably complete notes and records relating to the Owned Intellectual Property Rights and the Licensed Intellectual Property Rights.

(j) With respect to pending applications and applications for registration of the Owned Intellectual Property Rights and the Licensed Intellectual Property Rights that are material to the business or operation of the Company or any Subsidiary, the Company or any Subsidiary is not aware of any reason that could reasonably be expected to prevent any such application or application for registration from being granted with coverage substantially equivalent to the latest amended version of the pending application or application for registration. None of the trademarks, service marks, applications for trademarks and applications for service marks included in the Owned Intellectual Property Rights that are material to the business or operation of the Company or any Subsidiary has been the subject of an opposition or cancellation procedure. None of the patents and patent applications included in the Owned Intellectual Property Rights that are material to the business or operation of the Company or any Subsidiary has been the subject of an interference, protest, public use proceeding or third party request for reexamination or inter parte review.

(k) There are no legal actions (including any oppositions, interferences or re-examinations) settled, pending or threatened in writing (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property Rights of any Person by the Company or any of its Subsidiaries; (ii) challenging the validity, enforceability, registrability or ownership of any Owned Intellectual Property Rights or the Company's or any of its Subsidiaries' rights with respect to any Licensed Intellectual Property Rights; or (iii) by the Company or any of its Subsidiaries alleging any infringement, misappropriation, dilution or violation by any Person of the Owned Intellectual Property Rights or Licensed Intellectual Property

Rights. The Company and its Subsidiaries are not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Owned Intellectual Property Rights or Licensed Intellectual Property Rights.

(l) All products sold by the Company, any Subsidiary or any licensee of the Company or any Subsidiary and covered by a patent, trademark or copyright included in the Owned Intellectual Property Rights have been marked with the notice (applicable as of the date hereof) of all nations requiring such notice in order to collect damages.

Section 3.19. *Privacy and Data Security.*

(a) *Privacy Policy.* The Company and its Subsidiaries have a privacy policy regarding the collection, use and disclosure of personal information in the Company's or any of its Subsidiaries' possession, custody or control, or otherwise held or processed on its behalf and is and has been in material compliance with such privacy policy. True and complete copies of all privacy policies that have been used by the Company and its Subsidiaries and are currently in effect have been provided to the Buyer. Each of the Company and its Subsidiaries has posted a privacy policy in a clear and conspicuous location on all websites and any mobile applications owned or operated by the Company.

(b) *Compliance with Privacy and Data Security Laws.* Each of the Company and its Subsidiaries has materially complied at all times with all Applicable Laws regarding the collection, retention, use and protection of personal information.

(c) *Privacy and Data Security Contractual Obligations.* Each of the Company and its Subsidiaries is in material compliance with the terms of all Contracts to which the Company or any of its Subsidiaries is a party relating to data privacy, security or breach notification (including provisions that impose conditions or restrictions on the collection, use, disclosure, transmission, destruction, maintenance, storage or safeguarding of personal information).

(d) *Privacy and Data Security Complaints and Investigations.* No Person (including any Governmental Authority) has commenced any action relating to the Company's or any of its Subsidiaries' information privacy or data security practices, including with respect to the access, disclosure or use of personal information maintained by or on behalf of the Company or any of its Subsidiaries, or threatened in writing any such action, or made any written complaint, investigation or inquiry relating to such practices.

(e) *Effect of the Transaction.* The execution, delivery and performance of this Agreement and the consummation of the contemplated transactions, including any transfer of personal information resulting from such transactions, will not violate any Applicable Laws, the privacy policy of the Company and its

Subsidiaries as it currently exists or as it existed at any time during which any personal information was collected or obtained by or on behalf of Company and any of its Subsidiaries or other privacy and data security requirements imposed on Company or any party acting on its behalf under any contracts. Upon the Closing, the Buyer will continue to have the right to use such personal information on identical terms and conditions as the Company and any of its Subsidiaries enjoyed immediately prior to the Closing.

(f) *Security Measures.* The Company and its Subsidiaries have established and implemented policies, programs and procedures that are in compliance with applicable industry practices and are necessary and appropriate, including administrative, technical and physical safeguards to protect the confidentiality, integrity and security of personal information in its possession, custody or control against unauthorized access, use, modification, disclosure or other misuse.

(g) *Security Breaches and Unauthorized Use.* Neither the Company nor any of its Subsidiaries has experienced any loss, damage, or unauthorized access, disclosure, use or breach of security of any personal information in the Company's or any of its Subsidiaries' possession, custody or control, or otherwise held or processed on its behalf.

Section 3.20. *Insurance Coverage.* Sellers have furnished to Buyer a list of, and true and complete copies of, all insurance policies and fidelity bonds relating to the assets, business, operations, employees, officers or directors of the Company and the Subsidiaries. There is no claim by the Company or any Subsidiary pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. All premiums payable under all such policies and bonds have been timely paid and the Company and the Subsidiaries have otherwise complied fully with the terms and conditions of all such policies and bonds. Such policies of insurance and bonds (or other policies and bonds providing substantially similar insurance coverage) have been in effect since January 1, 2010 and remain in full force and effect. Such policies and bonds are of the type and in amounts customarily carried by Persons conducting businesses similar to those of the Company or any Subsidiary. No Seller knows of any threatened termination of, premium increase with respect to, or material alteration of coverage under, any of such policies or bonds. Except as disclosed in Schedule 3.20, the Company and the Subsidiaries shall after the Closing continue to have coverage under such policies and bonds with respect to events occurring prior to the Closing.

Section 3.21. *Licenses and Permits.* Schedule 3.21 correctly describes each license, franchise, permit, certificate, approval or other similar authorization issued to the Company that affects, or relates in any way to, the assets or business of the Company and its Subsidiaries (the "**Permits**") together with the name of the Governmental Authority issuing such Permit. Except as set forth on Schedule

3.21, (i) the Permits are valid and in full force and effect, (ii) neither the Company nor any Subsidiary is in default under, and no condition exists that with notice or lapse of time or both would constitute a default under, the Permits (iii) none of the Permits will be terminated or impaired or become terminable, in whole or in part, as a result of the transactions contemplated hereby and (iv) other than the Permits, there is no license, franchise, permit, certificate, approval or other similar authorization required under the Applicable Law for the Company or any of its Subsidiaries to conduct its business as currently conducted or proposed to be conducted.

Section 3.22. *Receivables.* All accounts, notes receivable and other receivables (other than receivables collected since the Balance Sheet Date) reflected on the Balance Sheet are, and all accounts and notes receivable arising from or otherwise relating to the business of the Company and its Subsidiaries as of the Closing Date will be, valid, genuine and fully collectible in the aggregate amount thereof, subject to normal and customary trade discounts, less any reserves for doubtful accounts recorded on the Balance Sheet. All accounts, notes receivable and other receivables arising out of or relating to such business of the Company and its Subsidiaries as of the Balance Sheet Date have been included in the Balance Sheet in accordance with GAAP applied on a consistent basis.

Section 3.23. *Selling Documents.* None of the documents or information delivered to Buyer in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading. The financial projections relating to the Company or any Subsidiary delivered to Buyer are made in good faith and are based upon reasonable assumptions, and no Seller is aware of any fact or set of circumstances that would lead it to believe that such projections are incorrect or misleading in any material respect.

Section 3.24. *Finders' Fees.* Except for Vision Knight Capital Management Company Limited whose fees and expenses will be paid by Sellers in accordance with Section 2.02(a)(ii), there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of any Seller or the Company or any Subsidiary who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 3.25. *Employees.*

(a) Schedule 3.25(a) sets forth, for each Key Employee, such employee's name, employer, title, hire date, location, whether full- or part-time, whether active or on leave (and, if on leave, the nature of the leave and the expected return date), whether exempt from the Fair Labor Standards Act, annual salary or wage rate, most recent annual bonus received and current annual bonus opportunity. Schedule 3.25(a) separately sets forth, for each individual

independent contractor engaged by the Company or any of its Subsidiaries whose annual compensation exceeds \$100,000, such contractor's name, duties and rate of compensation. Five days prior to the Closing Date, the Company will provide Buyer with a revised version of Schedule 3.25(a), updated as of such date.

(b) Other than (i) shares of Common Stock of the Company outstanding on the date hereof as set forth in Section 3.05 and (ii) warrants to purchase Common Stock of the Company outstanding on the date hereof as set forth in Schedule 3.06 of the Seller Disclosure Schedule, neither the Company nor any Subsidiary has issued or is obligated to issue any equity award to any of its employees, officers, directors or consultants.

(c) No Key Employee has indicated to any Seller, the Company or any of their respective Subsidiaries that he or she intends to resign or retire as a result of the transactions contemplated by this Agreement or otherwise within one year after the Closing Date.

(d) Except as set forth on Schedule 3.25(d), neither the Company nor any of its Subsidiaries has granted or paid or made any commitment to pay any severance, termination or change of control payment to any director, officer, employee or consultant.

(e) Each current and former employee, officer and consultant of the Company and its Subsidiaries has executed an Employee (or Consultant) Proprietary Information and Inventions Agreement substantially in the form attached hereto as Annex C. To the knowledge of each Seller, neither the Company nor any of its Subsidiaries is aware that any of its employees, officers or consultants are in violation thereof or are obligated under any contract or other agreement or subject to any judgment, decree or order of any court or any Government Authorities which would materially interfere with such person's ability to promote the interest of the Company or any of its Subsidiaries.

#### Section 3.26. *Employee Benefit Plans.*

(a) Schedule 3.26(a) lists each Employee Plan and specifies whether such plan is (i) a US Plan or an International Plan and (ii) a Seller Plan or a Company Plan.

(b) For each Employee Plan, Sellers have made available in the data room to Buyer a copy of such plan (or a description, if such plan is not written) and all amendments thereto and, as applicable: (i) all related trust agreements, insurance contracts or other funding arrangements and amendments thereto; (ii) the current prospectus or summary plan description and all summaries of material modifications; (iii) the most recent favorable determination or opinion letter from the IRS; (iv) the annual returns/reports (Form 5500) and accompanying schedules and attachments thereto for the three most recently completed plan years; (v) the three most recently prepared actuarial reports and financial statements; (vi) all

documents and correspondence relating thereto received from or provided to the IRS, the Department of Labor, the PBGC or any other Governmental Authority during the past three years; (vii) all related current administrative and other service contracts and amendments thereto with third-party services providers; (viii) all current employee handbooks, manuals and policies; and (ix) if such plan is an International Plan, documents that are substantially comparable (taking into account differences in Applicable Law and practices) to the documents required to be provided in clauses (i) through (viii).

(c) Each Employee Plan has been maintained in compliance with its terms and all Applicable Law, including ERISA and the Code. No action, suit, investigation, audit, proceeding or claim (or any basis therefor) (other than routine claims for benefits) is pending against or involves, or to the knowledge of such Seller, is threatened against or threatened in writing to involve, any Employee Plan before any arbitrator or Governmental Authority, including the IRS, the Department of Labor or the PBGC.

(d) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or has applied to the IRS for such a letter within the applicable remedial amendment period or such period has not expired and no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being issued or reissued or a penalty under the IRS Closing Agreement Program if discovered during an IRS audit or investigation. Each trust created under any such Employee Plan is exempt from Tax under Section 501(a) of the Code and has been so exempt since its creation.

(e) Neither the Company, nor any of its ERISA Affiliates (nor any predecessor thereof of any such entity) contributes to, or has in the past contributed to, any Multiemployer Plan.

(f) Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has in the past six years sponsored, maintained, administered or contributed to (or had any obligation to contribute to), or has or is reasonably expected to have any direct or indirect liability with respect to, any Title IV Plan, including any Multiemployer Plan.

(g) With respect to any Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause the Company or any of its Subsidiaries to incur any liability under ERISA or the Code.

(h) Neither the Company nor any of its Subsidiaries has any current or projected liability for, and no Employee Plan provides or promises, any post-employment or post-retirement medical, dental, disability, hospitalization, life or

similar benefits (whether insured or self-insured) to any current or former Service Provider (other than coverage mandated by Applicable Law, including COBRA).

(i) All contributions, premiums and payments that are due have been made for each Employee Plan within the time periods prescribed by the terms of such plan and Applicable Law, and all contributions, premiums and payments for any period ending on or before the Closing Date that are not due are properly accrued to the extent required to be accrued under applicable accounting principles and have been properly reflected on the Balance Sheet or disclosed in the notes thereto.

(j) No events have occurred with respect to any Employee Plan that would reasonably be expected to result in the assessment of any excise tax against the Company or any of its Subsidiaries.

(k) There has been no amendment to, written interpretation of or announcement (whether or not written) by the Company or any of its Affiliates relating to, or change in employee participation or coverage under, any Employee Plan that would increase the expense of maintaining such plan above the level of expense incurred in respect thereof for the most recent fiscal year ended prior to the date hereof.

(l) Neither the Company nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any current or former Service Provider for any Tax incurred by such Service Provider, including under Section 409A, 457A or 4999 of the Code.

(m) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby (either alone or together with any other event) will (i) entitle any current or former Service Provider to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Employee Plan or (iii) limit or restrict the right of the Company or any of its Subsidiaries or, after the Closing, Buyer, to merge, amend or terminate any Employee Plan.

