

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

GLOWPOINT, INC.

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): September 12, 2019

GLOWPOINT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-35376
(Commission File Number)

77-0312442
(IRS Employer
Identification No.)

999 18th Street, Suite 1350S
Denver, Colorado 80202
(Address of principal executive offices, zip code)

(303) 640-3838
(Registrant's telephone number, including area code)
(Former name or former address, if changed since last report.)

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

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

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	GLOW	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On September 12, 2019, Glowpoint, Inc., a Delaware corporation (“**Glowpoint**”), entered into an Agreement and Plan of Merger (the “**Merger Agreement**”) with Glowpoint Merger Sub II, Inc., a Delaware corporation and a direct wholly-owned subsidiary of Glowpoint (the “**Merger Sub**”), and Oblong Industries, Inc., a Delaware corporation (“**Oblong**”). The Merger Agreement provides that, among other things and subject to the terms and conditions set forth in the Merger Agreement, at the closing of the Merger (i) the Merger Sub will merge with and into Oblong (the “**Merger**”), with Oblong surviving as a wholly-owned subsidiary of Glowpoint; and (ii) in connection with the Merger, each share of capital stock of Oblong issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement) of the Merger (other than Excluded Shares (as defined in the Merger Agreement)) will be converted into the right to receive shares of Glowpoint’s newly created Series D Convertible Preferred Stock, par value \$0.0001 per share (the “**Preferred Stock**” and, the shares of Preferred Stock to be issued pursuant to the Merger Agreement, the “**Merger Consideration**”). The parties expect that the Preferred Stock will automatically convert into shares of Glowpoint’s common stock, par value \$0.0001 per share (“**Common Stock**”), upon approval of Glowpoint’s stockholders (the “**Series D Preferred Stock Conversion**”). Warrants to purchase shares of Oblong common stock that remain outstanding as of the Effective Time will be cancelled, terminated and extinguished as of the Effective Time without the payment of any consideration to the holders of such warrants. At the Effective Time, Glowpoint will assume all then-outstanding options to purchase shares of Oblong’s common stock (“**Oblong Options**”), and such options will be deemed, following the Effective Time, to constitute options to acquire shares of Glowpoint’s Common Stock on the same terms and conditions as were applicable under such Oblong Option at the Effective Time. Under the terms of the Merger Agreement, Glowpoint will issue and reserve for future issuance upon the exercise of the Oblong Options, an aggregate of approximately 17.4 million shares of Preferred Stock. Upon consummation of the proposed Merger, it is expected that the stockholders and equity incentive award holders of Glowpoint existing prior to the transaction will collectively own an approximately 25% interest in the combined company and the stockholders and Oblong Option holders of Oblong existing prior to the transaction will collectively own an approximately 75% interest in the combined company, in each case excluding any shares (i) issued pursuant to the Proposed Financing (as defined below) or (ii) reserved for future issuance under the new equity incentive plan of the combined company contemplated by the Merger Agreement (the “**New Incentive Plan**”), under which Glowpoint will reserve additional shares of its Common Stock for future issuance. In addition, the parties expect that, at the closing of the Merger, Glowpoint will assume certain obligations of Oblong outstanding under its Amended and Restated Loan and Security Agreement with Silicon Valley Bank.

The completion of the Merger is subject to satisfaction or waiver of certain closing conditions, including (i) the receipt of all required approvals of the stockholders of Oblong and any required third-party consents and regulatory clearances; (ii) the absence of any governmental order or law that makes consummation of the Merger illegal or otherwise prohibited; (iii) execution of the Support Agreements (as defined below); (iv) no more than five percent (5.0%) of the issued and outstanding shares of Oblong’s capital stock dissenting to the Merger; (v) the purchase by Foundry Group Select Fund, L.P. of at least \$2.5 million of Glowpoint’s newly-created Series E Convertible Preferred Stock, par value \$0.0001 per share (the “**Foundry Shares**”), in a private placement intended to be exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), to be closed substantially concurrently with the Merger (the “**Proposed Financing**”); (vi) Glowpoint raising at least \$2.5 million, inclusive of the Foundry Shares, in the Proposed Financing; and (vii) execution by Glowpoint of a registration rights agreement providing for the filing by Glowpoint of a Registration Statement on Form S-3 or other appropriate form under the Securities Act to permit registration of the sale of shares of Glowpoint Common Stock to be issued to Foundry Group Select Fund, L.P. following the Series D Preferred Stock Conversion. The obligation of each party to consummate the Merger is also conditioned upon the other party’s representations and warranties being true and correct (subject to certain materiality exceptions), the absence of any material adverse effect and the other party having performed in all material respects its obligations under the Merger Agreement.

The Merger Agreement contains customary representations and warranties of Glowpoint and Oblong relating to their respective businesses and financial statements and, in the case of Glowpoint, its public filings, in each case generally subject to customary materiality qualifiers. Additionally, the Merger Agreement provides for customary pre-

closing covenants of Glowpoint and Oblong, including covenants relating to conducting their respective businesses in the ordinary course and to refrain from taking certain actions without the other party's consent. The Merger Agreement also contains termination rights for each of Glowpoint and Oblong, including, among other customary termination provisions, (i) if the consummation of the Merger does not occur on or before November 30, 2019, subject to extensions to not later than September 12, 2020 for the sole purpose of obtaining regulatory clearances; (ii) subject to certain conditions, if Glowpoint's board of directors changes its recommendation in favor of the Series D Preferred Stock Conversion; and (iii) breach or failure to perform under a representation, warranty, covenant or agreement by a party such that the conditions to the closing of the Merger would not be satisfied, subject to a 30-day cure period for any such breaches that are capable of being cured. Upon (a) termination of the Merger Agreement by Oblong pursuant to clause (ii) of the foregoing sentence, Glowpoint would be required to pay to Oblong an amount equal to \$1,000,000; or (b) termination of the Merger Agreement pursuant to clause (iii) of the foregoing sentence, the breaching party would be required to pay to the terminating party an amount equal to \$1,000,000.

Pursuant to the Merger Agreement, Glowpoint's board of directors will consist of five members after the completion of the Merger, of which three members will be appointed by the members of Glowpoint's board existing prior to closing, with the remaining members being appointed by the members of Oblong's board existing prior to closing.

The Merger Agreement provides that each of Glowpoint and Oblong, during the period from the date of the Merger Agreement until the Effective Time, will be subject to certain restrictions on its ability to solicit alternative acquisition proposals from third parties, to provide non-public information to third parties and to engage in discussions with third parties regarding alternative acquisition proposals, subject to customary exceptions. Glowpoint is required to call a meeting of its stockholders to approve (i) the Series D Preferred Stock Conversion and (ii) the New Incentive Plan, and has agreed to recommend that its stockholders approve such items. Oblong is required to obtain the written consent of its stockholders to approve the Merger Agreement, and has agreed to recommend that its stockholders approve the Merger Agreement.

The board of directors of Glowpoint has unanimously (i) determined that the Merger Agreement and the transactions contemplated thereby are advisable, fair to and in the best interests of Glowpoint and its stockholders; (ii) adopted and approved the Merger Agreement and the transactions contemplated thereby; (iii) directed that the (A) Series D Preferred Stock Conversion and (B) New Incentive Plan be submitted to Glowpoint's stockholders for approval; and (iv) resolved to recommend the approval of such items by its stockholders, who will be asked to vote on such approval at a special meeting of the Glowpoint stockholders.

The Merger Agreement has been included as Exhibit 2.1 to this Current Report on Form 8-K to provide investors with information regarding its terms. It is not intended to provide any other factual information about Glowpoint or Oblong. The representations, warranties and covenants contained in the Merger Agreement were made only for purposes of the Merger Agreement as of the specific dates therein, were solely for the benefit of the parties to the Merger Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Merger Agreement.

The above description of the Merger Agreement and the transactions contemplated thereby is only a summary and does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

Support Agreements

On September 12, 2019, in connection with the execution of the Merger Agreement, Glowpoint entered into a Voting and Support Agreement with each of John Underkoffler and Brad Feld, each of which is an officer and/or

director of Oblong, and Oblong entered into a Voting and Support Agreement with each of Peter Holst, Jason Adelman, David Giangano, James Lusk, Richard Ramlall and David Clark, each of which is an officer and/or director of Glowpoint (collectively, the “**Support Agreements**”). Each Support Agreement requires, subject to the terms and conditions thereof, that the stockholder subject thereto vote or cause to be voted all Glowpoint or Oblong, as applicable, voting capital stock owned by such stockholder in favor of the transactions contemplated by the Merger Agreement; *provided, however*, that the Support Agreements do not limit or restrict any stockholder party thereto from (i) taking actions (or failing to take actions) in his or her capacity as a director or officer, or (ii) exercising his or her fiduciary duties as a director or officer, in each case of Glowpoint or Oblong, as applicable.

The Support Agreements will terminate upon the earliest to occur of (i) the Effective Time (in the case of Oblong) or receipt of the Parent Required Vote (as defined in the Merger Agreement) (in the case of Glowpoint); (ii) such date and time as the Merger Agreement shall be terminated pursuant to Article IX thereof or (iii) the termination of the Support Agreement by mutual written consent of the parties thereto.

The forms of the Support Agreements executed by the Glowpoint and Oblong stockholders listed above are included as Exhibits B and C, respectively, to the Merger Agreement, which is attached hereto as Exhibit 2.1 and is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On September 16, 2019, Glowpoint issued a press release announcing the execution of the Merger Agreement. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

In accordance with General Instruction B.2 of Form 8-K, the information furnished under Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, is deemed to be “furnished” and shall not be deemed “filed” for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or otherwise subject to the liabilities of that section, nor shall such information and Exhibit be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of September 12, 2019, by and among Glowpoint, Inc., Oblong Industries, Inc. and Glowpoint Merger Sub II, Inc.†
99.1	Press release of Glowpoint, Inc. dated September 16, 2019.

† Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant hereby undertakes to furnish supplementally copies of any of the omitted schedules upon request by the SEC.

SIGNATURE

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

GLOWPOINT, INC.

Date: September 16, 2019

By: /s/ Peter Holst
Name: Peter Holst
Title: President & CEO

AGREEMENT AND PLAN OF MERGER

by and among

GLOWPOINT, INC.,

OBLONG INDUSTRIES, INC.,

and

GLOWPOINT MERGER SUB II, INC.

Dated as of September 12, 2019

TABLE OF CONTENTS

	Page
1. THE MERGER	1
1.1 The Merger	1
1.2 Effective Time	2
1.3 Closing of the Merger	2
1.4 Certificate of Incorporation	2
1.5 Bylaws of the Company	2
1.6 Board of Directors and Officers of the Company	2
1.7 Board of Directors of the Parent	2
2. EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS	2
2.1 Conversion of Company Capital Stock	2
2.2 Treatment of Company Options and Warrants	3
2.3 Treatment of Parent Equity Awards	4
2.4 Dissenting Shares	4
2.5 Merger Consideration Schedule	5
3. EXCHANGE OF CERTIFICATES FOR MERGER CONSIDERATION	5
3.1 Delivery of the Merger Consideration	5
3.2 Exchange Procedures	5
3.3 Dividends and Distributions	6
3.4 Transfer Books; No Further Ownership Rights in Shares	6
3.5 Termination of Fund; No Liability	6
3.6 Lost, Stolen or Destroyed Certificates	6
3.7 Withholding Taxes	6
3.8 Adjustments to Prevent Dilution	6
4. REPRESENTATION AND WARRANTIES OF THE COMPANY	7
4.1 Corporate Organization	7
4.2 Capitalization	8
4.3 Authority; No Violation	8
4.4 Consents and Approvals	9
4.5 Financial Statements	9
4.6 Broker's Fees	9
4.7 Absence of Certain Changes or Events	10
4.8 Legal Proceedings	10
4.9 Taxes	10
4.10 Employee Benefit Plans	11
4.11 Compliance With Applicable Law	13
4.12 Certain Contracts	13
4.13 Undisclosed Liabilities	14
4.14 Anti-Takeover Provisions	14
4.15 Real Property	14
4.16 Title to Property	14
4.17 Insurance	15
4.18 Environmental Liability	15
4.19 Intellectual Property	15
4.20 Regulatory Matters	16