(n) Each International Plan (i) has been maintained in compliance with its terms and Applicable Law, (ii) if intended to qualify for special tax treatment, meets all the requirements for such treatment, and (iii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles. From and after the Closing Date, Buyer and its Affiliates will receive the full benefit of any funds, accruals and reserves under the International Plans.



(o) No Employee Plan, individually or collectively, would reasonably be expected to result in the payment of any amount that would not be deductible under Section 162(m) or 280G of the Code.

Section 3.27. *Labor Matters.*

(a) The Company and its Subsidiaries are, and have been since January 1, 2010 in material compliance with all Applicable Law relating to labor and employment, including those relating to labor management relations, wages, hours, overtime, employee classification, discrimination, sexual harassment, civil rights, affirmative action, work authorization, immigration, safety and health, information privacy and security, workers compensation, continuation coverage under group health plans, wage payment and the payment and withholding of Taxes.

(b) Neither the Company nor any of its Subsidiaries is or has been a party to or subject to, or is currently negotiating in connection with entering into, any Collective Bargaining Agreement, and there has not been any organizational campaign, petition or other unionization activity seeking recognition of a collective bargaining unit relating to any Service Provider. Neither the Company nor any of its Subsidiaries has failed to comply with the provisions of any Collective Bargaining Agreement, and there are no grievances outstanding against the Company or any of its Subsidiaries under any such agreement. There are no unfair labor practice complaints pending or, to the knowledge of any Seller, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving Service Providers. There is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to the knowledge of any Seller, threatened against or affecting the Company or any of its Subsidiaries. The consent or consultation of, or the rendering of formal advice by, any labor or trade union, works council or other employee representative body is not required for the Company to enter into this Agreement or to consummate any of the transactions contemplated hereby.

(c) Each of the Company and its Subsidiaries is, and has been since January 1, 2013, in compliance with WARN and has no liabilities or other obligations thereunder. Neither the Company nor any of its Subsidiaries has taken any action that would reasonably be expected to cause Buyer or any of its Affiliates to have any liability or other obligation following the Closing Date under WARN.

Section 3.28. *Tax.* Except as set forth in the Balance Sheet (including the notes thereto), (i) all Tax returns, statements, reports and forms (collectively, the “**Returns**”) that are required by Applicable Law to be filed with any Taxing Authority on or before the Closing Date with respect to any Pre-Closing Tax Period by, or with respect to, the Company or any of its Subsidiaries has been, or will be, timely filed on or before the Closing Date; (ii) each of the Company and

its Subsidiaries has timely paid all Taxes; (iii) the Returns that have been filed are true, correct and complete, (iv) the charges, accruals and reserves for Taxes with respect to the Company and any of its Subsidiaries reflected on the books of the Company are adequate to cover material Tax liabilities accruing for the period(s) stated in such books of the Company; (v) there is no action, suit, proceeding, investigation, audit or claim now proposed, or to the knowledge of any Seller, threatened or pending, against or with respect to the Company or any of its Subsidiaries in respect of any material Tax; (vi) each of the Company and its Subsidiaries have complied in all material respects with all Tax Law relating to the collection and withholding of Taxes and all such Taxes have been duly paid within the time and in the manner prescribed by Applicable Law by or on behalf of the Company and its Subsidiaries; (vii) Neither the Company nor any of its Subsidiaries has any liability for Taxes of any other Person (A) under Treasury Regulations Section 1.1502-6, (B) as a transferee or successor, or (C) by contract; (viii) Neither the Company nor any of its Subsidiaries will be required to include any material item of income or gain in, or exclude any material item of loss or deduction from, the determination of taxable income for any post-Closing tax period as a result of any (A) change in method of accounting for a Pre-Closing Tax Period required by Applicable Law to be made under Section 481 of the Code (or any corresponding provision of state, local or foreign Law); (B) installment sale or open transaction made or entered into on or prior to the Closing Date; (C) prepaid amount received on or prior to the Closing Date; or (D) intercompany transaction that will be required by Applicable Law to be taken into account under Treasury Regulations Section 1.1502-13 (or any predecessor provision or any similar provision of state, local or foreign Law) and that occurs on or prior to the Closing Date; (x) The Company has been a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code at all times since its formation, and the Company will be validly electing S corporation up to and including the Closing Date; (xi) Neither the Company nor any of its Subsidiaries has any amount that would constitute built-in gain under Section 1374 of the Code; and (xii) None of the Company and its Subsidiaries is a party to any contract or plan that has resulted or would result, separately or in the aggregate, in the payment of (i) any “excess parachute payments” within the meaning of Section 280G of the Code (without regard to the exceptions set forth in Sections 280G(b)(4) and 280G(b)(5) of the Code) or (ii) any amount for which a deduction would be disallowed or deferred under Section 162 or Section 404 of the Code.

Section 3.29. *Foreign Corrupt Practices Act.* Since January 1, 2010, neither the Company nor any Subsidiary has violated or committed any act or made any payment in violation of, or that requires disclosure under, the Foreign Corrupt Practices Act (15 U.S.C. §§ 78m(b), 78dd-1, 78dd-2, 78ff).

Section 3.30. *Change of Control Agreements.* Except for those listed on Schedule 3.30, the Company does not have any plan, contract, agreement, scheme or Employee Plan (1) pursuant to which any amounts may become payable (whether currently or in the future) to any Person (including any employee and independent contractor of the Company) as a result of or in connection with the

transactions contemplated hereby or (2) which provides for the acceleration or early vesting of any right or benefit or lapse of any restriction as a result of or in connection with transactions contemplated hereby.

Section 3.31. *Representations.* The representations and warranties of such Seller contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct with only such exceptions as would not in the aggregate reasonably be expected to have a Material Adverse Effect.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Subject to Section 11.03, except as set forth in the Buyer Disclosure Schedule, Buyer represents and warrants to Sellers as of the date hereof and as of the Closing Date that:

Section 4.01. *Existence and Power.* Buyer is a limited liability company duly organized and validly existing under the laws of PRC and has all powers (corporate or otherwise) and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted.

Section 4.02. *Authorization.* The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers and authority of Buyer and have been duly authorized on the part of Buyer except for the approvals of the board of directors and stockholders of Buyer required under the organizational documents of Buyer and the Applicable Law (the “**Board and Stockholder Approvals**”). This Agreement constitutes a valid and binding agreement of Buyer.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby require no material action by or in respect of, or material filing with, any Governmental Authority other than (i) approval by the Applicable Commission of Commerce, (ii) approval by the China Securities Regulatory Commission, and (iii) approval by the applicable Commission of Development and Reform Commission ((i), (ii) and (iii) collectively, the “**PRC Regulatory Approvals**”).

Section 4.04. *Noncontravention.* The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) violate the organizational documents of Buyer or (ii) assuming completion of the PRC Regulatory Approvals, violate any material Applicable Law of the PRC.

Section 4.05. *Purchase for Investment.* Buyer is purchasing the Shares for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Shares and is capable of bearing the economic risks of such investment.

Section 4.06. *Finders' Fees.* Except for Huatai United Securities Co., Ltd. whose fees and expenses will be paid by Buyer, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.07. *Solvency, Sufficient Funds and Source of Funds.* Buyer will have sufficient funds available as and when needed to enable it to pay the Purchase Price. Buyer is not insolvent nor will Buyer be insolvent immediately after giving effect to the consummation of the transactions contemplated by this Agreement.

Section 4.08. *Litigation.* There is no action, suit, investigation or proceeding (or any basis therefor) pending against, or to the knowledge of Buyer, threatened against or affecting, Buyer or any Affiliate of Buyer or any of their respective properties before (or, in the case of threatened actions, suits, investigations or proceedings, would be before) any Governmental Authority or arbitrator which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

## ARTICLE 5 COVENANTS OF SELLERS

Each Seller agrees that:

Section 5.01. *Conduct of the Company.* From the date hereof until the Closing Date, such Seller shall cause each of the Company and the Subsidiaries to, conduct its business in the ordinary course and use its best efforts to (i) preserve intact its present business organization, (ii) maintain in effect all of its foreign, federal, state and local licenses, permits, consents, franchises, approvals and authorizations, (iii) keep available the services of its directors, officers and Key Employees, (iv) maintain satisfactory relationships with its material customers, material lenders, material suppliers and others having material business relationships with it, and (v) manage its working capital (including the timing of collection of accounts receivable and of the payment of accounts payable) in the ordinary course of business. Without limiting the generality of the foregoing, except as expressly contemplated by this Agreement or approved in writing by Buyer in advance, such Seller shall not permit any of the Company or the Subsidiaries to:

- (a) amend its articles of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise);
- (b) split, combine or reclassify any shares of capital stock of the Company or any Subsidiary or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of the capital stock of the Company or any Subsidiary, or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or any Subsidiary Securities, except for dividends by any Subsidiary on a *pro rata* basis to the equity owners thereof;
- (c) (i) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of any Company Securities or Subsidiary Securities, other than the issuance of any Subsidiary Securities to the Company or any other Subsidiary or (ii) amend any term of any Company Security or any Subsidiary Security (in each case, whether by merger, consolidation or otherwise);
- (d) incur any capital expenditures or any obligations or liabilities in respect thereof, except for any capital expenditures not to exceed \$50,000 individually or \$100,000 in the aggregate which are made in the ordinary course of business;
- (e) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses, other than (i) supplies in the ordinary course of business of the Company and the Subsidiaries in a manner that is consistent with past practice and (ii) acquisitions with a purchase price (including assumed indebtedness) that does not exceed \$50,000 individually or \$100,000 in the aggregate;
- (f) sell, lease or otherwise transfer, or create or incur any Lien on, any of the Company's or any Subsidiary's material assets, securities, properties, interests or businesses other than in the ordinary course of business consistent with past practice;
- (g) other than in connection with actions permitted by Section 5.01(d) or Section 5.01(e), make any loans, advances or capital contributions to, or investments in, any other Person, other than in the ordinary course of business consistent with past practice;
- (h) create, incur, assume, suffer to exist or otherwise be liable with respect to any indebtedness for borrowed money or guarantees thereof other than the Outstanding Indebtedness and the use of corporate credit cards in the ordinary course of business;
- (i) enter into any agreement or arrangement that could, after the Closing Date, limit or restrict in any material respect the Company, any Subsidiary, Buyer or any of their respective Affiliates, from engaging or competing in any line of business, in any location or with any Person;

(j) enter into, amend or modify in any material respect or terminate any contract required to be disclosed by Section 3.12 or otherwise waive, release or assign any material rights, claims or benefits of the Company or any of its Subsidiaries if such entering into, amendment, modification, termination, waiver, release or assignment would have a Material Adverse Effect;

(k) (i) grant any severance, retention, change of control or termination pay to, or enter into or amend any severance, retention, change of control or termination agreement with, any current or former Service Provider, other than pursuant to a separation agreement entered into by the Company in connection with the Company's termination of a Service Provider that is not a Key Employee; (ii) materially increase the compensation or benefits provided to any Key Employee, except in the ordinary course of business, (iii) grant any equity or equity-based awards to, or discretionarily accelerate the vesting or payment of any such awards held by, any current or former Service Provider, (iv) establish, adopt, enter into or amend any Employee Plan or Collective Bargaining Agreement, (v) (x) hire any Company Employees outside the ordinary course of business other than to fill vacancies arising due to terminations of employment of Company Employees with base compensation of less than \$100,000 or (y) terminate the employment of any Key Employees, or (vi) transfer the employment or engagement of any Service Provider from the Company or any of its Subsidiaries to any Seller or any of its Affiliates (other than the Company or any of its Subsidiaries) or from any Seller or any of its Affiliates (other than the Company or any of its Subsidiaries) to the Company or any of its Subsidiaries;

(l) change the Company's methods of accounting, except as required by concurrent changes in GAAP, as agreed to by its independent public accountants;

(m) settle, or offer or propose to settle, (i) any material litigation, investigation, arbitration, proceeding or other claim involving or against the Company or any Subsidiary, (ii) any stockholder litigation or dispute against the Company or any of its officers or directors or (iii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby;

(n) make or change any material Tax election, change any annual tax accounting period, adopt or change any method of tax accounting, materially amend any Returns or file claims for material Tax refunds, enter any material closing agreement, settle any material Tax claim, audit or assessment, or surrender any right to claim a material Tax refund, offset or other reduction in Tax liability;

(o) take any action that would make any representation or warranty of the Company hereunder, or omit to take any action necessary to prevent any representation or warranty of the Company hereunder from being, untrue or inaccurate in any respect at the Closing Date; or

(p) agree, resolve or commit to do any of the foregoing.

Section 5.02. *Access to Information; Confidentiality.*

(a) From the date hereof until the Closing Date, each Seller will (i) give, and will cause the Company and each Subsidiary to give, Buyer, its counsel, financial advisors, auditors and other authorized representatives full access to the offices, properties, books and records of the Company and the Subsidiaries and to the books and records of such Seller, if applicable, relating to the Company and the Subsidiaries, (ii) furnish, and will cause the Company and each Subsidiary to furnish, to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Company or any Subsidiary as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisors of such Seller or the Company or any Subsidiary to cooperate with Buyer in its investigation of the Company or any Subsidiary. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by any Seller hereunder.

(b) After the Closing, each Seller and its Affiliates will hold, and will use their best efforts to cause their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Applicable Law, all confidential or proprietary documents and information concerning the Company and the Subsidiaries, except for the sole purpose of carrying out the business of the Company or to the extent that such information can be shown to have been (i) previously known on a nonconfidential basis by such Seller, (ii) in the public domain through no fault of such Seller or its Affiliates or (iii) later lawfully acquired by such Seller from sources other than those related to its prior ownership of the Company and the Subsidiaries; provided that Sellers may disclose such information to their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents in connection with (1) seeking any advice or assistance with respect to Tax matters related to the transactions contemplated hereby or (2) any investigation, dispute or litigation relating to the transactions contemplated by this Agreement, in each case, so long as such Persons are legally bound by customary confidentiality obligations with respect to such information. The obligation of each Seller and its Affiliates to hold any such information in confidence shall be satisfied if they exercise the same care with respect to such information as they would take to preserve the confidentiality of their own similar information.

(c) On and after the Closing Date, each Seller will afford promptly to Buyer and its agents reasonable access to its books of account, financial and other records (including accountant's work papers), information, employees and auditors to the extent necessary for Buyer in connection with any audit, investigation, dispute or litigation or any other necessary business purpose relating to the Company or any Subsidiary; *provided* that any such access by Buyer shall not unreasonably interfere with the conduct of the business of such Seller and all

such books of account, financial and other records and information shall be held in confidence by Buyer in accordance with Section 6.01.

Section 5.03. *Notices of Certain Events.* Each Seller shall promptly notify Buyer of:

- (a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
- (b) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;
- (c) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge threatened against, relating to or involving or otherwise affecting such Seller or the Company or any Subsidiary that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.13 or that relate to the consummation of the transactions contemplated by this Agreement;
- (d) any inaccuracy of any representation or warranty contained in this Agreement at any time during the term hereof that could reasonably be expected to cause the condition set forth in Section 8.02(a) and Section 8.02(f) not to be satisfied; and
- (e) any failure of such Seller to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by it hereunder;

*provided, however,* that the delivery of any notice pursuant to this Section 5.03 shall not limit or otherwise affect the remedies available hereunder to the party receiving that notice.

Section 5.04. *Noncompetition.*

(a) Each Seller agrees that for a period commencing on the Closing Date and ending on (A) with respect to any Seller who is a Company Employee, director or consultant of the Company or any Subsidiary as of the date hereof, the later of (i) the third anniversary of the date on which such Seller ceases to be such Company Employee, director or consultant and (ii) the expiration of the Earnout Period, (B) with respect to any other Seller, the third anniversary of the Closing Date (each, the “**Non-Compete Period**”), other than for and only for purposes of carrying out the Business of the Company or any Subsidiary, neither it nor any of its Affiliates shall:

- (i) engage, either directly or indirectly, as a principal or for its own account or solely or jointly with others, or as stockholders in any



corporation or joint stock association, in any business that competes with the Business, within or with respect to the geographical area of the United States, Europe, the PRC and anywhere else the Company operates or plans to operate as of the Closing Date or during the Non-Compete Period;

(ii) entice or otherwise intentionally cause any vendor, consultant, collaborator, developer, publisher, customer, distributor, agent, or contractor of the Company or any Subsidiary, including Yahoo! Inc. and any of its Affiliates, to cease its business relationship with the Company or such Subsidiary, as applicable; or

(iii) solicit or attempt to solicit any current employee of the Company or any Subsidiary;

*provided* that each Seller may make and retain investments, for investment purposes only, in less than 5% of the outstanding capital stock of any publicly-traded corporation that engages in a business that competes with the Business if stock of such corporation is listed on a U.S. domestic or foreign national stock exchange and such Seller is not otherwise affiliated with such corporation; and *further provided* that the placement of general advertisements that are not specifically targeted toward current employees of the Company or any Subsidiary shall not be deemed to be a breach of this Section 5.04.

(b) If any provision contained in this Section shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Section, but this Section shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the parties that if any of the restrictions or covenants contained herein is held to cover a geographic area or to be for a length of time which is not permitted by Applicable Law, or in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under Applicable Law, an arbitrator with competent jurisdiction shall construe and interpret or reform this Section to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as shall be valid and enforceable under such Applicable Law. Each Seller acknowledges that Buyer would be irreparably harmed by any breach of this Section and that there would be no adequate remedy at law or in damages to compensate Buyer for any such breach. Each Seller agrees that Buyer shall be entitled to injunctive relief requiring specific performance by such Seller of this Section, and such Seller consents to the entry thereof.

(c) Each Seller acknowledges that the limitations of time, geography, and scope of activity agreed to above are reasonable because, among other things, (i) the Business is in a highly competitive industry, (ii) such Seller has or will have access to the trade secrets and know-how of the Business, including without

limitation the plans and strategy (and in particular, the competitive strategy) of the Company, and (iii) these limitations are necessary to protect the trade secrets, confidential information, and goodwill of the Company and its Subsidiaries.

(d) In consideration of Sellers agreeing to the provisions of this Section, at the Closing, Buyer agrees to pay to Sellers the aggregate sum of \$2,000,000 (the “**Noncompete Consideration**”) in the manner provided in Section 2.02.

(e) For the avoidance of doubt, the Noncompete Consideration shall be in no event deemed as liquidated damages or an adequate amount of the Damages that the Buyer and the Company may suffer as a result of Sellers’ breach of its noncompetition obligations hereunder, and Sellers shall be fully liable for any and all Damages incurred or suffered by Buyer or any other Buyer Indemnified Party as a result of the breach by any Seller of this Section 5.04.

Section 5.05. *Future Seller Acquisitions.* Without limiting the generality of Section 5.04, after the Closing Date, if either of Mr. Rodrigo Sales or Mr. Ryan Stephens locates or is offered or otherwise approached with any opportunity (the “**Opportunity**”) of any acquisition of or investment in, directly or indirectly, in whichever form including by way of stock purchase, asset purchase, merger, consolidation, joint venture or otherwise, any entity, asset, security, properties, interest or business that relates to the Business, Mr. Rodrigo Sales and/or Mr. Ryan Stephens, as applicable, shall promptly disclose the Opportunity to the board of directors of the Company (the “**Board**”) for its approval. The Board may approve or reject, in its sole discretion, Mr. Rodrigo Sales and/or Mr. Ryan Stephens’ participation in such Opportunity and/or may condition such participation on such conditions or requirements as may be determined by the Board in its sole discretion.

Section 5.06. *Non-U.S. Business.* After the Closing Date, each Seller shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or reasonably desirable to assist the Company in completing a restructuring of the Business, including forming non-U.S. entities or structures, for purposes of maximizing the Tax benefits of the Company and its Subsidiaries, taken as a whole, including minimizing the Tax obligations of the Company and its Subsidiaries relating to their respective business outside of the U.S.

## ARTICLE 6 COVENANTS OF BUYER

Buyer agrees that:

Section 6.01. *Confidentiality.* Prior to the Closing Date and after any termination of this Agreement, Buyer and its Affiliates will hold, and will use their best efforts to cause their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence,

unless compelled to disclose by judicial or administrative process or by other requirements of law, all confidential or proprietary documents and information concerning the Company, any Subsidiary or any Seller furnished to Buyer or its Affiliates in connection with the transactions contemplated by this Agreement, except to the extent that such information can be shown to have been (i) previously known on a nonconfidential basis by Buyer, (ii) in the public domain through no fault of Buyer or (iii) later lawfully acquired by Buyer from sources other than Seller or the Company or any Subsidiary; *provided* that Buyer may disclose such information to its officers, directors, employees, accountants, counsel, consultants, advisors and agents in connection with the transactions contemplated by this Agreement and to its lenders or other Persons in connection with obtaining the financing for the transactions contemplated by this Agreement so long as such Persons are informed by Buyer of the confidential nature of such information and are directed by Buyer to treat such information confidentially. The obligation of Buyer and its Affiliates to hold any such information in confidence shall be satisfied if they exercise the same care with respect to such information as they would take to preserve the confidentiality of their own similar information. If this Agreement is terminated, Buyer and its Affiliates will, and will use their best efforts to cause their respective officers, directors, employees, accountants, counsel, consultants, advisors and agents to, destroy or deliver to Sellers' Representative, upon written request, all documents and other materials, and all copies thereof, obtained by Buyer or its Affiliates or on their behalf from Seller or the Company or any Subsidiary in connection with this Agreement that are subject to such confidence.

Section 6.02. *Special Tax Payment.* If any Seller pays any Tax (the "**Seller Tax Payment**") which (i) is solely in respect of the taxable profit (the "**Transition Period Profit**") of the Company accrued in the period commencing on the Balance Sheet Date and ending on the Closing Date to and only to extent that such profit has not and will not be distributed by the Company to any Seller and (ii) is required to be paid by the Tax Law solely due to the Company's status as an S corporation within the meaning of Sections 1361 and 1362 of the Code prior to the Closing, Buyer agrees to, upon receipt of the evidence of payment reasonably satisfactory to Buyer, indemnify such Seller against the Seller Tax Payment in a form mutually agreed by Buyer and the Sellers' Representative. Buyer and Sellers' Representative agree that the parties will take reasonable best efforts to structure the Seller Tax Payment such that the Taxes on such Seller Tax Payment are minimized and Buyer agrees to indemnify Sellers, if applicable, from any Taxes paid by Sellers as required by the Tax Law solely as a result of Sellers' receipt of the Seller Tax Payment from Buyer. If any Seller receives any Tax refund or Tax credit in respect of the Seller Tax Payment or the indemnification from Buyer in the foregoing sentence, such Seller shall pay to Buyer such Tax refund or cause such Tax credit to be transferred or otherwise used Buyer, as applicable, each in a form mutually agreed by Buyer and the Sellers' Representative.

ARTICLE 7  
COVENANTS OF BUYER AND SELLERS

In respect of Sections 7.01, 7.02 and 7.03, Buyer and each Seller agree that, and in respect of Sections 7.04, 7.05, 7.06 and 7.08, Buyer and each Management Seller agree that:

Section 7.01. *Reasonable Best Efforts; Further Assurances.*

(a) Subject to the terms and conditions of this Agreement, Buyer and such Seller will 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 or reasonably desirable under Applicable Laws to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement. Such Seller agrees and Buyer, after the Closing, agrees to cause the Company and each Subsidiary, to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

(b) Without limiting the generality of Section 7.01(a), Buyer shall use its reasonable best efforts to make appropriate filings and take other actions to obtain the PRC Regulatory Approvals and each Seller agrees to use its reasonable best efforts to provide collaboration and assistance, including timely furnishing the information required by the applicable Governmental Authority relating to the Company, any Subsidiary or such Seller.

(c) Without limiting the generality of Section 7.01(a), after the Closing, the Management Sellers shall cause the Company to duly make the filings required under the Applicable Law in connection with the transactions contemplated by this Agreement, including (i) filings to reflect the Company's new directors and officers after the Closing; and (ii) the applicable BE-13 forms.

Section 7.02. *Certain Filings.* Such Seller and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 7.03. *Public Announcements.* The parties agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement or the transactions contemplated hereby and, except for any press releases and public statements the making of which may be required by Applicable Law or any listing agreement with any national securities exchange, will not issue any such press release or make any such public statement prior to such consultation.

Section 7.04. *Board during the Earnout Period.* (a) The Board of the Company during the Earnout Period shall be consisted of five members, three of which shall be designated by Buyer or any of its Affiliates, one of which shall be the Chief Executive Officer of the Company (the “**CEO Director**”) and the remaining one shall be a person designated jointly by the Chief Executive Officer and the President of the Company (together with the CEO Director, the “**Management-Appointed Directors**”).

(b) At all meetings of the Board, a majority of the members of the Board shall constitute a quorum for the transaction of business. The act of a majority of the members of the Board shall be the act of the board of directors, unless the act of a greater number is required by the Applicable Laws or pursuant to Section 7.05.

(c) The Board shall hold regular quarterly meetings within four weeks following the end of the each quarter. No later than seven days prior to a regular quarterly meeting, the Management Sellers shall submit a report of the financial and operational performance of the Company and its Subsidiaries in respect of the period of the prior quarter to each member of the Board. The Management Sellers shall attend the session of the Board meeting discussing such report and respond to any questions or inquires relating thereof.

(d) At the first Board meeting after the Closing Date and thereafter the last regularly quarterly meeting of the Board for any year during the Earnout Period, a member of the Board designated by Buyer or any of its Affiliates will deliver a statement to the other members of the Board and the Management Sellers setting forth the actions of the Company or any of its Subsidiaries that are required to be approved by, filed with, or publicly announced by Buyer, any of its Affiliates or any Chinese Governmental Authority in accordance with the Chinese Applicable Law, including the listing rules of the Shenzhen Stock Exchange, which may be amended by Buyer from time to time in accordance with the changes of the Chinese Applicable Law. The Management Sellers shall cause the Company or any of its Subsidiaries not to take any such action without obtaining such approval or completing such filing and shall cause the Company or any of its Subsidiaries to timely report such actions in reasonable details to enable Buyer to make such public announcements.