4.21	Labor Matters	16
4.22	Transactions with Affiliates	17
4.23	Acknowledgment of the Company	17
4.24	No Other Representations or Warranties	17
5.	REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB	17
5.1	Corporate Organization	17
5.2	Capitalization	18
5.3	Authority; No Violation	19
5.4	Consents and Approvals	20
5.5	SEC Filings	20
5.6	Financial Statements	20
5.7	Broker's Fees	21
5.8	Absence of Certain Changes or Events	21
5.9	Legal Proceedings	21
5.10	Taxes	22
5.11	Employee Benefit Plans	22
5.12	Compliance With Applicable Law	24
5.13	Certain Contracts	25
5.14	Undisclosed Liabilities	25
5.15	Environmental Liability	25
5.16	Intellectual Property	26
5.17	Regulatory Matters	26
5.18	Labor Matters	26
5.19	Real Property	27
5.20	Title to Property	27
5.21	Transactions with Affiliates	28
5.22	Insurance	28
5.23	No Business Activities by Merger Sub	28
5.24	Ownership of Company Capital Stock; No Other Agreements	28
5.25	Anti-Takeover Provisions	28
5.26	Acknowledgment of Parent	28
5.27	No Other Representations or Warranties	28
6.	COVENANTS RELATING TO CONDUCT OF BUSINESS	29
6.1	Conduct of Business of the Company and Parent Prior to the Effective Time	29
6.2	Company Forbearances	29
6.3	Parent Forbearances	30
7.	ADDITIONAL AGREEMENTS	31
7.1	Private Placement	31
7.2	Information Statement	32
7.3	Company Stockholder Approval	32
7.4	Proxy Statement	32
7.5	Access to Information	33
7.6	Further Actions	33
7.7	Employees; Employee Benefit Plans	34
7.8	Indemnification; Directors' and Officers' Insurance	35
7.9	Acquisition Proposals	37

7.10	Section 16 Matters	39
7.11	Tax Treatment as Reorganization	39
7.12	New Parent Incentive Plan	39
7.13	Board of Directors of Parent After the Effective Time	39
7.14	Parent Consent as Sole Stockholder of Merger Sub	39
7.15	Conversion of July NPA	40
8.	CONDITIONS OF PRECEDENT	40
8.1	Conditions to Each Party's Obligation to Effect the Merger	40
8.2	Conditions to Obligations of Parent and Merger Sub	40
8.3	Conditions to Obligations of the Company	41
9.	TERMINATION AND AMENDMENT	41
9.1	Termination	41
9.2	Notice of Termination; Effect of Termination; Termination Fees	42
9.3	Amendment	43
9.4	Extension; Waiver	43
10.	GENERAL PROVISIONS	43
10.1	Nonsurvival of Representations, Warranties and Agreements	43
10.2	Expenses	43
10.3	Notices	43
10.4	Interpretation; Construction	44
10.5	Entire Agreement	44
10.6	Specific Performance	44
10.7	Governing Law; Venue	44
10.8	Severability	45
10.9	Publicity	45
10.10	Assignment; Third Party Beneficiaries	45
10.11	Waiver of Jury Trial	45
10.12	Counterparts; Delivery	45

Exhibit A - Directors and Executive Officers of Parent and Company

Exhibit B - Form of Support Agreement of directors and officers of Parent

Exhibit C - Form of Support Agreement of directors and officers of Company

Exhibit D - Term Sheet for Parent Merger Preferred Stock

Index of Defined Terms

	Page
Acceptable Confidentiality Agreement	38
Acquisition Proposal	38
Affiliate	6
Agreement	1
Alternative Acquisition Agreement	37
Assumed Company Options	4
Bankruptcy and Equity Exceptions	9
Business Day	2
Cancelled Shares	2
Capitalization Date	8
Certificate	3
Certificate of Incorporation	2
Certificate of Merger	2
Change of Recommendation	38
Claim	36
Closing	2
Closing Date	2
Closing Foundry Investment	32
Code	6
Company	1
Company Benefit Plans	11
Company Board	8
Company Board Designees	2
Company Capital Stock	1
Company Common Stock	2
Company Contract	14
Company Disclosure Letter	7
Company ERISA Affiliate	11
Company Intellectual Property Rights	15
Company Leased Real Property	15
Company Licenses	16
Company Material Adverse Effect	7
Company Non-U.S. Plan	12
Company Option	4
Company Permitted Liens	15
Company Personal Information	13
Company Preferred Stock	8
Company Privacy Policy	13
Company Recommendation	8
Company Required Vote	8
Company Stock Plans	8
Company Stockholder	5
Company Support Agreements	1

Company Termination Fee	42
Confidentiality Agreement	33
Consent	9
Consolidated Balance Sheet	9
Consolidated Financial Statements	9
Continuing Employees	34
D&O Insurance	36
Delaware Secretary	2
DGCL	1
Dissenting Shares	4
Effective Time	2
Environmental Laws	15
ERISA	11
Escrow Agent	5
Exchange Act	9
Exchange Agent	5
Expenses	36
Foundry Commitment	32
Governmental Entity	9
Indemnified Parties	35
Information Statement	32
July NPA	2
Knowledge of the Company	10
Knowledge of the Parent	20
Liens	8
Merger	1
Merger Consideration	3
Merger Consideration Schedule	5
Merger Sub	1
New Parent Incentive Plan	39
Note Conversion and Termination	40
Outside Date	41
Parent	1
Parent Benefit Plans	22
Parent Board	19
Parent Capital Stock	1
Parent Common Stock	18
Parent Common Stock Plans	18
Parent Contract	25
Parent Disclosure Letter	17
Parent Equity Award	4
Parent ERISA Affiliate	23
Parent Intellectual Property Rights	26
Parent Leased Real Property	27
Parent Licenses	26
Parent Material Adverse Effect	18

Parent Merger Preferred Stock	3
Parent Non-U.S. Plan	24
Parent Permitted Liens	27
Parent Personal Information	24
Parent Plans	34
Parent Preferred Stock	7
Parent Privacy Policy	24
Parent Recommendation	19
Parent Required Vote	19
Parent SEC Reports	20
Parent Series A-2 Preferred Stock	18
Parent Series C Preferred Stock	19
Parent Stock Buyback Program	18
Parent Stock Issuance	3
Parent Stockholder Meeting	19
Parent Support Agreements	1
Parent Termination Fee	43
PEO	11
PEO Plan	11
Permits	7
Person	6
Private Placement	32
Proxy Statement	32
Regulatory Law	34
Representatives	33
SEC	9
Securities Act	17
State Regulators	9
Subsidiary	7
Superior Proposal	39
Support Agreements	1
Surviving Company	1
Target Net Proceeds	32
Tax Return	11
Taxes	11
Termination Date	41
Written Consent	32

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of September 12, 2019 (as amended, supplemented or otherwise modified from time to time, and together with all exhibits and schedules hereto, this "**Agreement**"), is entered into by and among Glowpoint, Inc., a Delaware corporation ("**Parent**"), Oblong Industries, Inc., a Delaware corporation (the "**Company**"), and Glowpoint Merger Sub II, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent ("**Merger Sub**").

WHEREAS, the respective Boards of Directors of each of the Company, Parent and Merger Sub have approved the acquisition of the Company by Parent through the statutory merger of Merger Sub with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease, and the Company shall be the Surviving Company (as defined below) (the "**Merger**") upon the terms and subject to the conditions of this Agreement;

WHEREAS, the parties hereto intend that the Merger qualify as a reorganization within the meaning of Section 368(a) of the Code;

WHEREAS, the Board of Directors of the Company has (a) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, are advisable for and in the best interests of the Company and its stockholders, (b) approved, subject to the terms of this Agreement, the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, including the Merger, and (c) resolved, subject to the terms of this Agreement, to recommend that the Company's stockholders adopt this Agreement and approve the transactions contemplated hereby, including the Merger;

WHEREAS, the Board of Directors of Parent has (a) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, the New Parent Incentive Plan, the Parent Stock Issuance and the Parent Stock Issuance Conversion, are advisable for and in the best interests of Parent and its stockholders, (b) approved, subject to the terms of this Agreement, the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, including the Merger, the New Parent Incentive Plan, the Parent Stock Issuance and the Parent Stock Issuance Conversion, and (c) resolved, subject to the terms of this Agreement, to recommend that Parent's stockholders approve the New Parent Incentive Plan and the Parent Stock Issuance Conversion in connection with the Merger;

WHEREAS, the Board of Directors of the Merger Sub has (a) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, are advisable for and in the best interests of the Merger Sub and its stockholder, and (b) approved, subject to the terms of this Agreement, the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, including the Merger;

WHEREAS, as a condition to the willingness of the parties to enter into this Agreement, (i) all of the directors and executive officers of Parent listed on Exhibit A attached hereto have entered into support agreements (the "**Parent Support Agreements**"), substantially in the form attached hereto as Exhibit B, dated as of the date hereof, and (ii) all of the directors and executive officers of Company listed on Exhibit A attached hereto and certain stockholders of the Company have entered into support agreements (the "**Company Support Agreements**" and, together with the Parent Support Agreements, the "**Support Agreements**"), substantially in the form attached hereto as Exhibit C, dated as of the date hereof, pursuant to which each such director or executive officer has agreed, among other things, to vote, or, in the case of the Company Support Agreements, to provide their written consent with respect to, all of the Company Common Stock and Company Preferred Stock (together, the "**Company Capital Stock**"), or Parent Common Stock and Parent Preferred Stock (together, the "**Parent Capital Stock**"), as applicable, owned by such director or executive officer in favor of the approval of the matters set forth in such Support Agreements, subject to the terms thereof; and

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

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions of this Agreement, in accordance with the Delaware General Corporation Law ("**DGCL**"), at the Effective Time, Merger Sub shall merge with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease, and the Company shall be the surviving corporation (the "**Surviving Company**"). The parties to this Agreement agree to report the Merger for any and all federal and state income tax reporting purposes as a reorganization described in Section 368(a)(1)(A) of the Code by reason of Section 368(a)(2)(E) of the Code. The

parties to this Agreement hereby adopt this Agreement as a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). The Company, Parent and Merger Sub each will be a party to the reorganization within the meaning of Section 368(b) of the Code.

1.2 Effective Time. Subject to the provisions of this Agreement, the Merger shall become effective as set forth in a certificate of merger executed and acknowledged in accordance with, and otherwise satisfying, the applicable requirements of the DGCL (the “**Certificate of Merger**”), which shall be duly executed by the Company and Merger Sub and filed with the Secretary of State of the State of Delaware (the “**Delaware Secretary**”) on the Closing Date or as soon thereafter as practicable. As used herein, the term “**Effective Time**” shall mean the date and time when the Merger becomes effective as provided by the Certificate of Merger and otherwise in accordance with applicable law.

1.3 Closing of the Merger. Upon the terms and subject to the conditions of this Agreement, the closing of the Merger (the “**Closing**”) will take place (a) at the offices of Arnold & Porter Kaye Scholer LLP, at 9:00 a.m., Mountain Time, on the date that is the second (2nd) Business Day after the satisfaction or waiver of the conditions set forth in Section 8 hereof, other than conditions which by their terms are to be satisfied at the Closing, or (b) such other location, date or time as the parties may mutually agree (the “**Closing Date**”), unless this Agreement has been terminated pursuant to its terms or unless another time or date is agreed to in writing by the parties hereto. For purposes of this Agreement, a “**Business Day**” shall mean any day that is not a Saturday, a Sunday or other day on which the office of the Delaware Secretary is closed.

1.4 Certificate of Incorporation of the Company. At the Effective Time, the certificate of incorporation of the Surviving Company (the “**Certificate of Incorporation**”) shall remain as the certificate of incorporation of the Surviving Company until thereafter amended in accordance with the terms thereof or as provided by applicable law.

1.5 Bylaws of the Company. At the Effective Time, the by-laws of Merger Sub as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Company, except that references to Merger Sub’s name shall be replaced with references to the Surviving Company’s name, until thereafter amended in accordance with the terms thereof, the certificate of incorporation of the Surviving Company, or as provided by applicable law.

1.6 Board of Directors and Officers of the Company. The directors of the Company immediately prior to the Effective Time shall be the directors of the Surviving Company, each to hold office until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of the Surviving Company and applicable law. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Company, each to hold office until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of the Surviving Company and applicable law.

1.7 Board of Directors of the Parent. At the Effective Time, two (2) of the then-existing members of the Parent Board shall resign from the Parent Board, and John Underkoffler and one other director will be appointed by the Company from the Company Board existing prior to the Closing (the “**Company Board Designees**”), effective as of the Closing, each to hold office until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of the Parent and applicable law.

2. EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

2.1 Conversion of Company Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, the Company or the holder of any of the shares of Company Capital Stock, Parent Common Stock or any capital stock of Merger Sub:

(a) All shares of common stock, par value \$0.0001 per share, of the Company (the “**Company Common Stock**”) held in treasury or owned directly by the Company or any Subsidiary of the Company shall be cancelled and retired and shall not represent capital stock of the Surviving Company and shall not be exchanged for the Merger Consideration. Shares of Company Common Stock that are canceled and retired pursuant to this Section 2.1(a) are hereinafter referred to as the “**Cancelled Shares**”;

(b) All amounts owed (including any outstanding principal, accrued and unpaid interest, fees, prepayment penalties, and amounts owed by the Company under Section 2.2 of the July NPA) under all tranches of Notes of the Company issued pursuant to that certain Note Purchase Agreement, dated July 31, 2019 by and among the Company, as borrower, and the lenders party thereto (the “**July NPA**”), shall, immediately prior to the conversion in Section 2.1(d) below, be converted into shares of Series E Preferred Stock, par value \$0.0001 per share, of the Company;

(c) Each share of Series D Preferred Stock, par value \$0.0001 per share, of the Company issued and outstanding immediately prior to the Effective Time shall, immediately prior to the conversion in Section 2.1(e) below, be converted into Company Common Stock in accordance with the Certificate of Incorporation of the Company;

(d) Each share of Series E Preferred Stock, par value \$0.0001 per share, of the Company (other than (i) Cancelled Shares and (ii) Dissenting Shares, but including any Series E Preferred Stock issued as set forth in Section 2.1(b)) issued and outstanding immediately prior to the Effective Time shall be converted into and become the right to receive a number of validly issued, fully paid and nonassessable shares of Series D Convertible Preferred Stock, par value \$0.0001 per share, of Parent, on the terms set forth in the term sheet attached as Exhibit D hereto (the "**Parent Merger Preferred Stock**") equal to, in the case of all shares of Series E Preferred Stock, the Preferred Exchange Ratio as set forth on the Merger Consideration Schedule;

(e) Each share of Company Common Stock (other than (i) Cancelled Shares and (ii) Dissenting Shares, but including any Company Common Stock issued as set forth in Section 2.1(c)) issued and outstanding immediately prior to the Effective Time shall be converted into and become the right to receive a number of validly issued, fully paid and nonassessable shares of Parent Merger Preferred Stock equal to, in the case of all shares of Company Common Stock, the Common Exchange Ratio as set forth on the Merger Consideration Schedule;

(i) Effective as of the Effective Time, each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than (i) Cancelled Shares and (ii) Dissenting Shares) shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of certificates or evidence of shares in book-entry form that immediately prior to the Effective Time evidenced shares of Company Capital Stock (each, a "**Certificate**") shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor upon surrender of such Certificate in accordance with Section 3.2. The shares of Parent Merger Preferred Stock to be issued pursuant to this Section 2.1 is hereinafter referred to as the "**Merger Consideration**" and the issuance of such Merger Consideration is hereinafter referred to as the (the "**Parent Stock Issuance**").

(ii) Notwithstanding anything to the contrary set forth in this Agreement, and for purposes of calculating the Preferred Exchange Ratio and Common Exchange Ratio, the number of shares of Parent Merger Preferred Stock to be issued as a result of the Parent Stock Issuance, together with the number of shares of Parent Common Stock issuable as a result of the assumption of Company Options pursuant to Section 2.2 below, shall be equal to three times (3x) the number of shares of Parent Common Stock issued and outstanding on a fully-diluted basis immediately prior to the Effective Time.

(f) Each share of common stock, par value \$0.0001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid, and non-assessable share of common stock, par value \$0.0001 per share, of the Surviving Company with the same rights, powers, and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Company. From and after the Effective Time, all certificates representing shares of common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Company into which they were converted in accordance with the immediately preceding sentence;

(g) No fractional shares of Parent Merger Preferred Stock shall be issued in respect of shares of Company Capital Stock that are to be converted in the Merger into the right to receive shares of Parent Merger Preferred Stock. If any fractional share of Parent Merger Preferred Stock would, except for the provisions of this Section, be issuable to a holder of a Certificate (other than holders of Certificates representing (i) Cancelled Shares or (ii) Dissenting Shares) or convertible security of the Company pursuant to the Merger Consideration, the number of shares of Parent Merger Preferred Stock to be issued to such holder of a Certificate or convertible security of the Company in the Merger will be rounded up to the nearest whole share of Parent Merger Preferred Stock; and

(h) If, on or after the date of this Agreement and prior to the Effective Time, Parent splits, combines into a smaller number of shares, or issues by reclassification any shares of Parent Merger Preferred Stock, then the Merger Consideration and any dependent items shall be appropriately adjusted to provide to the holders of Company Capital Stock the same economic effect as contemplated by this Agreement prior to such action, and as so adjusted shall, from and after the date of such event, be the Merger Consideration or other dependent item, as applicable, subject to further adjustment in accordance with this sentence.

2.2 Treatment of Company Options and Warrants.

(a) At the Effective Time, Parent shall assume all outstanding and unexercised options to purchase Company Common Stock issued by the Company pursuant to the Company Stock Plans, whether or not then vested or exercisable (each a

“**Company Option**”) without any action on the part of the holder thereof. Immediately after the Effective Time, each Company Option outstanding immediately prior to the Effective Time shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable to such Company Option as set forth in the applicable Company Stock Plan (including any applicable award agreement, other agreement or other document evidencing such Company Option) immediately prior to the Effective Time, such number of shares of Parent Common Stock (rounded down to the nearest whole number) that is equal to the number of shares of Company Common Stock subject to the unexercised portion of such Company Option multiplied by the Common Exchange Ratio. The per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Option shall be equal to the exercise price per share of such Company Option in effect immediately prior to the Effective Time divided by the Common Exchange Ratio (rounded up to the nearest whole cent). The assumption of the Company Options is intended to comply with the regulations and other binding guidance under Section 409A of the Code, including Treas. Reg. 1.409A-1(b)(5)(v)(D), and such Company Options assumed pursuant to this Section 2.2(a) (the “**Assumed Company Options**”) shall be subject to the same terms and conditions (including vesting schedule, expiration date, exercise provisions, transfer restrictions and status as an “incentive stock option” under Section 422 of the Code, if applicable) as were applicable to the corresponding Company Options immediately prior to the Effective Time. It is the intention of the parties that each Company Option so assumed by Parent shall qualify following the Effective Time as an incentive stock option as defined in Section 422 of the Code to the extent permitted under Section 422 of the Code and to the extent such Company Option qualified as an incentive stock option prior to the Effective Time and the provisions of this Section 2.2(a) shall be applied consistent with that intent. Within 30 Business Days after the Effective Time, Parent will issue to each person who, immediately prior to the Effective Time, was a holder of a Company Option, a document evidencing the foregoing assumption of such option by Parent.

(b) Unless the shares of Parent Common Stock issuable upon exercise of the Assumed Company Options are otherwise covered by an existing registration statement on Form S-8 immediately upon the Effective Time, Parent shall file a registration statement on Form S-8 (or any successor form) or another appropriate form with respect to the shares of Parent Common Stock subject to the Assumed Company Options within a reasonable period of time after the Effective Time, and shall use commercially reasonable efforts at least equivalent to those used in maintaining the effectiveness of its existing registration statement(s) for its equity plans to maintain the effectiveness of such registration statement for so long as such Assumed Company Options remain outstanding.

(c) Prior to the Effective Time, the Company and Parent agree that the Company shall, subject to Parent’s review and consent (which consent shall not be unreasonably withheld), take all corporate action necessary to effectuate the provisions of this Section 2.2. From and after the Effective Time, unless the compensation committee of the Parent Board determines otherwise, all references to the Company in the Company Stock Plans and in each award or other agreement evidencing or relating to any Assumed Company Option or any other Company equity-based award, shall be deemed (i) for all purposes relating to employment, consultancy or directorship (or words of similar meaning) to refer to Parent and its Subsidiaries and (ii) for all other purposes, to refer to Parent.

(d) No warrants exercisable for shares of Company Capital Stock, whether vested or unvested, shall be assumed by Parent in the Merger. Each such warrant outstanding immediately prior to the Effective Time shall be cancelled, terminated and extinguished as of the Effective Time without the payment of any consideration to the holder of such warrant.

2.3 Treatment of Parent Equity Awards. Notwithstanding the transactions contemplated hereby, all equity incentive awards issued and outstanding under any Parent Common Stock Plan (each, a “**Parent Equity Award**”) shall remain unaffected by the Merger and shall continue on and following the Effective Date in accordance with the respective terms and conditions as were applicable to each such Parent Equity Award as set forth in the applicable Parent Common Stock Plan (including any applicable award agreement, other agreement or other document evidencing such Parent Equity Award) immediately prior to the Effective Time, unless otherwise provided to the contrary therein.

2.4 Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, including Section 2.1, shares of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than shares of Company Capital Stock cancelled in accordance with Section 2.1(a)) and held by a holder who has not voted in favor of adoption of this Agreement or consented thereto in writing and who has properly exercised appraisal rights of such shares of Company Capital Stock in accordance with Section 262 of the DGCL (such shares of Company Capital Stock being referred to collectively as the “**Dissenting Shares**”) until such time as such holder fails to perfect or otherwise loses such holder’s appraisal rights under the DGCL with respect to such shares of Company Capital Stock) shall not be converted into a right to receive a portion of the Merger Consideration, but instead shall be entitled to only such rights as are granted by Section 262 of the DGCL; provided, however, that if, after the Effective Time, such holder fails to perfect, withdraws or loses such holder’s right to appraisal pursuant to Section 262 of the DGCL or if a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, such shares of Company Capital Stock shall be treated as if they had been converted as of the Effective Time into the right to receive the portion of the Merger Consideration, if any, to which such holder is entitled pursuant to Section

2.1, without interest thereon. The Company shall provide Parent prompt written notice of any demands received by the Company for appraisal of shares of Company Capital Stock, any withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the DGCL that relates to such demand, and Parent shall have the opportunity and right to direct all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent (not to be unreasonably withheld), the Company shall not make any payment with respect to, or settle or offer to settle, any such demands.

2.5 Merger Consideration Schedule.

(a) The Company shall prepare and deliver to Parent, not later than two (2) Business Days prior to the Closing Date, a spreadsheet (the "**Merger Consideration Schedule**"), certified by the Chief Executive Officer of the Company, which shall set forth all of the following information, as of the Closing Date and immediately prior to the Effective Time:

(i) the name, mailing address and email address (to the extent available) of each Company Stockholder and the number, class and series of shares of Company Capital Stock held by such Company Stockholder immediately prior to the Effective Time (after giving effect to any exercise of Company Warrants and conversion of the Series D Preferred Stock in connection with the Merger), including, in the case of outstanding shares, the respective certificate numbers therefor, and with respect to each such certificate representing shares of Company Capital Stock, the aggregate number of shares of Parent Merger Preferred Stock issuable to such Company Stockholder at Closing;

(ii) (A) the name, mailing address and email address (to the extent available) of each holder of Company Options, and (B) the number of shares of Parent Common Stock issuable upon exercise of each such Company Option; and

(iii) the calculation of the Preferred Exchange Ratio and Common Exchange Ratio.

(b) For the avoidance of doubt, delivery of the Merger Consideration Schedule by the Company is not a condition to the closing of the Merger, and if the Company fails to deliver the Merger Consideration Schedule the Parent may, following Closing, hold (or cause to be held) the Merger Consideration in escrow pending receipt of the Merger Consideration Schedule.

3. EXCHANGE OF CERTIFICATES FOR MERGER CONSIDERATION

3.1 Delivery of the Merger Consideration.

(a) Prior to the Effective Time (and, with respect to Parent Merger Preferred Stock, from time to time after the Effective Time, as applicable), Parent shall deposit with the Exchange Agent, pursuant to an agreement providing for the matters set forth in this Section 3.1 and such other matters as may be appropriate and the terms of which shall be mutually acceptable to Parent and the Company, certificates or, at Parent's option, a single global certificate, representing shares of Parent Merger Preferred Stock (or make appropriate alternative arrangements if uncertificated shares of Parent Merger Preferred Stock represented by book-entry shares will be issued) sufficient to effect the conversion of each share of Company Capital Stock (other than Cancelled Shares) into the Merger Consideration pursuant to this Agreement.

3.2 Exchange Procedures.

(a) Reasonably promptly after the execution of this Agreement, Parent shall designate and appoint an exchange and escrow agent from or affiliated with a nationally recognized banking institution reasonably acceptable to the Parent and the Company, with such approval not to be unreasonably withheld or delayed, to act as exchange agent and escrow agent hereunder (in such capacities, the "**Exchange Agent**" and "**Escrow Agent**") for the purpose of exchanging Certificates.