Section 7.05. *Management of the Company after the Closing Date.* Except as otherwise provided in the Applicable Law, the business and affairs of the

Company after the Closing shall be managed by and under the direction of the Board. Without limiting the generality of the foregoing sentence, during the Earnout Period, subject to any additional approval requirements pursuant to Section 7.04(d), the Company agrees that it will not and it shall cause each of its Subsidiaries not to, and each of Buyer and the Management Sellers agree that it will cause the Company or any of its Subsidiaries not to, take any action (including any action by the Board or any committee thereof) with respect to any of the following matters without approval of the Board, *provided* that, during the Earnout Period, such approval shall include the vote or written consent of at least one of the Management-Appointed Directors with respect to the matters set forth in (c), (d), (e), (g), (i), (j) (except for those of the Management-Appointed Directors), (k), (m) (except for the Management-Appointed Directors), (n), (o), (q), (r), (s), (t) and (u) below:

(a) any merger, consolidation, reorganization (including conversion) or any other business combination involving the Company or any of its Subsidiaries (other than a merger, consolidation, reorganization or business combination under subsection (c) below);

(b) any recapitalization, reclassification, spin-off or combination of any securities of the Company or any of its Subsidiaries;

(c) (i) any acquisition by the Company or any of its Subsidiaries of assets, businesses, operations or securities, in a single transaction or a series of related transactions, with a value in the aggregate in excess of US\$3,000,000 or (ii) any merger, consolidation, reorganization, business combination or acquisition by the Company or any of its Subsidiaries which would be reasonably expected to have a material adverse effect on the Net Profit of the Company;

(d) any sale, transfer, lease, pledge or other disposition by the Company or any of its Subsidiaries of any material assets, businesses, interests, properties or securities;

(e) any creation, incurrence or assumption of any indebtedness of the Company or any of its Subsidiaries in excess of \$3,000,000 in the aggregate on a consolidated basis;

(f) the declaration of any dividend on or the making of any distribution with respect to, or the redemption, repurchase or other acquisition of, any securities of the Company or any of its Subsidiaries, except as expressly permitted by this Agreement or the Purchase Agreement, *provided* that as a principle the Company may distribute at least 30% of its annual profit at the discretion of the Board;

(g) any liquidation, dissolution, commencement of bankruptcy or similar proceedings with respect to the Company or any of its Subsidiaries;

(h) any issuance of securities of the Company other than (i) pursuant to an incentive plan as approved and amended from time to time by the Board, or any other compensatory option plan approved by the Board and (ii) the issuance of Company Securities upon the exercise of such options awarded under any of the plans set forth in clause (i) above;

(i) any material capital expenditure, which in either case is not specifically contemplated by the annual business plan of the Company or any of its Subsidiaries approved by the Board;

(j) any determination of compensation, benefits, perquisites and other incentives for senior management of the Company or any of its Subsidiaries (including any Key Employee as defined in the Purchase Agreement) and the approval or amendment of any plans or agreements in connection therewith;

(k) any material transaction between the Company or any of its Subsidiaries, on the one hand, and any management member of the Company or any of his/her Affiliates, on the other hand;

(l) any public offering of the Shares in any jurisdiction;

(m) any appointment or removal of Chief Executive Officer, Chief Financial Officer, President, VP Engineer and the Financial Controller or any other executive officer in any similar capacity of the Company or any of its Subsidiaries;

(n) any formulation or change in accounting or tax principles, policies with respect to the financial statements, records or affairs of the Company or any of its Subsidiaries, except as required by generally accepted accounting principles or by law, or any change in other matters that could affect any regulatory status or tax liability of the Company or any of its Subsidiaries;

(o) any appointment or removal of the auditors of the Company or any of its Subsidiaries;

(p) any amendment to the Charter or Bylaws or any adoption of or amendment to the certificate of incorporation or bylaws of any of its Subsidiaries;

(q) the creation, adoption and material amendment of any stock incentive plan or the equivalent by the Company or any of its Subsidiaries

and any increase of the total number of equity securities reserved for issuance thereunder;

(r) the commencement, defending or settlement of any litigation, arbitration or other proceedings which are material to the business of the Company or any of its Subsidiary;

(s) any approval of the audited or reviewed financial statements of the Company;

(t) any approval or amendment of the annual business plan, annual budget or long-term strategic plan of the Company or any of its Subsidiaries;

(u) any modification of the long-term business strategy or scope of the business of the Company or any of its Subsidiaries or any material customer, advertiser or publisher relationships thereof; or

(v) resolution of any other matter which the Chief Executive Officer, President, the Sellers' Representative (as defined in the Purchase Agreement) or the Buyer may from time to time raise for the Board's consideration and approval

Section 7.06. *Financial Controller*. During the Earnout Period, each of Buyer and the Management Sellers agrees that it will cause the Company to engage a financial controller (the "**Financial Controller**") designated by Buyer and approved by at least one of the Management-Appointed Directors. The Financial Controller shall have the powers and authorities as determined by the Board, including at least one of the Management-Appointed Directors.

Section 7.07 *Tax Return Filing*. The Sellers' Representative shall timely prepare and file or cause to be prepared and filed all Returns of the Company and each of its Subsidiaries for all Tax periods ending on or before the Closing Date where such Returns are due on or before the Closing Date. Buyer or the Company shall, at the cost of the Company, file or cause to be prepared and filed all Returns of the Company and each of its Subsidiaries for all Tax periods beginning on or before the Closing Date where such Returns are due after the Closing Date. Prior to the filing of any such Return, Buyer shall (i) obtain the written consent of Sellers' Representative (such consent not to be unreasonably withheld) and (ii) provide the Sellers with a substantially final draft of such Return. Buyer shall not file or cause to be filed, any amended Return for the Company for any Pre-Closing Tax Period without the consent of Sellers' Representative, which shall not be unreasonably withheld.



ARTICLE 8  
CONDITIONS TO CLOSING

Section 8.01. *Conditions to Obligations of Buyer and Sellers.* The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

(a) No provision of any Applicable Law shall prohibit the consummation of the Closing.

Section 8.02. *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) Each Seller shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date, and the representations and warranties of each Seller contained in this Agreement and in any certificate or other writing delivered by such Seller pursuant hereto (i) that are qualified by materiality or Material Adverse Effect shall be true at and as of the Closing Date as if made at and as of such date, and (ii) that are not qualified by materiality or Material Adverse Effect shall be true in all material respects at and as of the Closing Date as if made at and as of such time.

(b) There shall have been no material adverse change in the business, affairs, prospects, operations, properties, assets or condition of the Company and its Subsidiaries, taken as a whole, since the Balance Sheet Date.

(c) The President or Chief Executive Officer of the Company shall deliver to Buyer at the Closing a certificate stating that the conditions specified in the foregoing (a) and (b) have been fulfilled.

(d) There shall not be threatened, instituted or pending any action or proceeding by any Person before any Governmental Authority, (i) seeking to restrain, prohibit or otherwise interfere with the ownership or operation by Buyer or any of its Affiliates of all or any material portion of the business or assets of the Company or any Subsidiary or of Buyer or any of its Affiliates or to compel Buyer or any of its Affiliates to dispose of all or any material portion of the business or assets of the Company or any Subsidiary or of Buyer or any of its Affiliates, (ii) seeking to impose or confirm limitations on the ability of Buyer or any of its Affiliates effectively to exercise full rights of ownership of the Shares or (iii) seeking to require divestiture by Buyer or any of its Affiliates of any Shares or any business or assets of Buyer or any of its Affiliates.

(e) There shall not be any action taken, or any Applicable Law proposed, enacted, enforced, promulgated, issued or deemed applicable to the purchase of the Shares, by any Governmental Authority that, could reasonably be expected to, directly or indirectly, result in any of the consequences referred to in Sections 8.02(d)(i) through 8.02(d)(iii).

(f) Buyer shall have received all of the PRC Regulatory Approvals.

(g) Buyer or the Company, as applicable, shall have received or be satisfied that it will receive all consents and approvals contemplated by Section 3.03 or otherwise necessary in connection with the consummation of the transactions contemplated by this Agreement or to enable the Company and the Subsidiaries to continue to carry on their businesses as currently conducted.

(h) Buyer shall have received all documents it may reasonably request relating to the existence of each Seller, the Company and the Subsidiaries, as applicable, and the authority of each Seller to enter into this Agreement, all in form and substance reasonably satisfactory to Buyer, including a good standing certificate or similar legal document under the Applicable Law for each Subsidiary of the Company dated within five days prior to the Closing Date.

(i) Buyer shall have obtained funds sufficient to enable it to pay the Purchase Price.

(j) Buyer shall have received certification signed by each Seller to the effect that each such Seller is not a “foreign person” as defined in Section 1445 of the Code.

(k) Buyer shall have received from Silicon Legal Strategy, counsel for the Company, an opinion, dated as of the date hereof, in substantially the form attached hereto as Exhibit D.

(l) The Company shall have entered into an employment agreement with each Key Employee in the form and substance satisfactory to both Buyer and such Key Employee (each an “**Employment Agreement**”) which shall include, among others, provisions substantially similar in scope to the confidentiality, assignment of inventions, non-solicitation and non-competition obligations provided for herein and otherwise customary for the industry.

(m) Buyer and the Company shall have received an indebtedness pay-off letter from each of Mr. Michael Levit and Ms. Celeste Sales in a form reasonably satisfactory to Buyer and the Company.

(n) Buyer shall have received evidence of termination or amendment of the VK Agreement pursuant to which the Company, any of its Subsidiaries and Buyer shall be relieved from any and all liabilities arising from or in connection with the VK Agreement upon the payment required to be made by Buyer in accordance with Section 2.02(a)(ii) at Closing.

(o) Buyer and the Company shall have received a release and acknowledgment letter from each Person entitled to a change of control or similar payment in connection with the transaction contemplated by this Agreement in a form reasonably satisfactory to Buyer, releasing the Company, any of its Subsidiaries and Buyer from any and all liabilities arising from or in connection with the change of control or similar provisions contained in the offer letter or other agreements that he/she has entered into with the Company or its Subsidiaries.

(p) The Company shall have entered into a contract term extension agreement with Yahoo! Inc. to the reasonable satisfaction of Buyer.

(q) Mr. Ryan Stephens shall have exercised the warrants issued by Michael Levit in respect of a total of 688,160 shares of the Common Stock.

(r) Each Seller shall have delivered to Buyer (i) an Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) if such Seller is a "United States person" as defined in Section 7701(a)(30) of the Code; or (ii) an appropriate Internal Revenue Service Form W-8 (Certificate of Foreign Status) if such Seller is not a "United States person" as defined in Section 7701(a)(30) of the Code.

Section 8.03. *Conditions to Obligation of Sellers.* The obligation of each Seller to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date, the representations and warranties of Buyer contained in this Agreement and in any certificate or other writing delivered by Buyer pursuant hereto shall be true in all material respects at and as of the Closing Date as if made at and as of such date.

(b) Buyer shall have received all consents, authorizations or approvals from the Governmental Authorities referred to in Section 4.03, in each case in form and substance reasonably satisfactory to Sellers' Representative, and no such consent, authorization or approval shall have been revoked.

(c) Sellers' Representative shall have received all documents it may reasonably request relating to the existence of Buyer and the authority of Buyer to enter into this Agreement, all in form and substance reasonably satisfactory to Sellers' Representative.

(d) There shall not be threatened, instituted or pending any action or proceeding by any Person before any Governmental Authority seeking to prevent, enjoin, materially alter or materially delay the transactions contemplated by this Agreement.

(e) Buyer shall have received all of the PRC Regulatory Approvals.

(f) Buyer shall have received the Board and Stockholder Approvals.

## ARTICLE 9 SURVIVAL; INDEMNIFICATION

Section 9.01. *Survival.* The representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing until the eighteen (18)-month anniversary of the Closing Date; *provided* that the representations and warranties in Sections 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 3.08, 3.24 and 3.28 shall survive until the expiration of the applicable statutes of limitations. The covenants and agreements of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the expiration of the applicable statutes of limitations. Notwithstanding the preceding sentences, any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

Section 9.02. *Indemnification.*

(a) *Indemnification by Sellers.*

(i) Effective at and after the Closing, Sellers hereby agree to indemnify Buyer, its Affiliates and their respective successors and assignees and, effective at the Closing, without duplication, the Company, each Subsidiary and their respective successors and assignees (each, a "**Buyer Indemnified Party**"), and, collectively, the "**Buyer Indemnified**

**Parties**”) against and agrees to hold each of them harmless from any and all damage, loss, liability and expense (including reasonable expenses of investigation and reasonable attorneys’ fees and expenses in connection with any action, suit or proceeding whether involving a third party claim or a claim solely between the parties hereto) (the “**Damages**”), incurred or suffered by any Buyer Indemnified Party arising out of any misrepresentation or breach of warranty (determined without regard to any qualification or exception contained therein relating to materiality or Material Adverse Effect or any similar qualification or standard) (each such misrepresentation and breach of warranty a “**Warranty Breach**”) or breach of covenant or agreement made or to be performed by any Seller pursuant to this Agreement (including Exhibit A) regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or violation of any law by, Buyer, any of its Affiliates or any of their respective successors and assignees;

(ii) Notwithstanding anything to the contrary in this Agreement, Sellers also agree to indemnify the Buyer Indemnified Parties from and against all Damages, whether accrued, contingent, absolute, determined, determinable or otherwise, incurred or suffered by such Buyer Indemnified Party which relate to the Company or any Subsidiary and which arise out of or relate to (i) all Taxes imposed on the Company or any of its Subsidiaries, or for which the Company or any of its Subsidiaries is liable, with respect to the Pre-Closing Tax Period; (ii) Taxes arising as a result of the Company changing from a cash method of accounting to an accrual method of accounting for tax purposes after the Closing; (iii) transactions occurring in a Pre-Closing Tax Period between the Company or any of its Subsidiaries on one hand and any of their respective Affiliates on other hand in violation of any Applicable Law relating to Taxes or Tax matters; (iv) any breach or nonperformance of any representation, warranty, covenant or agreement by Sellers set forth in this Agreement to the extent relating to Taxes or Tax matters; and (v) any reasonable costs or expenses with respect to the Taxes indemnified hereunder regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or violation of any law by, Buyer or any of its Affiliates.

(iii) The aggregate indemnification obligation of Sellers for money damages pursuant to this Section 9.02(a) (other than as a result of the breach of Section 5.04, as discussed further below) shall not exceed the total amount of the Buyer Earnout Payment paid or payable to Sellers pursuant to Exhibit A (the “**Indemnificaton Cap**”); *provided* that the foregoing limitation shall not limit any right or remedy for fraud, intentional misrepresentation, gross negligence or willful breach or misconduct. In the event that the Buyer Indemnified Parties (or any of them) are entitled to recover Damages related to an indemnification claim

under this Section 9.02(a) (other than as a result of the breach of Section 5.04, as discussed further below), the Buyer Indemnified Parties shall first recover such Damages by setting off such Damages against any Buyer Earnout Payment payable to Sellers, *provided that* if (i) at the time of Buyer seeking to recover such Damages, no Buyer Earnout Payment is reasonably expected to be payable pursuant to Exhibit A within three months therefrom, or (ii) at the end of the three-month period from the time of Buyer seeking to recover such Damages, no Buyer Earnout Payment is actually payable pursuant to Exhibit A or the Buyer Earnout Payment payable then is not sufficient for Buyer to recover such Damage, Buyer may, at the time of Buyer seeking to recover such Damages or at the end of such three-month period, as applicable, elect to recover such Damages from Buyer Earnout Payments previously paid to the Sellers. In the event that the Damages resulting from a breach of Section 5.04 exceed the Indemnification Cap, Buyer may recover the excess Damages above the Indemnification Cap only from the Seller that has breached Section 5.04 and Buyer may not recover any such excess Damages above the Indemnification Cap from any other Seller; *provided*, however, that a Seller's maximum aggregate indemnification obligation with respect to such Seller's breach of Section 5.04 shall be capped at the amount of the Share Proceeds received by such Seller. For the sake of clarity, notwithstanding anything to the contrary herein, the provisions of this Section 9.02(a)(iii) shall not apply to any indemnification obligations required pursuant to Exhibit A (the "**Earnout Indemnification Obligations**") and such Earnout Indemnification Obligations shall be governed by the terms and conditions set forth on Exhibit A.

(iv) The Buyer Indemnified Parties may not recover pursuant to the indemnity set forth in this Section 9.02(a) unless and until the Damages incurred or suffered by the Buyer Indemnified Parties exceed \$250,000 in the aggregate (the "**Threshold**"), and once the Threshold has been reached, the Buyer Indemnified Parties may make claims for indemnification for all Damages (including the amount of the Threshold); *provided* that the foregoing limitation shall not limit any right or remedy for fraud, intentional misrepresentation, gross negligence or willful breach or misconduct.

(v) Damages shall be calculated net of actual recoveries under existing insurance policies (net of any applicable collection costs and reserves, deductibles, premium adjustments and retrospectively rated premiums).

(vi) Sellers' liabilities under this Section 9.02 shall be severally but not jointly based on such Seller's Pro Rata Portion.

(b) *Indemnification by Buyer.* Effective at and after the Closing, Buyer hereby indemnifies each Seller, its Affiliates and their respective successors and

assignees against and agrees to hold each of them harmless from any and all Damages incurred or suffered by such Seller, any of its Affiliates or any of their respective successors and assignees arising out of any Warranty Breach or breach of covenant or agreement made or to be performed by Buyer pursuant to this Agreement regardless of whether such Damages arise as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or violation of any law by, such Seller, any of its Affiliates or any of their respective successors and assignees; *provided* that the aggregate indemnification obligation of Buyer for money damages pursuant to this Section 9.02(b) shall not exceed the total amount of the Buyer Earnout Payment paid or payable to Sellers pursuant to Exhibit A; *provided* further that the foregoing limitation shall not limit any right or remedy for fraud, intentional misrepresentation, gross negligence or willful breach or misconduct.

Section 9.03 *Third Party Claim Procedures.*

(a) The party seeking indemnification under Section 9.02 (the “**Indemnified Party**”) agrees to give prompt notice in writing to the party against whom indemnity is to be sought (the “**Indemnifying Party**”) of the assertion of any claim or the commencement of any suit, action or proceeding by any third party (“**Third Party Claim**”) in respect of which indemnity may be sought under such Section. If such notice is being given by a Buyer Indemnified Party, such notice shall be delivered to the Sellers’ Representative. Such notice shall set forth in reasonable detail such Third Party Claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Third Party Claim and, subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel for such defense, in each case at its own expense; provided that prior to assuming control of such defense, the Indemnifying Party must (i) acknowledge that it would have an indemnity obligation for the Damages resulting from such Third Party Claim as provided under this Article 9 and (ii) furnish the Indemnified Party with evidence that the Indemnifying Party has adequate resources to defend the Third Party Claim and fulfill its indemnity obligations hereunder.

(c) The Indemnifying Party shall not be entitled to assume or maintain control of the defense of any Third Party Claim and shall pay the fees and expenses of counsel retained by the Indemnified Party if (i) the Indemnifying Party does not deliver the acknowledgment referred to in Section 9.03(b)(i) within 30 days of receipt of notice of the Third Party Claim pursuant to Section 9.03(a), (ii) the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (iii) the Indemnified Party reasonably believes an adverse determination with respect to the Third Party

Claim would be materially detrimental to the reputation or future business prospects of the Indemnified Party or any of its affiliates, (iv) the Third Party Claim seeks an injunction or equitable relief against the Indemnified Party or any of its affiliates or (v) the Indemnifying Party has failed or is failing to prosecute or defend vigorously the Third Party Claim.

(d) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 9.03, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such Third Party Claim.

(e) In circumstances where the Indemnifying Party is controlling the defense of a Third Party Claim in accordance with paragraphs (b) and (c) above, the Indemnified Party shall be entitled to participate in the defense of any Third Party Claim and to employ separate counsel of its choice for such purpose, in which case the fees and expenses of such separate counsel shall be borne by the Indemnified Party; *provided* that in such event the Indemnifying Party shall pay the fees and expenses of such separate counsel (i) incurred by the Indemnified Party prior to the date the Indemnifying Party assumes control of the defense of the Third Party Claim or (ii) if representation of both the Indemnifying Party and the Indemnified Party by the same counsel would create a conflict of interest.

(f) Each party shall cooperate, and cause their respective affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

Section 9.04. *Direct Claim Procedures.* In the event an Indemnified Party has a claim for indemnity under Section 9.02 against an Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party agrees to give prompt notice in writing of such claim to the Indemnifying Party. Such notice shall set forth in reasonable detail such claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually prejudiced the Indemnifying Party. If the Indemnifying Party does not notify the Indemnified Party within 30 days following the receipt of a notice with respect to any such claim that the Indemnifying Party disputes its indemnity obligation to the Indemnified Party for any Damages with respect to such claim, such Damages shall be conclusively deemed a liability of the Indemnifying Party and the Indemnifying Party shall promptly pay to the Indemnified Party any and all Damages arising out of such claim. If the Indemnifying Party has timely disputed its indemnity obligation for any Damages with respect to such claim, the parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to Section 11.08.



Section 9.05 *Tax Treatment of Indemnification*. To the extent permitted by Applicable Law, all indemnification payments under this Article 9, shall be deemed adjustments to the Purchase Price for United States federal, state and local income Tax purposes.

## ARTICLE 10 TERMINATION

Section 10.01. *Grounds for Termination*. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of the Sellers' Representative and Buyer;
- (b) by Buyer or the Sellers' Representative if the Closing shall not have been consummated on or before January 31, 2016; or
- (c) by either Sellers' Representative or Buyer if there shall be any Applicable Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any Governmental Authority having competent jurisdiction.

The party desiring to terminate this Agreement pursuant to Section 10.01(b) or Section 10.01(c) shall give notice of such termination to the other party.

Section 10.02. *Effect of Termination*. If this Agreement is terminated as permitted by Section 10.01, such termination shall be without liability of either party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party to this Agreement; *provided* that:

- (a) if such termination shall result from the (i) willful failure of Buyer to fulfill a condition to the performance of the obligations of Sellers, (ii) failure of Buyer to perform a covenant of this Agreement, (iii) material breach by Buyer of any representation or warranty or agreement contained herein, (iv) failure to obtain the PRC Regulatory Approvals due to reasons not primarily attributable to the violation by Sellers of Section 7.01(a) or (v) failure of Buyer to obtain sufficient funds to pay the Purchase Price, Sellers shall retain the Good Faith Deposit and any interest accrued thereon as liquidated damages which shall be the exclusive remedy of Sellers against Buyer in connection with such termination; it being understood that the Good Faith Deposit will be allocated among Sellers by the Sellers' Representative in proportion to the respective portions of the Purchase Price that would have been allocated to each Seller would the Closing have occurred;

(b) if such termination shall result from the (i) willful failure of any Seller to fulfill a condition to the performance of the obligations of Buyer (other than the conditions set forth in Sections 8.02(f) and 8.02(i)), (ii) material failure of any Seller to perform a covenant of this Agreement, or (iii) material breach by any Seller of any representation or warranty or agreement contained herein, then the Good Faith Deposit and any interest accrued thereon shall be returned to Buyer within five Business Days from the date of termination, in addition to any other remedy Buyer is entitled at law or in equity; and

(c) if such termination shall result from the reasons other than those set forth in Section 10.02(a) and (b), the Good Faith Deposit and any interest accrued thereon shall be returned to Buyer within five Business Days from the date of termination.

The provisions of Sections 6.01, 11.04, 11.07 and 11.08 shall survive any termination hereof pursuant to Section 10.01.

#### ARTICLE 11 MISCELLANEOUS

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail (“**e-mail**”) transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

if to Buyer, to:

Genimous Investment Co., Ltd. Depu Equity Investment LLP  
Address: Room C-301, Heng’Ao Center, No. 26 Jinshifang St.,  
Financial Avenue, Beijing 100140  
Attention: Yu Xingang  
Facsimile No.: +86-10 6621 0960  
yuxingang@genimous.com

with a copy to:

Beijing Genimous Depu Equity Investment LLP  
Address: Room C-301, Heng’Ao Center, No. 26 Jinshifang St.,  
Financial Avenue, Beijing 100140  
Attention: Sun Jing  
Facsimile No.: +86-10 6621 0960  
sunjing@genimous.com

if to Sellers, to:

Spigot, Inc.  
774 Mays Blvd., #10-456  
Incline Village, NV 89451  
Attention: Rodrigo Sales  
Facsimile No.:  
E-mail:

with a copy to:

Silicon Legal Strategy, A Professional Corporation  
90 New Montgomery Street  
San Francisco, CA 94105  
Attention: Andre Gharakhanian  
Facsimile No.: (415) 520-6572  
E-mail: andre@siliconlegal.com

if to Seller's Representative:

Rodrigo Sales

Facsimile No.:  
E-mail:

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 11.02. *Amendments and Waivers.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement (*provided*, with respect to Sections Section 7.04, Section 7.05 and Section 7.06, by each of Buyer and the Management Sellers) or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of

any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 11.03. *Disclosure Schedule References.* The parties hereto agree that any reference in a particular Section of either the Seller Disclosure Schedule or the Buyer Disclosure Schedule shall only be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the relevant party that are contained in the corresponding Section of this Agreement and (b) any other representations and warranties of such party that is contained in this Agreement, but only if the relevance of that reference as an exception to (or a disclosure for purposes of) such representations and warranties would be readily apparent to a reasonable person who has read that reference and such representations and warranties, without any independent knowledge on the part of the reader regarding the matter(s) so disclosed.

Section 11.04. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. For the avoidance of doubt, Sellers shall pay all legal, accounting, investment banking/brokerage and other professional expenses incurred by the Company and Sellers in connection with this Agreement, and the transactions contemplated hereby and thereby, including the expenses of legal counsel and accountants engaged by them, all contractual payments arising out of, based upon or resulting from any contractual change in control provisions and all other expenses incurred by the Company and Sellers in connection herewith and not expressly allocated hereunder.

Section 11.05. *Sellers' Representative.*

(a) Each Seller hereby irrevocably constitutes and appoints Mr. Rodrigo Sales (the “**Sellers' Representative**”), as such Seller’s attorney-in-fact and agent in connection with the matters described in this Section 11.05, subject to the limitations specified herein. This power is irrevocable and coupled with an interest, and shall not be affected by the death, incapacity, illness, dissolution or other inability to act of any Seller.