(b) Promptly after the Effective Time, but in any event not more than five (5) Business Days after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record, as of immediately prior to the Effective Time, of shares of Company Capital Stock (each such holder, a "**Company Stockholder**"), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to each Certificate representing any shares of Company Capital Stock held by such Company Stockholder shall pass, only upon delivery of the completed letter of transmittal and such Certificate to the Exchange Agent and shall be in such form and have such other provisions as Parent and the Company shall mutually agree) and (ii) instructions for use in effecting the surrender of each such Certificate in exchange for the total amount of Merger Consideration that such Company Stockholder is entitled to receive in exchange for such holder's shares of Company Capital Stock in the Merger pursuant to this Agreement. From and after the Effective Time, until surrendered as contemplated by this

Section 3.2, each Certificate representing shares of Company Capital Stock held by a Company Stockholder shall be deemed to represent only the right to receive the total amount of Merger Consideration to which such Company Stockholder is entitled in exchange for such shares of Company Capital Stock as contemplated by Section 2.

(c) Upon the later of (i) surrender by a Company Stockholder to the Exchange Agent of all Certificates representing such holder's shares of Company Capital Stock, together with a letter of transmittal duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, and (ii) the Company's delivery of the Merger Consideration Schedule to the Parent as set forth in Section 2.5, such Company Stockholder shall be entitled to receive in exchange therefor (and the Exchange Agent shall mail to such Company Stockholder within ten (10) Business Days following such surrender): (i) a certificate (or certificates in the aggregate) or evidence of its interest in a single global certificate, or book-entry statement in the case of uncertificated shares, representing the number of whole shares of Parent Merger Preferred Stock into which such holder's shares of Company Capital Stock represented by such holder's properly surrendered Certificates were converted in accordance with Section 2.1, and such Certificates so surrendered shall be forthwith cancelled, and (ii) a check in an amount of U.S. dollars (after giving effect to any required withholdings pursuant to Section 3.7) equal to any cash dividends and other distributions that such holder has the right to receive pursuant to Section 3.3.

3.3 Dividends and Distributions. No dividends or other distributions with respect to shares of Parent Merger Preferred Stock shall be paid to the holder of any unsurrendered Certificate until such Certificate is surrendered as provided in this Section 3, but provided that, to the extent that any such dividends or distributions are declared with a record date on or after the Effective Time, such dividends or distributions shall accrue for the account of such holder to be paid as provided in this Section 3.3. Subject to the effect of applicable laws, following such surrender, there shall be paid, without interest, to the record holder of the shares of Parent Merger Preferred Stock issued in exchange for shares of Company Capital Stock represented immediately prior to the Effective Time by such Certificate (i) when any payment or distribution of a certificate representing any share(s) of Parent Merger Preferred Stock is made to such holder pursuant to Section 3.2(b) or 3.2(c), all dividends and other distributions payable in respect of such Parent Merger Preferred Stock with a record date on or after the Effective Time and a payment date on or prior to the date of such surrender and not previously paid and (ii) on the appropriate payment date, the dividends or other distributions payable with respect to such Parent Merger Preferred Stock with a record date after the Effective Time but prior to surrender and with a payment date subsequent to such surrender. For purposes of dividends and other distributions in respect of Parent Merger Preferred Stock, all shares of Parent Merger Preferred Stock to be issued pursuant to the Merger shall be entitled to dividends pursuant to the immediately preceding sentence as if issued and outstanding as of the Effective Time.

3.4 Transfer Books; No Further Ownership Rights in Shares. After the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers of shares of Company Capital Stock on the records of the Company. After the Effective Time, the holders of Certificates shall cease to have any rights with respect to such shares, except the right to receive the Merger Consideration and such dividends and other distributions on or in respect of Parent Merger Preferred Stock as provided herein or as otherwise provided by applicable law. If, after the Effective Time, Certificates are presented to the Surviving Company for any reason, they shall be canceled and exchanged as provided in Section 2.

3.5 Termination of Fund; No Liability. At any time following twelve (12) months after the Effective Time, Parent shall be entitled to require the Exchange Agent to deliver to Parent certificates representing shares of Parent Merger Preferred Stock not delivered to holders of Certificates. Thereafter, holders of Certificates shall be entitled to look only to Parent, which shall thereafter act as the Exchange Agent (subject to abandoned property, escheat or other similar laws), as general creditors of Parent with respect to the delivery of the Merger Consideration. None of Parent, the Surviving Company and the Exchange Agent shall be liable to any Person (as defined below) for any Merger Consideration delivered to a public official pursuant to any abandoned property, escheat or similar law. For purposes of this Agreement, "**Person**" means any natural person, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, Governmental Entity or other entity.

3.6 Lost, Stolen or Destroyed Certificates. In the event that any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit attesting to that fact by the Person claiming such Certificate to be lost, stolen or destroyed, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate a certificate representing shares of Parent Merger Preferred Stock to which such holder is entitled, which constitute the total amount of Merger Consideration deliverable in respect of such Certificate as determined in accordance with Section 2.

3.7 Withholding Taxes. Parent and Exchange Agent will be entitled to deduct and withhold from the Merger Consideration payable to any holder of Company Capital Stock pursuant to this Agreement or the transactions contemplated hereby, and pay to the appropriate taxing authorities, such amounts as the Parent, or any affiliate (as defined under the Exchange Act (an "**Affiliate**")) thereof, or the Exchange Agent are required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "**Code**"), or any applicable provision of U.S. federal, state, local or non-U.S. tax law. To the extent that such amounts are properly withheld by the Parent or Exchange Agent and timely paid over to the

appropriate taxing authority, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the holder of the Company Capital Stock in respect of whom such deduction and withholding were made by Parent or the Exchange Agent.

3.8 Adjustments to Prevent Dilution. Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of Company Capital Stock, the Parent Common Stock or the preferred stock, par value \$0.0001 per share, of Parent (the "**Parent Preferred Stock**"), shall occur (other than the issuance of additional shares of capital stock of the Company or Parent as permitted or contemplated by this Agreement), including by reason of any reclassification, recapitalization, stock split (including a reverse stock split), or combination, exchange, readjustment of shares, or similar transaction, or any stock dividend or distribution paid in stock, the Preferred Exchange Ratio, the Common Exchange Ratio and the Merger Consideration and any other amounts payable pursuant to this Agreement and the Plan Shares, as applicable, shall be appropriately adjusted to reflect such change; *provided, however*, that this sentence shall not be construed to permit Parent or the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Disclosure Letter of the Company delivered to Parent concurrently herewith (the "**Company Disclosure Letter**") (with specific reference to the section of this Agreement to which the information stated in such Company Disclosure Letter relates; provided that (i) disclosure in any section of such Company Disclosure Letter shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable or relevant to such other Section and (ii) the mere inclusion of an item in such Company Disclosure Letter as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would reasonably be expected to result in a Company Material Adverse Effect), the Company hereby represents and warrants to Parent and Merger Sub as follows:

4.1 Corporate Organization.

(a) Each of the Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. Each of the Company and each of its Subsidiaries has all requisite corporate or limited liability company power and authority and possesses all governmental franchises, licenses, permits, authorizations, variances, exemptions, orders and approvals (collectively, "**Permits**") necessary to enable it to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted. Each of the Company and each of its Subsidiaries is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties makes such qualification necessary. As used in this Agreement: (1) The term "**Company Material Adverse Effect**" means (i) a material adverse effect on the business, results of operations, financial condition or assets of the Company and its Subsidiaries taken as a whole or (ii) a material adverse effect on the Company's ability to consummate the transactions contemplated hereby on a timely basis; provided, however, that in determining whether a Company Material Adverse Effect has occurred, there shall be excluded any effect on the Company or its Subsidiaries relating to or arising in connection with (A) any adverse change, effect, event or occurrence, state of facts or developments as a result of the public announcement or the pendency of this Agreement or the transactions contemplated hereby or any actions required to be taken (or refrained from being taken) in compliance herewith, including any action taken (or omitted to be taken) with the written consent of or at the written request of either the Parent or Merger Sub, (B) any change in federal, state, non-U.S. or local law, regulations, policies or procedures, or interpretations thereof, GAAP, or regulatory accounting requirements applicable or potentially applicable to the industries in which the Company or its Subsidiaries operate, (C) changes generally affecting the industries in which the Company or its Subsidiaries operate that are not specifically related to the Company and its Subsidiaries and do not have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, (D) changes in general economic conditions or political conditions, or in the financial, credit or securities markets in general (including changes in the prevailing interest rates, exchange rates or stock, bond and/or debt prices) in the United States, in any region thereof, or in any non-U.S. or global economy that do not have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, (E) any attack on, or by, outbreak or escalation of hostilities or acts of terrorism (including cyberterrorism) involving the United States, or any declaration of war by the United States Congress or any hurricane or other natural disaster, (F) any failure to meet financial projections, estimates or forecasts for any period (provided, that the underlying cause of such failure may, to the extent applicable, be considered in determining whether there has been a Company Material Adverse Effect), (G) the taking of any action by Parent, Merger Sub or any of their respective Affiliates (including any breach of this Agreement committed thereby), or (H) any matter set forth in the Company Disclosure Letter; and (2) the term "**Subsidiary**" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or any other entity that is consolidated with such Person for financial reporting purposes.

(b) The copies of the Certificate of Incorporation and Bylaws of the Company, and similar organizational documents of each its Subsidiaries, which have previously been made available to Parent, are true, complete and correct copies of such documents as in effect as of the date of this Agreement. For purposes of this Agreement, all documents and other information posted in the online data room established by the Company prior to the date hereof shall be deemed to have been made available to Parent and Merger Sub.

4.2 Capitalization.

(a) The authorized capital stock of the Company consists of 88,007,000 shares, consisting of 65,000,000 shares of Company Common Stock and 23,007,000 shares of preferred stock, par value \$0.0001 per share. Of the preferred stock, 19,757,000 shares have been designated as Series D Preferred Stock and 3,250,000 shares have been designated as Series E Preferred Stock (together, the "**Company Preferred Stock**"). As of the close of business on September 6, 2019 (the "**Capitalization Date**"), there were (i) 27,305,729 shares of Company Common Stock outstanding and (ii) 22,656,100 shares of the Company Preferred Stock outstanding, consisting of 19,756,834 shares of Series D Preferred Stock outstanding and 2,899,266 shares of Series E Preferred Stock outstanding. All of the issued and outstanding shares of Company Capital Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. As of the date of this Agreement, the Company does not have and is not bound by any outstanding subscriptions, options, warrants, calls, scrip, rights to subscribe to, purchase rights, conversion rights, exchange rights, equity appreciation rights, phantom stock, profits participation, calls, commitments or agreements of any character (A) calling for the purchase, sale, repurchase, redemption or issuance of any shares of Company Capital Stock or any other equity securities of the Company or any securities representing the right to purchase or otherwise receive any shares of the Company capital stock (including any rights plan or agreement) or (B) providing a counterparty with redeemable or contingent common stock or a guaranteed return. Section 4.2(a) of the Company Disclosure Letter sets forth a true, complete and correct list of the aggregate number of shares of Company Common Stock issuable upon the exercise of each Company Option granted under the Company Stock Plans that was outstanding as of the Capitalization Date and the exercise price for each such Company Option. Since the Capitalization Date, the Company has not (i) issued or repurchased any shares of its capital stock or any securities convertible into or exercisable for any shares of its capital stock, or (ii) issued or awarded any options, restricted shares or other equity-based awards under the any equity compensation stock plans of the Company (the "**Company Stock Plans**").

(b) Section 4.2(b) of the Company Disclosure Letter lists the name, jurisdiction of organization, authorized and outstanding shares of capital stock and record and beneficial owners of such capital stock for each Subsidiary of the Company. Neither the Company nor any of its Subsidiaries own, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable for, any equity or similar interest in, any corporation, partnership, joint venture or other similar business association or entity (other than its wholly owned Subsidiaries), with respect to which securities the Company or any of its Subsidiaries has invested (and currently owns) or is required to invest \$5,000,000 or more. The Company owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of the Company's Subsidiaries free and clear of any liens, charges, encumbrances, adverse rights or claims and security interests whatsoever ("**Liens**"), and all of such shares are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Neither the Company nor any of its Subsidiaries has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase, repurchase, sale, redemption or issuance of any shares of capital stock or any other equity security of any Subsidiary of the Company or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Subsidiary. There are no restrictions on the Company with respect to voting the stock of any Subsidiary of the Company.