(b) Each Seller hereby irrevocably grants the Sellers’ Representative full power and authority, effective from and after the date hereof:

(i) to (A) dispute or refrain from disputing, on behalf of such Seller, any claim made by Buyer or any other Buyer Indemnified Party under this Agreement for which the Sellers may be liable, (B) negotiate and compromise, on behalf of such Seller, any dispute involving Sellers that may arise under, and to exercise or refrain from exercising any remedies available under, this Agreement with respect to any matter that involves Sellers, and (C) execute, on behalf of such Seller, any settlement

agreement, release or other document with respect to such dispute or remedy involving Sellers;

(ii) to amend or modify this Agreement on behalf of all Sellers, or to grant any waiver hereunder or thereunder;

(iii) to engage attorneys, accountants and agents at the expense of Sellers with respect to the matters as to which the Sellers' Representative is granted the authority to act under this Section 11.05;

(iv) to pay or distribute to Sellers any portion of the Purchase Price, the Buyer Earnout Payment and the Net Profit Target Bonus that may be delivered to the Sellers' Representative on behalf of the Sellers in accordance with the instructions of Sellers;

(v) to collect from such Seller and to pay Buyer or any other Buyer Indemnified Party any amount due to such Person pursuant to this Agreement, including the Sellers Earnout Payment;

(vi) to collect and receive any amount payable by Buyer to Sellers and designate receiving bank accounts in relation thereof, each pursuant to this Agreement; and

(c) Each Seller hereby agrees that:

(i) in all matters in which action by the Sellers' Representative is required or permitted in this Agreement, including Exhibit A and any other agreement, documents and instruments contemplated under the Agreement, the Sellers' Representative is authorized to act on behalf of such Seller, notwithstanding any dispute or disagreement among the Sellers, or between any Seller and the Sellers' Representative, and Buyer and the Company shall be entitled to rely on any and all actions taken by the Sellers' Representative under this Agreement without any liability to, or obligation to inquire of, any Seller, regardless of whether Buyer or the Company has knowledge of any such dispute or disagreement; and

(ii) the power and authority of the Sellers' Representative, as described in this Agreement, shall continue in force until all rights and obligations of the Sellers under this Agreement shall have terminated, expired or been fully performed.

(d) Notwithstanding the foregoing, but subject to the limitations on the authority granted to the Sellers' Representative specified in this Section 11.05, each Seller agrees, at the request of the Sellers' Representative: (i) to take all actions reasonably necessary or appropriate to consummate the transactions contemplated hereby individually on such Seller's own behalf, and (ii) to deliver, individually on such Seller's own behalf, any other documents reasonably required of such Seller pursuant to this Agreement.

(e) Sellers' Representative and each Seller hereby acknowledge and agree that neither Buyer nor any Affiliate of Buyer shall have any liability to Sellers' Representative or any Seller whatsoever with respect to the actions, decisions or determinations of the Sellers' Representative.

Section 11.06. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that Section 7.04, Section 7.05 and Section 7.06 shall be binding upon and inure to the benefit of Buyer and the Management Sellers and their respective successors and assigns; *provided further* that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto; except that Buyer may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to (i) one or more of its Affiliates at any time and (ii) after the Closing Date, to any Person; *provided* that no such transfer or assignment shall relieve Buyer of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Buyer.

Section 11.07. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of California, without regard to the conflicts of law rules of such state.

Section 11.08. *Arbitration.* Any dispute arising out of or in connection with this Agreement shall be submitted to the Hong Kong International Arbitration Centre ("HKIAC") for arbitration which shall be conducted in accordance with the Arbitration Rules of the HKIAC in force when the notice of arbitration is submitted in accordance with these rules. The dispute shall be resolved by an arbitral tribunal consisting of three arbitrators, with each of Buyer and the Sellers' Representative appointing one arbitrator and the two arbitrators shall appoint the third arbitrator who shall be the president of the tribunal. If the two arbitrators cannot agree on the third arbitrator, the Chairman of HKIAC shall appoint the third arbitrator. The arbitration proceedings shall be conducted in English and Chinese. Any award is final and may be enforced in any court of competent jurisdiction. The award shall apportion the costs of arbitration. The parties shall duly and punctually perform their obligations hereunder pending issuance of the arbitral award.

Section 11.09. *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities

hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 11.10. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 11.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.12. *Specific Performance.* The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

GENIMOUS INVESTMENT CO., LTD.

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

Name: LIREN ZHAO

Title: CHAIRMAN



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.


SELLERS' REPRESENTATIVE, solely  
in his capacity as Sellers'  
Representative

By:   
Name: Rodrigo Sales

RODRIGO SALES

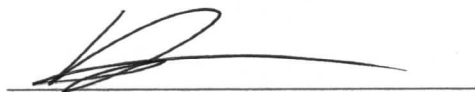
By: 

THE RODRIGO SALES GRANTOR  
RETAINED ANNUITY TRUST

By:   
Name: Rodrigo Sales  
Title: Trustee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

RYAN STEPHENS

A handwritten signature in black ink, appearing to read 'Ryan Stephens', is written over a solid horizontal line.

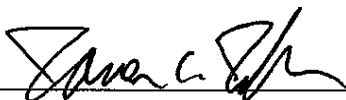
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CELESTE SALES

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

JASON JOHNSON

By: 

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MICHAEL LEVIT

By: Michael Levit

MICHAEL LEVIT, Trustee of the  
Michael Levit 2014 Annuity Trust

By: Michael Levit  
Name: Michael Levit  
Title: Trustee, Spigot Board member

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

RICHARD D. STUBBLEFIELD LIVING  
TRUST U/D/T 11/16/09

By: Richard D. Stubblefield  
Name:  
Title: Richard Stubblefield  
Trustee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LINDA R. BEATY TRUST DATED  
DECEMBER 15, 2006

By: Linda Stubblefield  
Name: LINDA Stubblefield  
Title: Trustee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

PETER I.A. BOSCO TRUST

By: 

\_\_\_\_\_  
Name:

Title: *Settlor / Trustee*



**ANNEXT A**

**NAME OF SELLERS AND SHARES TO BE SOLD**

<b>Stockholders</b>	<b>Number of Shares to be Sold</b>
Johnson, Jason	346,558
Levit, Michael	3,635,253
Michael Levit, Trustee of the Michael Levit 2014 Annuity Trust	822,073
Linda R. Beaty Trust dated December 15, 2006	74,765
Peter I.A. Bosco Trust	49,843
Sales, Celeste	38,655
Sales, Rodrigo	7,881,814
Richard D. Stubblefield Living Trust U/D/T	74,766
The Rodrigo Sales Grantor Retained Annuity Trust	875,757
Stephens, Ryan	688,160
<b>Total</b>	<b>14,487,644</b>

**ANNEX B**

**LIST OF KEY EMPLOYEES**

**ANNEX C**

**FORM OF PROPRIETARY INFORMATION AND INVENTIONS  
AGREEMENT**

*(ATTACHED SEPERATELY)*

## EXHIBIT A

### POST-CLOSING CONTINGENT PAYMENTS AND SHARE PURCHASE

1. *Definitions.* Each capitalized term used and not otherwise defined herein shall have the meaning assigned such terms in the Stock Purchase Agreement dated August 31, 2015 among Genimous Investment Co., Ltd., a company incorporated under the laws of the PRC with its stocks listed in the Shenzhen Stock Exchange, as Buyer, Rodrigo Sales, as Sellers' Representative and Sellers parties thereto (the "**Agreement**"). References to a particular section shall mean the correspondent section of this Exhibit A unless otherwise specified. In addition, the following terms as used herein shall have the following meanings:

"**Earnout Target**" means, for any Initial Earnout Year, the Net Profit set forth opposite such Initial Earnout Year in the table below:

<b>Initial Earnout Year</b> (as adjusted pursuant to Section 4)	<b>Earnout Target</b>
Year ended December 31, 2015	\$17,210,000
Year ended December 31, 2016	\$25,610,000
Year ended December 31, 2017	\$34,090,000
Year ended December 31, 2018	\$40,060,000
Total	\$116,970,000

"**Earnout Period**" means the period beginning on the Closing Date and ending on December 31, 2018, as extended by the Extended Earnout Years pursuant to Section 4.

"**Initial Earnout Year**" means any of the twelve-month periods ending December 31, 2015, December 31, 2016, December 31, 2017, or December 31, 2018, as adjusted pursuant to Section 4.

"**Net Profit**" means, for any Initial Earnout Year or Extended Earnout Year, the consolidated net income of the Company and its Subsidiaries for such

Earnout Year or Extended Earnout Year, as applicable, after all expenses and other proper charges including (i) income and franchise taxes and (ii) impairment loss of intangible assets, account receivable or other assets, determined in accordance with IFRS but applied and calculated in a manner consistent with past practice.

“**Sellers Earnout Indemnification Amount**” means, for any Initial Earnout Year, an amount equal to (i) the quotient of (A) the amount by which the applicable Earnout Target exceeds the Net Profit for such Initial Earnout Year, *divided* (B) \$116,970,000, *multiplied* by (ii) the sum of (A) the Purchase Price, and (B) \$133,696,710.

“**Yearly Earnout Installment**” means, with respect to an Initial Earnout Year during the Earnout Period, the Earnout Target for the applicable Initial Earnout Year *multiplied* by 1.143.

2. *Earnout Payments to Sellers.* As additional consideration for the Shares, subject to the terms and conditions of this Exhibit A, Buyer shall pay to Sellers’ Representative, in respect of each Initial Earnout Year during the Earnout Period, cash in an amount equal to the following (together with the payment under Section 4(c), the “**Buyer Earnout Payment**”):

(a) If the Net Profit for such Initial Earnout Year is no less than the applicable Earnout Target, such amount shall be equal to the applicable Yearly Earnout Installment *minus* the Sellers Earnout Payment due in all prior Initial Earnout Years but not paid by Sellers and *minus* the Unpaid Portion of Sellers Earnout Indemnification Shortfall not paid by Sellers, if any;

(b) if the Net Profit for such Initial Earnout Year is less than the applicable Earnout Target:

(i) if the applicable Sellers Earnout Indemnification Amount is no less than the applicable Yearly Earnout Installment, such amount shall be equal to zero; it being understood that Section 3 and Section 4 shall apply; and

(ii) if the applicable Sellers Earnout Indemnification Amount is less than the applicable Yearly Earnout Installment, such amount shall be equal to the excess of such Yearly Earnout Installment over such Sellers Earnout Indemnification Amount.

3. *Sellers Earnout Payment.* If, in respect of each Initial Earnout Year during the Earnout Period, the applicable Sellers Earnout Indemnification Amount exceeds the applicable Yearly Earnout Installment, Sellers shall pay to Buyer cash in an amount (the “**Sellers Earnout Payment**”) equal to the excess of such Sellers Earnout Indemnification Amount over such Yearly Earnout Installment (the “**Sellers Earnout Indemnification Shortfall**”), up to an amount equal to 50% of the total Buyer Earnout Payment(s) received by the Sellers’ Representative on

behalf of Sellers for all previous Initial Earnout Years, (the “**Sellers Indemnification Cap**”, which cap amount, for clarification, shall exclude the deductions pursuant to Section 8); *provided* that in respect of each Initial Earnout Year, if the amount of the applicable Sellers Earnout Indemnification Shortfall exceeds the applicable Sellers Indemnification Cap, in addition to the payment of the applicable Sellers Earnout Payment pursuant to the foregoing sentence, Section 4 shall apply. If Sellers fail to make the Sellers Earnout Payment pursuant to this Sections 3 and Section 6, Buyer shall have the right to set off the unpaid portion of the Sellers Earnout Payment against any payment due and payable by the Company or Buyer pursuant to this Agreement or otherwise to any Seller in his/her/its capacity as a Seller, Company Employee, consultant of the Company or any Subsidiary or otherwise.

4. *Extension of the Earnout Period.*

(a) If, in respect of any Initial Earnout Year during the Earnout Period, (i) the Net Profit for such Initial Earnout Year is less than the applicable Earnout Target and (ii) the amount of the applicable Sellers Earnout Indemnification Shortfall exceeds the applicable Sellers Indemnification Cap (such Initial Earnout Year satisfying both (i) and (ii), a “**Shortfall Year**”, such excess in (ii), the “**Unpaid Portion of Sellers Earnout Indemnification Shortfall**”), then each calendar year subsequent to such Shortfall Year is an extended Earnout Year (each, an “**Extended Earnout Year**”) until the Net Profit for such Extended Earnout Year is no less than the applicable Extended Earnout Year Target, *provided* that, if the Sellers Representative, on behalf of Sellers, within two Business Days following the date upon which the determination of the Net Profit for the applicable Shortfall Year becomes final and binding upon the parties as provided in Section 5, elects in writing to pay to Buyer the entire amount of the applicable Sellers Earnout Indemnification Shortfall, then there will be no Extended Earnout Year and the calendar year subsequent to such Shortfall Year will be an Initial Earnout Year.

(b) For purposes of this Exhibit A, the “**Extended Earnout Year Target**” means, in respect of any Extended Earnout Year, an amount equal to the Earnout Target for the relevant Shortfall Year *multiplied* by  $1.10^n$ , with the “**n**” equal to the number of years that have passed since the Shortfall Year, inclusive the Shortfall Year. By way of illustration, (i) if the Initial Earnout Year ending on December 31, 2015 is a Shortfall Year, the Extended Earnout Year Target for the Extended Earnout Year ending on December 31, 2016 is equal to the Earnout Target for the Initial Earnout Year ending on December 31, 2015 *multiplied* by 1.10; and (ii) if the year ending on December 31, 2017 is still an Extended Earnout Year pursuant to Section 4(a), the Extended Earnout Year Target for the year ending on December 31, 2017 is equal to the Earnout Target for the Initial Earnout Year ending on December 31, 2015 *multiplied* by  $1.10^2$ .