4.3 Authority: No Violation.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and, subject to receipt of the Company Required Vote and the accuracy of the representations and warranties of Parent and Merger Sub set forth in this Agreement, to consummate the transactions contemplated by this Agreement. The Board of Directors of the Company (the "**Company Board**") at a duly held meeting has (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of the Company and its stockholders, (ii) approved, subject to the terms of this Agreement, the execution, delivery and performance of this Agreement and the transactions contemplated hereby, including the Merger, and (iii) resolved to recommend that the stockholders of the Company approve this Agreement and the transactions contemplated hereby, including the Merger (the recommendation contemplated by this clause (iii) being referred to as the "**Company Recommendation**"), and directed that such matter be submitted for consideration by the Company Stockholders. None of the aforesaid actions by the Company Board has been amended, rescinded or modified as of the date of this Agreement. Except for the approval of this Agreement by the affirmative vote of the holders of (i) a majority of the outstanding shares of Company Common Stock and Company Preferred Stock, voting together as a single class on an as-converted basis, (ii) a majority of the outstanding shares of Company Preferred Stock, voting together as a single class on an as-converted basis, and (iii) a majority of the outstanding shares of Company Common Stock, voting together as a single class (the "**Company Required Vote**"), no other

corporate proceedings on the part of the Company are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally (the "**Bankruptcy and Equity Exceptions**").

(b) Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby, including the Merger, will (i) violate any provision of the Certificate of Incorporation or Bylaws of the Company or any of the similar governing documents of any of its Subsidiaries, or (ii) assuming that the consents, approvals and filings referred to in Section 4.4 are duly obtained or made, (A) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, or (B) violate, conflict with, result in a breach of any provision of, or require redemption or repurchase or otherwise require the issuance, purchase or sale of any securities under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any of its Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected, except (in the case of clause (ii) above) for such violations, conflicts, breaches, defaults or other events which, either individually or in the aggregate, would not reasonably be expected to result in a Company Material Adverse Effect.

4.4 Consents and Approvals. No consent, approval, clearance, waiver, Permit or order ("**Consent**") of or from, or filings or registrations with, any federal, national, state, provincial or local government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality or self-regulatory organization of competent jurisdiction (each a "**Governmental Entity**") or with any third Person are necessary in connection with the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby, including the Merger, except for (a) any Consents from, or registrations, declarations, notices or filings made to or with any Governmental Entity (including any state or local public service or public utilities commission or other similar state or local regulatory bodies (collectively, the "**State Regulators**") and local cable or internet franchise authorities) (other than with respect to securities, antitrust, competition, trade regulation or similar laws), in each case as may be required in connection with this Agreement, the Merger or the other transactions contemplated by this Agreement and are required with respect to mergers, business combinations or changes in control of software applications companies generally, (b) the filing of the Certificate of Merger with the Delaware Secretary pursuant to the DGCL, (c) other consents or approvals of, or filings or registrations with, Governmental Entities or third parties, and (d) such other Consents which if not obtained or made would not be reasonably expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

4.5 Financial Statements.

(a) The Company has delivered to the Parent a copy of (A) the audited consolidated balance sheets of the Company and its Subsidiaries as of December 31, 2018, together with the audited consolidated statements of operations and comprehensive loss, cash flows and stockholders' equity of the Company and its Subsidiaries for the year then ended, and the related notes thereto, and (B) the unaudited consolidated balance sheet of the Company and its Subsidiaries (the "**Consolidated Balance Sheet**") as of July 31, 2019, together with the related unaudited consolidated statements of operations and comprehensive loss, cash flows and shareholders' equity of the Company and its Subsidiaries for the seven-month period then ended (such audited and unaudited financial statements collectively being referred to herein as the "**Consolidated Financial Statements**"). The Consolidated Financial Statements, together with the notes thereto, (i) complies in all material respects with the accounting requirements and with the published rules and regulations of the U.S. Securities and Exchange Commission (the "**SEC**") with respect thereto applicable to companies subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), (ii) have been prepared in accordance with GAAP (except that the unaudited Consolidated Financial Statements do not contain all notes required by GAAP and are subject to normal year-end audit adjustments) applied on a consistent basis throughout the periods covered thereby (except to the extent disclosed therein or required by changes in GAAP), (iii) are correct and complete in all material respects and (iv) fairly present, in all material respects, the consolidated financial position of the Company and its Subsidiaries at the dates thereof and the consolidated results of the operations and cash flows of the Company and its Subsidiaries for the respective periods indicated.

4.6 Broker's Fees. Neither the Company nor any of its Subsidiaries, nor any of their respective officers or directors on behalf of the Company or any of the Company's Subsidiaries, has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated by this Agreement.

4.7 Absence of Certain Changes or Events.

(a) Since July 31, 2019, no event has occurred which has had or would reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

(b) Except as contemplated by this Agreement or permitted under Section 6.2, since July 31, 2019, the Company and its Subsidiaries have carried on their respective businesses in all material respects in the ordinary course of business, and neither the Company nor any of its Subsidiaries has engaged in any material transaction that was not in the ordinary course of business consistent with past practice.

(c) Since July 31, 2019, there has been no incident of damage, destruction or loss of any property owned by the Company or any of its Subsidiaries or used in the operation of their businesses, whether or not covered by insurance, having a replacement cost or fair market value in excess of \$100,000. Without limiting the generality of the foregoing, since July 31, 2019 and through the date of this Agreement, neither the Company nor any of its Subsidiaries has taken any action that would have been prohibited by Section 6.1 or 6.2 if it had been taken after the date hereof and prior to the Closing Date.

4.8 Legal Proceedings.

(a) Neither the Company nor any of its Subsidiaries is a party to any, and there are no pending or, to the Knowledge of the Company, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature (i) against the Company or any of its Subsidiaries that would reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect or (ii) challenging the validity or propriety of the transactions contemplated by this Agreement. "**Knowledge of the Company**" means the actual knowledge of the directors and executive officers of the Company listed in Section 4.8(a) of the Company Disclosure Letter. The directors and executive officers of the Company listed in Section 4.8(a) of the Company Disclosure Letter shall not be deemed to have knowledge (actual, constructive or otherwise) of any fact, event, condition or occurrence known or deemed to be known by any other Person other than as expressly set forth in the foregoing sentence.

(b) As of the date of this Agreement, neither the Company nor any of its Subsidiaries or any of their businesses or properties are subject to or bound by any injunction, order, judgment, decree or regulatory restriction of any Governmental Entity specifically imposed upon the Company, any of its Subsidiaries or the assets of the Company or any of its Subsidiaries which would reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

4.9 Taxes.

(i) Each of the Company and its Subsidiaries has (A) duly and timely filed (including pursuant to applicable extensions granted without penalty) all Tax Returns required to be filed by it, and such Tax Returns are true, correct and complete in all material respects, and (B) timely paid all Taxes due and payable by it (including Taxes required to be withheld by it and regardless of whether shown as due on such Tax Returns), or, in the case of Taxes not yet due and payable, established an adequate accrual in accordance with GAAP on the Consolidated Financial Statements for the payment of all such Taxes (excluding any accrual for deferred Taxes established to reflect timing differences between book and Tax income); and (ii) there are no Liens for Taxes upon the assets of either the Company or its Subsidiaries except for statutory liens for current Taxes not yet due or Liens for Taxes that are being contested in good faith by appropriate proceedings and for which reserves adequate in accordance with GAAP have been provided.

(b) There are no disputes, audits, examinations, investigations or proceedings pending or threatened in writing in respect of any Taxes or Tax Returns of the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries is a party to any litigation or administrative proceeding relating to Taxes, in each case, other than in respect of matters for which adequate reserves have been established in accordance with GAAP.

(c) Neither the Company nor any of its Subsidiaries will be required, as a result of a change in accounting method, an installment sale or an open transaction for, or during, a Tax period beginning on or before the Effective Time, to include any adjustment under Section 481(c) of the Code (or any similar provision of state, local or foreign law) in taxable income for any Tax period beginning on or after the Effective Time, or to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period beginning on or after the Effective Time.

(d) Neither the Company nor any of its Subsidiaries (i) is a party to any Tax allocation, sharing or indemnity contract or arrangement, (ii) has been a member of an "affiliated group" (other than a group the common parent of which is the

Company) filing a consolidated federal income tax return, or (iii) has any liability for Taxes of any Person (other than the Company and its Subsidiaries) arising from the application of Treasury Regulation section 1.1502-6 or any analogous provision of state, local or non-U.S. law, or as a transferee or successor, by contract or otherwise.

(e) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or non-U.S. law) has been entered into by or with respect to the Company or any of its Subsidiaries.

(f) Neither the Company nor any of its Subsidiaries has been a “distributing corporation” or a “controlled corporation” in any distribution occurring during the last two (2) years prior to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(g) Neither the Company nor any of its Subsidiaries has granted any waiver of any federal, state, local or non-U.S. statute of limitations with respect to, or granted any extension of a period of time for the assessment or payment of, any Tax, which waiver or extension has not since expired.

(h) Neither the Company nor any of its Subsidiaries has “participated”, within the meaning of Treasury Regulations Section 1.6011-4(c)(3), in any of the transactions described in Treasury Regulations Section 1.6011-4(b)(2), (3), (4), (5) or (6).

(i) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that prevents, or would reasonably be expected to prevent, the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(j) As used herein, “**Taxes**” shall mean all taxes, levies or other assessments imposed by any United States federal, state, local or non-U.S. taxing authority, including income, excise, property, sales, use, transfer, franchise, payroll, withholding, social security, gross receipts, license, capital stock, profits, environmental, customs, duties, employment, unemployment, disability, value added, alternative minimum, estimated or other tax of any kind or any charge of any kind in the nature of (or similar to) taxes, including any interest or penalties attributable thereto.

(k) As used herein, “**Tax Return**” shall mean any return, report, information return or other document (including any related or supporting information) required to be filed with any taxing authority with respect to Taxes, including all information returns relating to Taxes of third parties, any claims for refunds of Taxes and any amendments or supplements to any of the foregoing.

4.10 Employee Benefit Plans.

(a) Section 4.10(a) of the Company Disclosure Letter sets forth a true and complete list or description of each employee welfare benefit plan and employee pension benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), Sections 3(1) and 3(2), each other compensation, consulting, employment agreement, each stock option, stock purchase, stock appreciation right, other stock based, life, health, disability or other insurance or benefit, bonus, deferred or incentive compensation, severance or separation, profit sharing, retirement, or other employee benefit plan, practice, policy or arrangement of any kind (whether oral or written, qualified or nonqualified, funded or unfunded, and including any that have been frozen or terminated) covering current or former employees, directors, or independent contractors of the Company or the Subsidiaries which the Company or the Subsidiaries maintain or are required to contribute to as of the date of this Agreement (collectively, the “**Company Benefit Plans**”) and separately identifies each Company Benefit Plan that is sponsored or maintained by Trinet HR Corporation (the “**PEO**” and each such Company Benefit Plan, a “**PEO Plan**”). Copies of the Company Benefit Plan documents (and, if applicable, related trust or funding agreements, insurance policies and service provider agreements) and all amendments not already incorporated thereto and written descriptions if not reduced to a written document, have been made available to Parent together with the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) required to be filed, the most recent summary plan description and the most recent IRS determination letter or opinion letter issued with respect to any Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(b) Neither the Company nor any entity that would have ever been considered as a single employer with the Company or part of the same “controlled group” as the Company for purposes of Section 414(b), (c), (m) or (o) of the Code (a “**Company ERISA Affiliate**”) has ever maintained, contributed to or been required to contribute to any Company Benefit Plan that (i) is a “multiemployer plan” as defined in Sections 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, (iii) is a “welfare benefit plan” as defined in Section 3(1) of ERISA that provides for post-retirement medical, life insurance or other welfare-type benefits to any former employees of the Company (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state law regarding medical continuation

coverage), (iv) is a "multiple employer plan" as defined in Section 413(c) of the Code or (v) is a "multiple employer welfare arrangement" within the meaning of 3(40)(A) of ERISA.

(c) The Company Benefit Plans and their related trusts intended to qualify under Sections 401(a) and 501(a) of the Code are subject to a favorable determination or opinion letter from the IRS (or are entitled to rely on such a letter issued to the provider of a master, prototype, volume submitter or similar plan) and, to the Knowledge of the Company, nothing has occurred that is expected to result in the revocation of such qualified status by the IRS.

(d) The Company Benefit Plans (other than the PEO Plans), and to the Knowledge of the Company, the PEO Plans, have been maintained and administered in all material respects in accordance with their terms and applicable laws.

(e) As of the date of this Agreement, there are no suits, actions, disputes, claims (other than routine claims for benefits) or arbitrations, or any audits, examinations or administrative proceedings before any Governmental Entity pending or, to the Knowledge of the Company, threatened, with respect to any Company Benefit Plan (other than any PEO Plan) or any related trust or other funding medium thereunder, or with respect to the Company in its capacity as the plan sponsor or fiduciary thereof, or, to the extent relating to current or former employees of the Company, any PEO Plan. No Company Benefit Plan is currently the subject of a submission under IRS Employee Plans Compliance Resolution System, nor under the Department of Labor's Delinquent Filer Voluntary Compliance Program, and the Company does not anticipate any such submission of any Company Benefit Plan.

(f) Neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any fiduciary, trustee, or administrator of any Company Benefit Plan or Company ERISA Affiliate, has engaged in, or in connection with the transactions contemplated by this Agreement will engage in, any transaction that would be a non-exempt "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

(g) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in a "partial termination" of any Company Benefit Plan within the meaning of Section 411(d)(3) of the Code.

(h) All contributions required to be made under the terms of any Company Benefit Plan, or applicable law, with respect to any period ending prior to the date of this Agreement have been paid or have been timely accrued on the audited financial statements to the extent required by GAAP, and none of the Company Benefit Plans has any material unfunded liabilities as of the date of this Agreement that are not so reflected in such audited financial statements.

(i) Each Company Benefit Plan that constitutes in any part a "nonqualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code and any award thereunder, in each case that is subject to Section 409A of the Code, (i) has at all times been operated in compliance in all respects with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder and (ii) either (A) has at all times been in a form which complies with the requirements of Section 409A of the Code or (B) has been timely amended under guidance issued pursuant to Section 409A of the Code so that its terms and provisions comply in all material respects with the requirements of Section 409A of the Code. No payment to be made under any Company Benefit Plan is, or to the Knowledge of the Company, will be, subject to the penalties of Section 409A(a)(1) of the Code.

(j) The per share exercise price of each Company Option is no less than the fair market value of a share of Company Common Stock on the date of grant of such Company Option, determined in a manner consistent with Section 409A of the Code.

(k) Each Company Benefit Plan maintained, sponsored or contributed to for the benefit of employees located outside the United States (each, a "**Company Non-U.S. Plan**") (A) complies in all material respects with applicable law, (B) is fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions, to the extent such Company Non-U.S. Plan is intended to be funded and/or book-reserved, (C) has been registered to the extent required, and has been maintained in good standing with applicable governmental authorities, and (D) if intended to qualify for special Tax treatment, meets all requirements for such treatment. No Company Non-U.S. Plan contains or has ever contained a defined benefit provision or otherwise provided any defined benefit pensions. Neither the Company nor any of its Subsidiaries, nor any of their respective agents or delegates, have breached any fiduciary obligation with respect to the administration or investment of any Company Non-U.S. Plan. None of the Company Non-U.S. Plans (other than pension plans) provide for retiree benefits or for benefits to retired employees or to the beneficiaries or dependents of retired employees. All employee data necessary to administer each Company Non-U.S. Plan in accordance with its terms and conditions and all applicable laws is in possession of the Company and its

Subsidiaries and such data is complete, correct, and in a form which is sufficient for the proper administration of such Company Non-U.S. Plan.

(l) The Company and its Subsidiaries have, for purposes of each Company Benefit Plan and for all other purposes, correctly classified in all material respects all individuals performing services to the Company and/or its Subsidiaries as common law employees, leased employees, or independent contractors, as applicable.

(m) The execution and performance of this Agreement will not (i) constitute a stated triggering event under any Company Benefit Plan that will result in any payment (whether of severance pay or otherwise) becoming due to any employee of the Company, its Subsidiaries or any Company ERISA Affiliate, (ii) accelerate the time of payment or vesting or increase the amount of compensation due under any Company Benefit Plan, (iii) cause any individual to accrue or receive additional benefits, service or accelerated rights to payment of benefits under any Company Benefit Plan, (iv) directly or indirectly cause the Company, its Subsidiaries or any Company ERISA Affiliate to transfer or set aside any assets to fund or otherwise provide for benefits for any individual, (v) result in a requirement to pay any tax "gross-up" or similar "make-whole" payments to any employee, director or consultant of the Company, its Subsidiaries or any Company ERISA Affiliate or (vi) result in any "parachute payment" as defined in Section 280G(b)(2) of the Code that could subject any Person to liability for Tax under Section 4999 of the Code or cause the loss of a deduction to the Company or any of its Subsidiaries under Section 280G of the Code.

4.11 Compliance With Applicable Law.

(a) The Company and each of its Subsidiaries hold all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses under and pursuant to, and have complied with and are not in violation under, any applicable law, statute, order, rule or regulation of any Governmental Entity relating to the Company or any of its Subsidiaries, except where the failure to hold such license, franchise, permit or authorization or such non-compliance or violation would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect, and neither the Company nor any of its Subsidiaries has received written notice of any violations of any of the above which, individually or in the aggregate, would reasonably be expected to result in a Company Material Adverse Effect.

(b) The Company and each of its Subsidiaries (i) is, and since January 1, 2018 has been, in compliance with (A) all written policies of the Company and each of its Subsidiaries pertaining to the logical and physical security of electronic data stored or used by the Company or any of its Subsidiaries (the "**Company Privacy Policy**"), and (B) all applicable laws pertaining to privacy, data protection, user data or Company Personal Information; and (ii) has implemented and maintained commercially reasonable administrative, technical and physical safeguards to protect such Company Personal Information against unauthorized access and use, in each case of clause (i) and (ii) except as would not, individually or in the aggregate, reasonably be likely to result in a Company Material Adverse Effect. There has been no loss, damage or unauthorized access, disclosure, use or breach of security of Company Personal Information maintained by or on behalf of the Company or any of its Subsidiaries, except in each case as would not, individually or in the aggregate, reasonably be likely to result in a Company Material Adverse Effect. No Person (including any Governmental Entity) has made any written claim or commenced any action with respect to unauthorized access, disclosure or use of Company Personal Information maintained by or on behalf of any of the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be likely to result in a Company Material Adverse Effect. None of (1) the execution, delivery, or performance of this Agreement or (2) the consummation of any of the transactions contemplated by this Agreement, including the Merger, will violate any Company Privacy Policy or any law pertaining to privacy, data protection user data or Company Personal Information, except in each case as would not, individually or in the aggregate, reasonably be likely to result in a Company Material Adverse Effect. "**Company Personal Information**" means all data or information controlled, owned, stored, used or processed by the Company or any of its Subsidiaries relating to an identified or identifiable customer or natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver's license number, account number, personal identification number, health or medical information (or any other unique identifier or one or more factors specific to the Person's physical, physiological, mental, economic or social identity), whether such information is in individual or aggregate form and regardless of the media in which it is contained.

4.12 Certain Contracts.

(a) As of the date hereof, neither the Company nor any of its Subsidiaries is a party to or is bound by any contract, arrangement, commitment or understanding (whether written or oral) (i) which is a material contract (as defined in Item 601(b)(10) of Regulation S-K of the SEC) to be performed after the date of this Agreement, (ii) which restricts the rights of the Company or any of its Subsidiaries to compete in any material respect in any line of business in any geographic area or with any Person, or which requires exclusive referrals of business or requires the Company or any of its Subsidiaries to offer specified products or services to their customers on an exclusive basis, (iii) with or to a labor union or guild (including any collective bargaining agreement), (iv) which relates to the incurrence of indebtedness (other than capital leases) in the principal amount of

\$500,000 or more, (v) which grants any Person a right of first refusal, right of first offer or similar right with respect to any material properties, assets or businesses of the Company or its Subsidiaries, (vi) which involves the purchase of assets or interests, other than in the ordinary course of business, with a purchase price of \$500,000 or more in any single case or \$500,000 in all such cases, (vii) which involves the sale of assets, other than in the ordinary course of business, with a purchase price of \$500,000 or more in any single case or \$500,000 in all such cases, or (viii) which involved payments by or to the Company or any of its Subsidiaries in fiscal year 2018 of more than \$500,000 or which would reasonably be expected to involve payments by or to the Company or any of its Subsidiaries during fiscal year 2019 of more than \$500,000. Each contract, arrangement, commitment or understanding of the type described in this Section 4.12(a), whether or not set forth in Section 4.12(a) of the Company Disclosure Letter, is referred to herein as a “**Company Contract**”, and neither the Company nor any of its Subsidiaries has received written notice of any material violation of a Company Contract by any of the other parties thereto. The Company has made available to the Parent (which requirement may be satisfied by posting such information in the online data room established by the Company prior to the date hereof) all contracts which involved payments by or to the Company or any of its Subsidiaries in fiscal year 2018 of more than \$500,000 or which would reasonably be expected to involve payments by or to the Company or any of its Subsidiaries during fiscal year 2019 of more than \$500,000 other than any such contract that is terminable at will on one-hundred twenty (120) days or less notice without payment of a penalty in excess of \$10,000, and other than any contract entered into on or after the date hereof that is permitted under the provisions of Section 6.2.

(b) Except as would not reasonably be expected to result in, either individually or in the aggregate, a Company Material Adverse Effect, (i) each Company Contract is valid and binding on the Company and in full force and effect (other than due to the ordinary expiration of the term thereof), and, to the Knowledge of the Company, is valid and binding on the other parties thereto, in each case, as enforceability may be limited by the Bankruptcy and Equity Exceptions, (ii) the Company and each of its Subsidiaries has in all material respects performed all obligations required to be performed by it to date under each Company Contract, and (iii) no event or condition exists which constitutes or, after notice or lapse of time or both, would constitute a material default on the part of the Company or any of its Subsidiaries under any such Company Contract.

4.13 Undisclosed Liabilities. Except for (a) liabilities that are fully reflected or reserved against on the Consolidated Balance Sheet, (b) liabilities incurred since July 31, 2019 in the ordinary course of business consistent with past practice, (c) liabilities arising under the terms of (but not from any breach or default under) any agreement, contract, commitment, license, permit, lease or other instrument or obligation that is either (x) disclosed in the Company Disclosure Letter or (y) not required to be so disclosed by the terms of this Agreement (and including any of the foregoing types of instruments or obligations that are entered into or obtained after the date of this Agreement, as long as such action does not result in a breach of this Agreement), or (d) liabilities incurred pursuant to or in connection with this Agreement or the transactions contemplated hereby, neither the Company nor any of its Subsidiaries has any liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due).

4.14 Anti-Takeover Provisions. Assuming the accuracy of the representations and warranties of Parent and Merger Sub set forth in Section 5, the Company Board has taken all action necessary to render inapplicable to this Agreement and the transactions contemplated hereby, including the Merger, the restrictions on business combinations set forth in Section 203 of the DGCL. To the Knowledge of the Company, no other state anti-takeover statute or regulation applies to this Agreement or any of the transactions contemplated hereby, including the Merger.

4.15 Real Property. Neither the Company nor any of its Subsidiaries owns any real property. Section 4.15 of the Company Disclosure Letter sets forth the street addresses of all real property used or held for use in the business of the Company or any of its Subsidiaries, which Company or any of its Subsidiaries leases, operates, occupies, or subleases in connection with such business or upon which any tangible assets of the Company or any of its Subsidiaries are located and all instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in Company or any of its Subsidiaries or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable).

4.16 Title to Property.

(a) Personal Property. The Company and its Subsidiaries have good and valid title to, or a valid leasehold interest in, or with respect to licensed assets only, a valid license to use, all tangible personal property owned by them on the date hereof, free and clear of all Liens other than Company Permitted Liens, except where the failure to have such title, valid leasehold or valid license would not reasonably be expected to result in, either individually or in the aggregate, a Company Material Adverse Effect. With respect to personal property used in the business of the Company and its Subsidiaries which is leased rather than owned, neither the Company nor any Subsidiary thereof is in default under the terms of any such lease the loss of which would reasonably be expected to result in, either individually or in the aggregate, a Company Material Adverse Effect.

(b) Leased Property. All material leases of real property and all other leases material to the Company and its Subsidiaries under which the Company or a Subsidiary, as lessee, leases real or personal property (the "**Company Leased Real Property**") are valid and binding in accordance with their respective terms, there is not under such lease any material existing default by the Company or such Subsidiary or, to the Knowledge of the Company, the lessors thereunder, or any event which with notice or lapse of time would constitute such a default, and in the case of real estate leases the Company or such Subsidiary quietly enjoys the premises provided for in such lease except, in each case, as would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect. Except as would not reasonably be expected to result in, in the aggregate, a Company Material Adverse Effect, to the Knowledge of the Company, there does not exist any condemnation or eminent domain proceeding that affects any Company Leased Real Property.