(c) In respect of any Extended Earnout Year, if the Net Profit for such Extended Earnout Year is no less than the applicable Extended Earnout Year

Target, Buyer shall pay to Sellers' Representative on behalf of Sellers cash in an amount equal to (i) the Yearly Earnout Installment for the applicable Shortfall Year, *minus* (ii) the Unpaid Portion of Sellers Earnout Indemnification Shortfall for the applicable Shortfall Year, *minus* (iii) the total amount of the Extended Earnout Year Sellers Earnout Indemnification Amount for all prior Extended Earnout Years with respect to the applicable Shortfall Year, if any. For purposes of this Exhibit A, the “**Extended Earnout Year Sellers Earnout Indemnification Amount**” means, in respect of any Extended Earnout Year, an amount equal to (i) the quotient of (A) the amount by which the applicable Extended Earnout Year Target exceeds the Net Profit for such Extended Earnout Year, *divided* (B) \$116,970,000, *multiplied* by (ii) the sum of (A) the Purchase Price, and (B) \$133,696,710.

(d) In respect of a Shortfall Year, the Earnout Period shall be extended and the subsequent Initial Earnout Years and the corresponding Earnout Targets shall be delayed by the number of the years of the Extended Earnout Year with respect to such Shortfall Year. By way of illustration, if the Initial Earnout Year ending on December 31, 2015 is a Shortfall Year and the relevant Extended Earnout Years end until the year ending on December 31, 2017 pursuant to Section 4(a), (i) the Earnout Period shall be extended until the year ending on December 31, 2020, and (ii) the Earnout Target for the Initial Earnout Year ending on December 31, 2016 shall be the Initial Earnout Target for the Initial Earnout Year ending on December 31, 2018, the Initial Earnout Target for the Initial Earnout Year ending on December 31, 2017 shall be the Initial Earnout Target for the Initial Earnout Year ending on December 31, 2019 and the Initial Earnout Target for the Initial Earnout Year ending on December 31, 2018 shall be the Initial Earnout Target for the Initial Earnout Year ending on December 31, 2020, each unless any such adjusted Initial Earnout Year becomes a new Shortfall Year in which case this Section 4 shall again apply. Notwithstanding the foregoing, if the Sellers elect to pay to Buyer the entire amount of the applicable Sellers Earnout Indemnification Shortfall, then the Earnout Period shall not be extended in respect of such Shortfall Year.

5. *Procedures to Determine the Net Profit.*

(a) *Earnout Notice.* As promptly as practicable, but no later than 120 days after the last day of each Initial Earnout Year or the Extended Earnout Year during the Earnout Period, as applicable, Buyer will cause to be prepared and delivered to Sellers' Representative a written statement (the “**Earnout Notice**”) setting forth in reasonable detail its determination of the Net Profit for the applicable Initial Earnout Year or the Extended Earnout Year, as applicable.

(b) *Earnout Objection Notice.* If the Sellers' Representative disagrees with the calculation of the Net Profit as set forth in the Earnout Notice, the Sellers' Representative may, within fifteen (15) days after receipt of such Earnout Notice, deliver a written notice of disagreement to Buyer setting forth in reasonable detail the Sellers' Representative's calculation of the Net Profit (an

**“Earnout Objection Notice”**). The Earnout Objection Notice shall specify the items and/or the amounts in the applicable Earnout Notice disputed by Sellers and shall describe in reasonable detail the basis for such objection. The Sellers’ Representative shall be deemed to have agreed to all other items and amounts contained in the Earnout Notice. If the Sellers’ Representative fails to deliver the Earnout Objection Notice within such seven-day period, the Net Profit set forth in the Earnout Notice shall be final and binding on all parties, including the Sellers’ Representative and Sellers.

(c) *Auditor and Final Amount.* If an Earnout Objection Notice is timely delivered by Sellers’ Representative pursuant to Section 5(b), Buyer and Sellers’ Representative shall negotiate in good faith to agree upon the disputed items and/or amounts. If, within seven days of the date of receipt by Buyer of the Earnout Objection Notice, Buyer and Sellers’ Representative are unable to reach an such agreement, they shall promptly thereafter submit the dispute to independent accountants of nationally recognized standing reasonably satisfactory to both Buyer and Sellers’ Representative (the **“Auditor”**), who shall resolve finally and exclusively any such dispute. The Auditor shall review the Agreement, this Exhibit A and the disputed items or amounts for the purpose of calculating the Net Profit in accordance with IFRS. The Auditor shall deliver to Buyer and Sellers’ Representatives, as soon as practicable, but in any event within 30 days of submission of the disputed items or amounts to the Auditor, a report setting forth in reasonable detail such calculation of the Net Profit. In making such calculation, the Auditor shall consider only those items and amounts in the calculation of the Net Profit which are identified in the Earnout Objection Notice as being items as to which Sellers’ Representative has disagreed and the Auditor may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Auditor’s calculation will be based solely on written materials submitted by Buyer or Sellers’ Representative (i.e., not on independent review) and on the provisions of the Agreement and this Exhibit A.

(d) *Auditor Expenses.* The costs and expenses of the Auditor in determining the Net Profit for such Initial Earnout Year or the Extended Earnout Year, as applicable, shall be (i) borne by Buyer if the difference between the Net Profit for such Initial Earnout Year or the Extended Earnout Year, as applicable, as determined by the Auditor (the **“Final Net Profit”**) and the Net Profit for such Initial Earnout Year or the Extended Earnout Year, as applicable, as determined by Buyer is greater than the difference between the Final Net Profit and the Net Profit for such Initial Earnout Year or the Extended Earnout Year, as applicable, as determined by Sellers’ Representative and (ii) borne by Sellers’ Representative on behalf of the Sellers if the difference between the Final Net Profit and the Net Profit for such Initial Earnout Year as determined by Buyer is less than the difference between the Final Net Profit and the Net Profit for such Initial Earnout Year or the Extended Earnout Year, as applicable, as determined by Sellers’ Representative.



6. *Timing of Payments.* Buyer and Sellers shall pay the Buyer Earnout Payment or the Seller Earnout Payment, as applicable, pursuant to Sections 2, 3 and 4(c) in full no later than 15 Business Days following the date upon which the determination of the Net Profit for the applicable Initial Earnout Year or Extended Earnout Year, as applicable becomes final and binding upon the parties as provided in Section 5 (including any final resolution of any dispute raised by the Sellers' Representative in an Earnout Objection Notice) and, if there is any setoff pursuant to Section 8, the amount of the Damages and the resulting payables pursuant to this Exhibit A is determined pursuant to Section 9.04 and Section 11.08 of the Agreement or otherwise agreed upon by Buyer and the Sellers' Representative.

7. *Condition of Buyer Earnout Payment.* Notwithstanding anything contained herein to the contrary, unless otherwise approved by Buyer in writing, (i) the obligation of Buyer to make any Buyer Earnout Payment payable to Mr. Rodrigo Sales under this Agreement shall be conditioned upon that, as of December 31<sup>st</sup> of the year in which such Buyer Earnout Payment was earned, Mr. Rodrigo Sales shall have continuously served as the Chief Executive Officer of the Company since the Closing Date and (ii) the obligation of Buyer to make any Buyer Earnout Payment payable to Mr. Ryan Stephens under this Agreement shall be conditioned upon that, as of December 31<sup>st</sup> of the year in which such Buyer Earnout Payment was earned, Mr. Ryan Stephens shall have continuously served as the President of the Company since the Closing Date. Notwithstanding the foregoing, in the event that (a) Mr. Rodrigo Sales or Mr. Ryan Stephens' service as Chief Executive Officer or President, as applicable, is terminated by the Company without Cause (as defined in their respective Employment Agreements) or either of them resigns for Good Reason (as defined in their respective Employment Agreements) or (b) Mr. Rodrigo Sales or Mr. Ryan Stephens is demoted without Cause (as defined in their respective Employment Agreements) such that he no longer hold the positions of Chief Executive Officer and President, as applicable, but still remain employee or consultant of the Company, then the condition specified in part (i) or (ii) above, as applicable, shall be deemed to have been waived by Buyer and the failure of Mr. Rodrigo Sales or Mr. Ryan Stephens, as applicable, to remain as Chief Executive Officer and President of the Company, respectively, shall not relieve Buyer from its obligation to pay to Mr. Rodrigo Sales or Mr. Ryan Stephens, as applicable, the Buyer Earnout Payments.

8. *Setoff by Sellers Indemnification Obligation.* Notwithstanding anything contained herein to the contrary, Buyer is entitled to set off the amount of the Damages that any Buyer Indemnified Party is entitled to recover pursuant to the Agreement, if any, against any payment payable by Buyer to any Person pursuant to this Exhibit A.

9. *Share Pledge.* As security for the payment of the Buyer Earnout Payment, Buyer agrees to pledge a total of 5,795,057 shares of Common Stock (the "**Pledged Shares**") to the Sellers' Representative at and concurrently with the Closing upon the terms and subject to the conditions of a Stock Pledge Agreement

in a form mutually agreeable to Buyer and Sellers' Representative (the "**Stock Pledge Agreement**"). In respect of each Initial Earnout Year, Sellers shall irrevocably release or cause the irrevocable release of 25% of the Pledge Shares immediately upon (i) if any Buyer Earnout Payment for such Initial Earnout Year is payable pursuant to this Exhibit A, receipt by the Sellers' Representative of such Buyer Earnout Payment; and (ii) otherwise, determination of the amount of the applicable Net Profit for such Initial Earnout Year pursuant to Section 5.

10. *Net Profit Target Bonus.* If, with respect to any Initial Earnout Year during the Earnout Period (for clarification, excluding any Extended Earnout Year), the Net Profit for such year (the "**Actual Net Profit**") exceeds the applicable Earnout Target, Buyer and the Management Sellers agree to cause the Company to award a performance bonus (the "**Net Profit Target Bonus**") in an aggregate amount equal to 40% of the amount by which the Actual Net Profit for such year exceeds the applicable Earnout Target to the then senior management team, with the list of the recipients, their respective entitlements to the Net Profit Target Bonus and the terms and conditions therefor to be agreed upon by Buyer, the Chief Executive Officer and the President of the Company.

11. *No Negative Net Profit.* Sellers shall ensure that the Net Profit for each Initial Earnout Year and each Extended Earnout Year calculated pursuant to the then effective IFRS is a positive figure.

12. *Post-closing Operation of the Company/Business.* Subject to the terms of this Agreement, subsequent to the Closing, neither Buyer nor any Seller shall, directly or indirectly, take any actions in bad faith that would have the purpose of manipulating any payment under this Exhibit A.

13. *No Security.* The parties understand and agree that, except as pursuant to the Stock Pledge Agreement, (i) the contingent rights to receive the Buyer Earnout Payment or the Net Profit Target Bonus shall not be represented by any form of certificate or other instrument, and do not constitute an equity or ownership interest in Buyer or the Company, (ii) Seller shall not have any rights as a security holder of Buyer or the Company as a result of Seller's contingent right to receive the Buyer Earnout Payment or the Net Profit Target Bonus, and (iii) no interest is payable with respect to the Buyer Earnout Payment or the Net Profit Target Bonus.

**EXHIBIT B**

**FORM OF LEGAL OPINION**

***(ATTACHED SEPERATELY)***

**SPIGOT, INC.**

**Disclosure Schedule to the Stock Purchase Agreement**

**Dated August 31, 2015**

The following are disclosures and exceptions to the representations and warranties made by Spigot, Inc. (the “Company”) in Article 3 of the Stock Purchase Agreement dated as of August 31, 2015 (the “Agreement”), by and among the Company, Genimous Investment Co., Ltd. (“Buyer”), Rodrigo Sales, in his capacity as the Company’s representative, and the stockholders of the Company set forth on Annex A, and constitutes the Company Disclosure Schedule to the Agreement. Unless otherwise noted herein, any capitalized term used but not defined in this Company Disclosure Schedule shall have the same meaning assigned to such term in the Agreement. The section numbers in this Company Disclosure Schedule correspond to the section numbers in the Agreement. This Disclosure Schedule and the information, descriptions and disclosures herein are intended to qualify and limit the representations and warranties of the Company contained in the Agreement. Any matter disclosed in a section or subsection of this Company Disclosure Schedule corresponding to any section or subsection of Article 3 of the Agreement shall be deemed to have been disclosed (i) with respect to that section and subsection of Article 3 of the Agreement and (ii) with respect to any other section or subsection of Article 3 of the Agreement to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable or relevant to such other section or subsection. The information contained herein is disclosed solely for the purposes of the Agreement, and no information contained herein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever, including without limitation, and violation of law or breach of any agreement.

**Section 3.04 – Noncontravention**

Toolbar Private Label Agreement, dated October 1, 2012, by and between the Company and CBS Interactive Inc

Pursuant to (i) the Exchange Agreement, dated April 30, 2012, by and among the Company, Spigot, Inc., a Delaware corporation, and certain shareholders of the Company, (ii) the Stock Purchase Agreement, dated April 27, 2011, by and between the Company and Rodrigo Sales and (ii) the Stock Purchase Agreement, dated April 27, 2011, by and between the Company and Michael Levit, the Company has certain approval rights and rights of first refusal on transfers of certain shares of the Company’s capital stock. All such rights will be waived by the Company in connection with the Closing.