(c) As used herein, "**Company Permitted Liens**" means (i) Liens disclosed in Section 4.16 of the Company Disclosure Letter, (ii) Liens for current Taxes not yet due and payable and other standard exceptions commonly found in title policies in the jurisdiction where the property is located, (iii) such encumbrances and imperfections of title, if any, as do not materially detract from the value of the properties and do not materially interfere with the present or proposed use of such properties or otherwise materially impair such operations, (iv) Liens imposed or promulgated by laws with respect to real property and improvements, including zoning regulations, (v) mechanics', carriers', workmen's, repairmen's and similar Liens incurred in the ordinary course of business or (vi) Liens that would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

4.17 Insurance. The Company and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent in accordance with industry practice (taking into account the cost and availability of such insurance), except as would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect. The Company and its Subsidiaries are in compliance with their insurance policies and are not in default under any of the terms thereof, except for any such non-compliance or default that would not reasonably be expected to result in a Company Material Adverse Effect. Each such policy is outstanding and in full force and effect (other than due to the ordinary expiration of the term thereof). All premiums and other payments due under any such policy have been paid.

4.18 Environmental Liability. Neither the Company nor any of its Subsidiaries has received any written notice of any legal, administrative, arbitral or other proceedings, claims, actions, causes of action or, to the Knowledge of the Company, private environmental investigations or remediation activities or governmental investigations of any nature seeking to impose, or that would reasonably be expected to result in the imposition, on the Company or any of its Subsidiaries of any liability or obligation arising under common law standards relating to protection of the environment or human health, or under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (collectively, "**Environmental Laws**"), which liability or obligation would reasonably be expected to result in a Company Material Adverse Effect. During, or, to the Knowledge of the Company, prior to the period of, (a) its or any of its Subsidiaries' ownership or operation of any of their respective current properties, (b) its or any of its Subsidiaries' participation in the management of any property, or (c) its or any of its Subsidiaries' holding of a security interest or other interest in any property, there were no releases or threatened releases of hazardous, toxic, radioactive or dangerous materials or other materials regulated under Environmental Laws in, on, under or affecting any such property which would reasonably be expected to result in a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries is subject to any agreement, order, judgment, decree, letter or memorandum by or with any Governmental Entity or third Person imposing any material liability or obligation pursuant to or under any Environmental Law that would reasonably be expected to result in a Company Material Adverse Effect. The Company and its Subsidiaries are in compliance with all Environmental Laws, including possessing all material permits required for its currently conducted operations under applicable Environmental Laws, except, in each case, for any such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Company Material Adverse Effect. Notwithstanding any other provision of this Agreement to the contrary (including Section 4.11), the representations and warranties of the Company in this Section 4.18 constitute the sole representations and warranties of the Company with respect to any matter (including any liability) relating to Environmental Laws.

4.19 Intellectual Property. The Company and its Subsidiaries own, or are validly licensed or otherwise have the right to use, all patents, patent applications, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights, trade secrets, designs, domain names, lists, data, databases, processes, methods, schematics, technology, know-how, documentation, and other proprietary intellectual property rights and any such rights in computer programs (collectively, "**Company Intellectual Property Rights**") as used in their business as presently conducted. All patents and pending patent applications, and registrations and applications for trademarks, copyrights and domain names within the Company Intellectual Property Rights are listed in Section 4.19 of the Company Disclosure Letter, except where the failure to have the right to use such Company Intellectual Property Rights, individually or in the aggregate, has not had and would not reasonably be expected to result in a Company Material Adverse Effect. No actions, suits or other proceedings are pending or, to the Knowledge

of the Company, threatened that the Company or any of its Subsidiaries is infringing, misappropriating or otherwise violating the rights of the Company or any of its Subsidiaries with respect to any Company Intellectual Property Right owned by the Company or any of its Subsidiaries, expect for such infringement, misappropriation or violation that, individually or in the aggregate, would not reasonably be expected to result in a Company Material Adverse Effect. Notwithstanding any other provision of this Agreement to the contrary, the representations and warranties of the Company in this Section 4.19 constitute the sole representations and warranties of the Company with respect to any matter (including any liability) relating to intellectual property matters.

4.20 Regulatory Matters.

(a) Company and each of its Subsidiaries hold (i) all material approvals, authorizations, certificates and licenses issued by the State Regulators that are required for Company and each of its Subsidiaries to conduct its business as presently conducted and (ii) all other material regulatory permits, approvals, licenses and other authorizations, including franchises, ordinances and other agreements granting access to public rights of way, issued or granted to Company or any of its Subsidiaries by a Governmental Entity that are required for Company and each of its Subsidiaries to conduct its business, as presently conducted (clause (i) and (ii) collectively, the "**Company Licenses**").

(b) Each Company License is valid and in full force and effect and has not been suspended, revoked, canceled or adversely modified, except where the failure to be in full force and effect, or the suspension, revocation, cancellation or modification of which would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect. No Company License is subject to (i) any conditions or requirements that have not been imposed generally upon licenses in the same service, unless such conditions or requirements would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect, or (ii) any pending regulatory proceeding or judicial review before a Governmental Entity, unless such pending regulatory proceeding or judicial review would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of Company, there has been no event, condition or circumstance that would preclude any Company License from being renewed in the ordinary course (to the extent that such Company License is renewable by its terms), except where the failure to be renewed would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

(c) The licensee of each Company License is in compliance with each Company License and has fulfilled and performed all of its obligations with respect thereto, including all reports, notifications and applications required by the rules, regulations, policies, instructions and orders of the State Regulators, and the payment of all regulatory fees and contributions, except (i) for exemptions, waivers or similar concessions or allowances and (ii) where such failure to be in compliance, fulfill or perform its obligations or pay such fees or contributions would not reasonably be expected to result in, individually or in the aggregate, a Company Material Adverse Effect.

4.21 Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to or is bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization involving any employees of the Company, nor is the Company or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiary has committed an unfair labor practice (within the meaning of the National Labor Relations Act) or seeking to compel the Company or any such Subsidiary to bargain with any labor organization as to wages or terms and conditions of employment, nor is there any strike or other material labor dispute involving its or any of its Subsidiaries' employees pending or, to the Knowledge of the Company, threatened, nor, to the Knowledge of the Company, is there any activity involving its or any of its Subsidiaries' employees seeking to certify a collective bargaining unit or engaging in other organizational activity.

(b) As of the date of this Agreement, there is no written labor or employment-related charge, complaint or claim of any sort pending or, to the Knowledge of the Company, threatened, against the Company or any Subsidiary of the Company, or, to the Knowledge of the Company, with respect to the current and former employees of the Company, the PEO related to services provided on behalf of the Company, before any Governmental Entity.

(c) Since January 1, 2018, the Company and the Company Subsidiaries have been and are in compliance with (i) all applicable laws respecting employment and employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, harassment, non-discrimination in employment, workers' compensation, unemployment compensation and the collection and payment of withholding or payroll Taxes and similar Taxes and (ii) all obligations of the Company and the Company Subsidiaries under any employment agreement, consulting agreement, severance agreement, collective bargaining agreement or any similar employment or labor-related agreement or understanding, except, in each case, any such noncompliance that would not, individually or in the aggregate, have, or would reasonably be expected to have, a Company Material Adverse Effect. Since January 1, 2018, all independent contractors and

consultants providing personal services to the Company and the Company Subsidiaries have been properly classified as independent contractors for purposes of all applicable laws, including applicable laws with respect to employee benefits, and all employees of the Company and the Company Subsidiaries have been properly classified under the FLSA.

(d) Since January 1, 2018, the Company and its Subsidiaries have complied with all applicable laws, rules and regulations relating to labor, labor relations or employment, including, without limitation, any provisions thereof relating to equal employment opportunity, wages, hours, overtime regulation, employee safety and health, immigration control, drug testing, termination pay, vacation pay, fringe benefits, collective bargaining and the payment and/or accrual of the same and all Taxes, insurance and all other costs and expenses applicable thereto, and neither the Company nor any of its Subsidiaries is liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing.

4.22 Transactions with Affiliates. As of the date of this Agreement, there are no transactions, agreements, arrangements or understandings between the Company or any of the Subsidiaries of the Company, on the one hand, and any Affiliate of the Company (other than the Subsidiaries of the Company), on the other hand, of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act of 1933, as amended (the "**Securities Act**").

4.23 Acknowledgement of the Company. The Company acknowledges and agrees that it has conducted its own independent review and analysis of the business, assets, condition and operations of Parent and its Subsidiaries. In entering into this Agreement, the Company has relied solely upon its own investigation and analysis and the representations and warranties, covenants and agreements of Parent and Merger Sub contained in this Agreement and the Company (a) acknowledges that, other than as set forth in this Agreement, none of Parent, Merger Sub nor any of their respective directors, officers, employees, Affiliates, agents or representatives makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to the Company or its agents or representatives prior to the execution of this Agreement, and (b) agrees, to the fullest extent permitted by applicable law, that none of Parent, Merger Sub nor any of their respective directors, officers, employees, Affiliates, agents or representatives shall have any liability or responsibility whatsoever to the Company on any basis (including in contract, tort or otherwise) based upon any information provided or made available, or statements made, to the Company prior to the execution of this Agreement.

4.24 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Section 4, neither the Company nor any other Person makes any other express or implied representation or warranty with respect to the Company, the Company's Subsidiaries or the transactions contemplated by this Agreement, and the Company disclaims any other representations or warranties, whether made by the Company or any of its Affiliates, officers, directors, employees, agents or representatives. Except for the representations and warranties expressly contained in this Section 4, the Company hereby disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing, including via any online data room) to Parent, Merger Sub or any of their Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Parent by any director, officer, employee, agent, consultant, or representative of the Company or any of its Affiliates).

5. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in (a) Parent's filings with the SEC required by the Securities Act or the Exchange Act (excluding any disclosures set forth in any section of any such report entitled "Risk Factors" or "Forward-Looking Statements" or any other disclosures included in such filings to the extent that they are forward-looking in nature) or (b) in the Disclosure Letter of Parent and Merger Sub delivered to the Company concurrently herewith (the "**Parent Disclosure Letter**") (with specific reference to the section of this Agreement to which the information stated in such Parent Disclosure Letter relates; provided that (i) disclosure in any section of such Parent Disclosure Letter shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable or relevant to such other Section and (ii) the mere inclusion of an item in such Parent Disclosure Letter as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would reasonably be expected to result in a Parent Material Adverse Effect), Parent and Merger Sub hereby represent and warrant to the Company as follows:

5.1 Corporate Organization.

(a) Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Parent and Merger Sub each have all requisite corporate power and authority and possesses all Permits necessary to enable it to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted. Parent and each of its Subsidiaries is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties makes such qualification necessary. As used in this Agreement,

the term “**Parent Material Adverse Effect**” means (i) a material adverse effect on the business, results of operations, financial condition or assets of Parent and its Subsidiaries taken as a whole, or (ii) a material adverse effect on Parent’s or Merger Sub’s ability to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that in determining whether a Parent Material Adverse Effect has occurred, there shall be excluded any effect on the Parent or its Subsidiaries (1) relating to or arising in connection with (A) any adverse change, effect, event or occurrence, state of facts or developments as a result of the public announcement or the pendency of this Agreement or the transactions contemplated hereby or any actions required to be taken (or refrained from being taken) in compliance herewith, including any action taken (or omitted to be taken) with the written consent of or at the written request of the Company, (B) any change in federal, state, non-U.S. or local law, regulations, policies or procedures, or interpretations thereof, GAAP or regulatory accounting requirements applicable or potentially applicable to the industries in which Parent or its Subsidiaries operate, (C) changes generally affecting the industries in which Parent or its Subsidiaries operate that are not specifically related to Parent and its Subsidiaries and do not have a materially disproportionate adverse effect on the Parent and its Subsidiaries, taken as a whole, (C) changes in general economic conditions or political conditions, or in the financial, credit or securities markets in general (including changes in the prevailing interest rates, exchange rates or stock, bond and/or debt prices) in the United States, in any region thereof, or in any non-U.S. or global economy that do not have a materially disproportionate adverse effect on the Parent and its Subsidiaries, taken as a whole, (E) any attack on, or by, outbreak or escalation of hostilities or acts of terrorism (including cyberterrorism) involving, the United States, or any declaration of war by the United States Congress or any hurricane or other natural disaster, (F) any failure to meet financial projections, estimates or forecasts for any period (provided, that the underlying cause of such failure may, to the extent applicable, be considered in determining whether there has been a Parent Material Adverse Effect), (G) the taking of any action by Company or any of its Affiliates (including any breach of this Agreement committed thereby), (H) any matter set forth in the Parent Disclosure Letter; or (I) changes in the market price or trading volume of the Parent Common Stock on the NYSE American (it being understood that this clause (I) does not and shall not be deemed to apply to the underlying cause or causes of any such changes); and (2) relating to or arising in connection with, but not materially worse than, Parent’s historical negative financial results and historical negative trends either (A) reflected in the Parent’s financial statements filed with the SEC since January 1, 2018 or (B) discussed in the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in any of the Parent’s annual reports on Form 10-K or quarterly reports on Form 10-Q filed with the SEC since January 1, 2018.