The consent of the Sellers will be required in order to terminate the Company’s s-chapter election in connection with the Closing.

**Section 3.06 – Ownership of Shares**

**Section 3.07– Subsidiaries**

<b><u>Subsidiary</u></b>	<b><u>Jurisdiction of Incorporation</u></b>
GreenTree Applications SRL	Romania
Azureus Software Inc.	Delaware
GMGP LLC	Delaware
SearchMe Technologies, Inc.	Delaware

### **Section 3.08 – Financial Statements**

Buyer and the Company have agreed to modify the accounting treatment pursuant to the CBS Interactive Agreement to amortize user acquisition costs thereunder over a three (3) year period to more accurately reflect users' viable lifetime (the "CBS Accounting Change").

### **Section 3.09 – Absence of Certain Changes**

Reference is made to the CBS Accounting Change.

On July 29, 2015, Microsoft Corporation released its new Edge internet browser ("Edge"). The Company's Software is currently not compatible with Edge. The Company is currently working to enhance the Software to provide for such compatibility.

Amendment to Consulting Agreement, dated August 5, 2015, between the Company and Claude Tolbert d/b/a Three Sticks Management Group, LLC.

Separation Agreement, dated July 27, 2015, between Azureus Software, Inc. and Sarah Hartshorn.

### **Section 3.10 – No Undisclosed Liabilities**

The Company anticipates August 2015 invoices payable by the Company to [ ], [ ], and [ ] in the amounts of \$503,183.85, \$742,795.70, and \$203,966.50, respectively.

### **Section 3.11 – Intercompany Accounts**

The Company manages its financial operations on a consolidated basis, *provided* that, from time to time, the Company effects customary, non-material transfer pricing adjustments with its subsidiary GreenTree Applications SRL.

### **Section 3.12 – Material Contracts**

#### **(a)(ii)**

Platform & Co-Marketing Agreement, dated as of October 13, 2014.

License Agreement, dated October 4, 2013.

Browser AddOn Private Label Agreement, dated February 13, 2014.

Toolbar and/or Browser AddOn Private Label Agreement, dated May 15, 2014.

Join Venture Agreement, dated November 26, 2014.

**(a)(iii)**

Publisher Monetization Services Agreement, dated November 29, 2011.

Direct Navigation Distribution Agreement, dated November 14, 2011.

Insertion Order and Additional Terms and Conditions, dated July 25, 2014.

Advertising Software Agreement, dated November 14, 2014.

E-Commerce Platform & Services Agreement, dated December 2, 2011.

Toolbar Private Label Agreement, dated as of November 1, 2012.

Toolbar Private Label Agreement, dated as of April 1, 2013.

Agreement No. DS-3625-06/14, dated June 1, 2014.

Agreement No. DS-3626-06/14, dated July 1, 2014.

**(a)(v)**

Asset Purchase Agreement, dated September 4, 2014.

Stock Purchase and Sale and Management Agreement, dated February 26, 2014.

Asset Purchase Agreement, dated July 6, 2012.

Asset Purchase Agreement, dated January 2, 2012.

Asset Sale / Purchase and Noncompete Agreement, dated January 31, 2012.

**(a)(vi)**

Promissory Notes in the aggregate principal amount of \$925,000, issued by the Company to [ ] and subsequently transferred to [ ] on January 25, 2013 (collectively, the “[ ] Notes”). As of the date hereof, \$925,000 in principal, along with accrued interest, under the [ ] Notes remains outstanding.

Promissory Notes in the aggregate principal amount of \$925,000, issued by the Company to [ ] (collectively, the “[ ] Notes”). A payment of \$500,000 was made to principal on December 31, 2014. As of the date hereof, \$425,000 in principal, along with accrued interest, remains outstanding.

**(ix)**

Reference is made to the Yahoo Agreement.

**(x) and (xi)**

Restricted Stock Purchase Agreement, dated April 27, 2011, between Spigot, Inc. and Rodrigo Sales

Restricted Stock Purchase Agreement, dated April 27, 2011, between Spigot, Inc. and Michael Levit

Exchange Agreement, dated April 30, 2012, between the Company, Rodrigo Sales, Michael Levit and other stockholders of Spigot, Inc., a Delaware corporation

Stock Restriction Agreement, dated April 30, 2012, between Spigot, Inc. and Rodrigo Sales

Stock Restriction Agreement, dated April 30, 2012, between Spigot, Inc. and Michael Levit

Stock Transfer Agreement, dated June 25, 2014, between Spigot, Inc., Rodrigo Sales and The Rodrigo Sales Grantor Retained Annuity Trust

Stock Transfer Agreement, dated June 26, 2014, between Spigot, Inc., Michael Levit and Michael Levit, a married man as his sole and separate property

Stock Transfer Agreement, dated June 26, 2014, between Spigot, Inc., Michael Levit, a married man as his sole and separate property and Michael Levit, Trustee of the Michael Levit 2014 Annuity Trust

Stock Transfer Agreement, dated June 25, 2014, between Spigot, Inc., Rodrigo Sales and Jason Johnson

Stock Transfer Agreement, dated June 25, 2014, between Spigot, Inc., Michael Levit and Jason Johnson

Reference is made to the Levit Notes

Employment Agreement, dated January 18, 2015, between the Company and Ryan Stephens

Proprietary Information and Inventions Agreement, dated January 26, 2015, between the Company and Ryan Stephens

**Section 3.16 – Software**



### Section 3.17 – IT Systems

WordPress, the content management system on which the Vuze blog webpage is built, was a target a widespread security breach affecting users of certain WordPress plug-ins on or about November 1, 2014. Certain content on the Vuze blog webpage was temporarily compromised by the breach, but has since been restored and it is believed that the underlying security flaws have been corrected by WordPress.

### Section 3.18 – Intellectual Property

#### (a)(i) Patents:




Title	Owner or Inventor	Jurisdiction	Registration # or Application #	Registration or Application Date	Status
Distributed Peer Location In Peer-to-Peer File Transfers	Olivier Chalouhi, Paul Anton Richardson Gardner	U.S.A	Application: 12/328,492 Registration: 9,106,668	Application: 12/04/2008 Issued: 08/11/2015	Issued
Associative Construction of Multi-media Subscriptions	Olivier Chalouhi, Paul Anton Richardson Gardner	European Patent Office	9815217.6	07/17/2009	Application withdrawn
Associative Construction of Multi-media Subscriptions	Olivier Chalouhi, Paul Anton Richardson Gardner	Hong Kong	11113818	12/23/2011	Reported as Abandoned
Reverse Subscriptions	Olivier Chalouhi, Paul Anton Richardson Gardner	U.S.A.	12/562,048	09/17/2009	Application pending
Associated Content System	Olivier Chalouhi, Paul Anton Richardson Gardner	U.S.A.	12/831,962	07/07/2010	Application pending
Offline Downloader	Olivier Chalouhi, Paul Anton Richardson Gardner	U.S.A.	12/853,963	08/10/2010	Application abandoned
Systems and Methods for	Paul Anton Gardner	U.S.A.	Application: 13/110,021	Issued: 10/15/2013	Issued

Distributing Data Within an Internet Having a Plurality of Nodes (Jackson)			Registration: 8,559,445		
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**(a)(i) Trademarks:**

<b>Registration No.</b>	<b>Mark</b>	<b>Country</b>	<b>Date Filed</b>	<b>Date Registered</b>
897353	AZUREUS**	Austria	6/26/2006	6/26/2006
1205219	VUZE	Australia	10/18/2007	6/11/2009
897353	AZUREUS**	Benelux	6/26/2006	6/26/2006
741603	VUZE	Canada	12/4/2007	6/8/2009
897353	AZUREUS**	China	6/26/2006	6/26/2006
6328854	VUZE	China	10/18/2007	3/28/2010
6328855	VUZE	China	10/18/2007	3/28/2010
897353	AZUREUS**	Czech Republic	6/26/2006	6/26/2006
897353	AZUREUS**	Denmark	6/26/2006	6/26/2006
004594453	AZUREUS	European Community	8/17/2005	11/7/2007
006406144		European Community	10/30/2007	11/12/2008
007235468		European Community	9/15/2008	6/16/2009
007448988	STUDIOHD	European Community	8/12/2008	7/21/2009
006076806	VUZE	European Community	7/6/2017	4/25/2008

<b>Registration No.</b>	<b>Mark</b>	<b>Country</b>	<b>Date Filed</b>	<b>Date Registered</b>
063402236	AZUREUS**	France	1/2/2006	1/2/2006
897353	AZUREUS**	Greece	6/26/2006	6/26/2006
897353	AZUREUS	<b>Int'l Registration U.S. (3329674)</b> Austria Benelux China Czech Republic Denmark Greece Ireland Italy Japan Korea (Republic of) Poland Portugal Russian Federation Singapore Spain Sweden Switzerland U.K.	6/26/2006	11/9/2006
941197	AZUREUS	<b>Int'l Registration U.S. (3547049)</b> Switzerland	12/19/2006	12/6/2007
897353	AZUREUS**	Ireland	6/26/2006	6/26/2006
897353	AZUREUS**	Italy	6/26/2006	6/26/2006
897353	AZUREUS**	Japan	6/26/2006	6/26/2006
897353	AZUREUS**	Korea (Republic of)	6/26/2006	6/26/2006
4530635	VUZE	Korea (Republic of)	10/19/2007	3/15/2010
897353	AZUREUS**	Poland	6/26/2006	6/26/2006

Registration No.	Mark	Country	Date Filed	Date Registered
897353	AZUREUS**	Portugal	6/26/2006	6/26/2006
897353	AZUREUS**	Russian Federation	6/26/2006	6/26/2006
897353	AZUREUS**	Singapore	6/26/2006	6/26/2006
897353	AZUREUS**	Spain	6/26/2006	6/26/2006
897353	AZUREUS**	Sweden	6/26/2006	6/26/2006
897353	AZUREUS**	Switzerland	6/26/2006	6/26/2006
941197	AZUREUS***	Switzerland	12/19/2006	12/19/2006
897353	AZUREUS**	United Kingdom	06/09/2006	06/26/2006
3329674 INT'L REG 897353	AZUREUS**	United States	6/26/2006	11/6/2007
3547049 INT'L REG 941197	AZUREUS***	United States	12/19/2006	12/16/2008
3285557	Azureus**	United States	6/7/2005	8/28/2007
4488730		United States	4/23/2010	2/25/2014
3785559		United States	7/30/2008	5/4/2010
3722923		United States	10/22/2007	12/08/2009
3700207	STUDIOHD	United States	11/25/2008	10/20/2009
3493245	VUZE	United States	1/11/2007	8/26/2008

Registration No.	Mark	Country	Date Filed	Date Registered
3415468	VUZE	United States	1/11/2007	4/22/2008

**\*\*COVERED BY INT'L REGISTRATION No. 897353**  
**\*\*\*COVERED BY INT'L REGISTRATION No. 941197**

**(a)(i) Domain Name Registrations:**

**See attached list of domain names owned by the Company and its subsidiaries.**

Pursuant to its standard form agreements and other agreements with its customers and partners set forth in Section 3.12 above, the Company customarily grants to its customers and partners a limited, non-exclusive and non-transferable license to use the Company's Software solely for purposes of fulfilling the parties obligations under such agreements.

**(d) and (k)**

On July 22, 2014, the Company received a claim from Mindjet Corporation ("Mindjet") alleging that the Company's use of the term "Spigot" and its previously used lightbulb logo design (the "Lightbulb Logo") infringed upon Mindjet's trademarks. The Company discussed this claim with Mindjet in July and August 2014 and has not received or sent any further communications to Mindjet regarding the matter. The Company no longer uses the Lightbulb Logo.

**(l)**

The Company does not place patent notices on its Software.

**Section 3.21 – Licenses and Permits**

Entity	License/Permit	Issuing Governmental Authority
Azureus Software, Inc.	Nevada State Business License	Nevada Secretary of State
GMGP, LLC	Nevada State Business License	Nevada Secretary of State
Spigot, Inc.	Nevada State Business License	Nevada Secretary of State
Spigot, Inc.	Certificate of Qualification	Florida Department of State

**Section 3.22 – Receivables**

The Company received an invoice, effective June 30, 2015, from Yahoo! that contains a discrepancy with respect to amounts payable by Yahoo! to the Company for the period ended June 30, 2015. The Company anticipates that such invoice will be corrected by Yahoo! and that the final amount payable by Yahoo! will be consistent with amounts reflected on the Balance Sheet.

**Section 3.25- Employees**

**Section 3.26- Employee Benefit Plans**

Plan	Plan Type
Company 401(k) Plan, administered by Empower Retirement (a division of Great West Life & Annuity Insurance Company)	US, Company Plan
Anthem Blue Cross Premium Healthcare Plan	US, Company Plan
Anthem Dental Blue Platinum Plan	US, Company Plan
VSP Vision Plan	US, Company Plan
Anthem Blue Cross Life Insurance	US, Company Plan

Reference is made to the change of control bonus payments disclosed above in Section 3.25(d) above.

**Section 3.30- Change of Control Agreements**

Reference is made to the disclosure regarding change of control bonuses in Section 3.25(d) above.