(b) The copies of the Certificate of Incorporation and Bylaws of Parent and Merger Sub, and similar organizational documents of each of Parent’s Subsidiaries, which have previously been made available to the Company are true, complete and correct copies of such documents as in effect as of the date of this Agreement. For purposes of this Agreement, all documents and other information posted in the online data room established by Parent prior to the date hereof shall be deemed to have been made available to the Company.

5.2 Capitalization.

(a) The authorized capital stock of Parent consists of 150,000,000 shares of Common Stock, par value \$0.0001 per share (“**Parent Common Stock**”), and 5,000,000 shares of preferred stock, par value \$0.0001 per share. As of the close of business on the Capitalization Date, there were 5,139,956, 32, and 475 shares of Parent Common Stock, Parent Series A-2 Convertible Preferred Stock, par value \$0.0001 per share (“**Parent Series A-2 Preferred Stock**”), and Parent Series C Preferred Stock outstanding, no Series B Preferred Stock, Perpetual Series B-1 Preferred Stock or Series D Convertible Preferred Stock Outstanding and 98,389 treasury shares outstanding. As of the close of business on the Capitalization Date, no shares of Parent Common Stock or preferred stock were reserved or to be made available for issuance. All of the issued and outstanding shares of Parent Common Stock and preferred stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. As of the date of this Agreement, except (i) as set forth in Section 5.2(a) of the Parent Disclosure Letter, (ii) pursuant to any cashless exercise provisions of any options or pursuant to the surrender of shares to Parent or the withholding of shares by Parent to cover tax withholding obligations under Parent’s stock plans and arrangements set forth in Section 5.2(a) of the Parent Disclosure Letter (collectively, and in each case as the same may be amended to the date hereof, the “**Parent Common Stock Plans**”), and (iii) as set forth elsewhere in this Section 5.2(a), Parent does not have and is not bound by any outstanding subscriptions, options, warrants, calls, scrip, rights to subscribe to, purchase rights, conversion rights, exchange rights, equity appreciation rights, phantom stock, profits participation, calls, commitments or agreements of any character (A) calling for the purchase, sale, repurchase, redemption or issuance of any shares of Parent Common Stock, preferred stock or any other equity securities of Parent or any securities representing the right to purchase or otherwise receive any shares of the Parent capital stock (including any rights plan or agreement) or (B) providing a counterparty with redeemable or contingent common stock or a guaranteed return. Section 5.2(a) of the Parent Disclosure Letter sets forth a true, complete and correct list of the aggregate number of shares of Parent Common Stock issuable upon the exercise of each stock option or subject to each restricted stock award and restricted stock unit granted under the Parent Common Stock Plans that was outstanding as of the Capitalization Date and the exercise price for each such stock option. Since the Capitalization Date, Parent has not (i) issued or repurchased any shares of its capital stock or any securities convertible into or exercisable for any shares of its capital stock, other than pursuant to the Parent’s existing stock buyback program (the “**Parent Stock Buyback Program**”), upon the exercise of employee stock options or under

restricted stock units granted prior to such date and disclosed in this [Section 5.2\(a\)](#) or pursuant to the surrender of shares to Parent or the withholding of shares by Parent to cover tax withholding obligations under the Parent Common Stock Plans, or (ii) issued or awarded any options, restricted shares or other equity-based awards under the Parent Common Stock Plans.

(b) The authorized capital stock of Merger Sub consists of 100 shares of common stock, par value \$0.0001 per share, all of which are issued and outstanding and are owned, of record and beneficially, solely by Parent.

(c) [Section 5.2\(c\)](#) of the Parent Disclosure Letter lists the name, jurisdiction of organization, authorized and outstanding shares of capital stock and record and beneficial owners of such capital stock for each Subsidiary of the Parent. Neither Parent nor any of its Subsidiaries own, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable for, any equity or similar interest in, any corporation, partnership, joint venture or other similar business association or entity (other than its wholly owned Subsidiaries), with respect to which securities Parent or any of its Subsidiaries has invested (and currently owns) or is required to invest \$5,000,000 or more. Parent owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of Parent's Subsidiaries free and clear of any Liens and all of such shares are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Neither Parent nor any of its Subsidiaries has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase, repurchase, sale, redemption or issuance of any shares of capital stock or any other equity security of any Subsidiary of Parent or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Subsidiary. There are no restrictions on the Parent with respect to voting the stock of any Subsidiary of the Parent.

5.3 [Authority: No Violation.](#)

(a) Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and, subject to receipt of the Parent Required Vote and the accuracy of the representations and warranties of the Company set forth in this Agreement, to consummate the transactions contemplated hereby, including the New Parent Incentive Plan. The Board of Directors of Parent (the "**Parent Board**") at a duly held meeting has (i) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, the New Parent Incentive Plan, the Parent Stock Issuance and the Parent Stock Issuance Conversion, are advisable for and in the best interests of Parent and its stockholders, (ii) approved, subject to the terms of this Agreement, the execution, delivery, and performance of this Agreement and the transactions contemplated hereby, including the Merger, the New Parent Incentive Plan, the Parent Stock Issuance and the Parent Stock Issuance Conversion, and (iii) resolved to recommend that the stockholders of the Parent approve the New Parent Incentive Plan and the Parent Stock Issuance Conversion in connection with the Merger (the recommendation contemplated by this clause (iii) being referred to as the "**Parent Recommendation**"), and directed that the New Parent Incentive Plan and the Parent Stock Issuance Conversion matters be submitted for consideration by Parent's stockholders at an annual or special meeting of Parent's stockholders (the "**Parent Stockholder Meeting**"). None of the aforesaid actions by the Parent Board has been amended, rescinded or modified as of the date of this Agreement. Except for the approval of (i) the New Parent Incentive Plan and Parent Stock Issuance Conversion by the affirmative vote of the holders of a majority of the total number of votes represented by the Parent's outstanding shares of (a) Parent Common Stock and (b) Parent Series A-2 Preferred Stock and Parent's 0% Series C Convertible Preferred Stock, par value \$0.0001 per share (the "**Parent Series C Preferred Stock**"), each voting on an as converted basis in accordance with its terms, and, in the case of the foregoing clauses (a) and (b), which are entitled to vote thereon; and (ii) this Agreement by the affirmative vote of a majority of the outstanding shares of the Parent Series C Preferred Stock, including the Lead Investor thereof (as defined in the applicable Certificate of Designation of Rights, Powers, Preferences, Privileges and Restrictions for such series of Parent Preferred Stock) (collectively, the "**Parent Required Vote**") and Parent's voting of the outstanding capital stock of Merger Sub as required by [Section 7.9](#), no other corporate proceedings on the part of Parent or Merger Sub are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and (assuming due authorization, execution and delivery by the Company) constitutes a valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, except as enforcement may be limited by the Bankruptcy and Equity Exceptions.

(b) Neither the execution and delivery of this Agreement by Parent or Merger Sub, nor the consummation by Parent or Merger Sub of the transactions contemplated hereby, including the Merger, New Parent Incentive Plan and Parent Stock Issuance, will (i) violate any provision of the Certificate of Incorporation or Bylaws of Parent or Merger Sub or any of the similar governing documents of any of Parent's Subsidiaries or (ii) assuming that the consents, approvals and filings referred to in [Section 5.4](#) are duly obtained or made, (A) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Parent, Merger Sub or any of their respective Subsidiaries or any of their respective properties or assets, or (B) violate, conflict with, result in a breach of any provision of, or require redemption or repurchase or otherwise require the issuance, purchase or sale of any securities under, constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the

performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Parent, Merger Sub or any of their respective Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Parent, Merger Sub or any of their respective Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected, except (in the case of clause (ii) above) for such violations, conflicts, breaches, defaults or other events which either individually or in the aggregate would not reasonably be expected to result in a Parent Material Adverse Effect.

5.4 Consents and Approvals. No Consents of or from, or filings or registrations with, any Governmental Entity or with any third Person are necessary in connection with the execution and delivery by Parent or Merger Sub of this Agreement or the consummation by Parent or Merger Sub of the transactions contemplated hereby, including the Merger, New Parent Incentive Plan, the Parent Stock Issuance and the Parent Stock Issuance Conversion, except for (a) any Consents from, or registrations, declarations, notices or filings made to or with any Governmental Entity (including any State Regulator and local cable or internet franchise authorities) (other than with respect to securities, antitrust, competition, trade regulation or similar laws), in each case as may be required in connection with this Agreement, the Merger, New Parent Incentive Plan, Parent Stock Issuance, the Parent Stock Issuance Conversion or the other transactions contemplated by this Agreement and are required with respect to mergers, business combinations or changes in control of telecommunications/digital networking companies generally, (b) the filing with the SEC of the Proxy Statement as well as any other filings required to be made with the SEC pursuant to the Securities Act or the Exchange Act, (c) the filing of the Certificate of Merger and related certificates with the Delaware Secretary pursuant to the DGCL, (d) such filings and approvals as may be required to be made under the state blue sky or securities laws or various states in connection with the New Parent Incentive Plan, Parent Stock Issuance and Parent Stock Issuance Conversion, (e) such filings as may be required to (i) cause the shares of Parent Common Stock to be issued pursuant to the Parent Stock Issuance Conversion to be approved for listing on the NYSE American and (ii) if required by the NYSE American, receive all necessary approval for the Merger and the other transactions contemplated by this Agreement under Section 341 of the NYSE American Company Guide, (f) other consents or approvals of, or filings or registrations with, Governmental Entities or third parties, and (g) such other Consents which if not obtained or made would not be reasonably expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

5.5 SEC Filings. Parent has timely furnished or filed all forms, reports, statements, certifications and other documents (including all exhibits, amendments and supplements thereto) required to be furnished or filed by it with the SEC pursuant to the Securities Act or the Exchange Act since January 1, 2018 (collectively, the "**Parent SEC Reports**"). None of Parent's Subsidiaries is required to file or furnish reports with the SEC pursuant to the Exchange Act. Each of the Parent SEC Reports, as amended prior to the date of this Agreement, complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, each as in effect on the date so filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such subsequent filing). None of the Parent SEC Reports contained, when filed or, if amended or supplemented prior to the date hereof, as of the date of such amendment or supplement, any untrue statement of a material fact or omitted to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. There are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Parent SEC Reports. To the Knowledge of the Parent, as of the date hereof, none of the Parent SEC Reports is subject to ongoing SEC review. "**Knowledge of the Parent**" means the actual knowledge of the directors and executive officers of Parent listed in Section 5.5 of the Parent Disclosure Letter. The directors and executive officers of the Parent listed in Section 5.5 of the Parent Disclosure Letter shall not be deemed to have knowledge (actual, constructive or otherwise) of any fact, event, condition or occurrence known or deemed to be known by any other Person other than as expressly set forth in the foregoing sentence.

5.6 Financial Statements.

(a) Each of the financial statements included (or incorporated by reference) in the Parent SEC Reports (including the related notes, where applicable), fairly present in all material respects (subject, in the case of the unaudited statements, to normal recurring adjustments, none of which would be reasonably expected to result in, individually or in the aggregate, a Parent Material Adverse Effect) the results of the consolidated operations and changes in stockholders' equity and consolidated financial position of Parent and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth. Each of such financial statements (including the related notes, where applicable), complies in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto and each of such financial statements (including the related notes, where applicable) has been prepared in accordance with GAAP, as in effect on the date or for the period with respect to which such principles are applied, in all material respects consistently applied during the periods involved, except in each case as indicated in such statements or in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q. The books and records of Parent and its Subsidiaries have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions.

(b) Parent (i) has established and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) and internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act), including to ensure that material information relating to Parent, including its consolidated Subsidiaries, is made known to the chief executive officer and the chief financial officer of Parent by others within those entities and (ii) has disclosed, based on its most recent evaluation prior to the date hereof, to Parent's outside auditors and the audit committee of the Parent Board (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls over financial reporting. Parent's disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by Parent in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to the management of Parent as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act.

(c) From January 1, 2018 to the date of this Agreement, (i) neither the Parent nor any Subsidiary of the Parent nor, to the Knowledge of Parent (as defined below), any director, officer, auditor, accountant or representative of the Parent or any of the Subsidiaries of the Parent has received any written complaint, allegation, assertion or claim that the Parent or any of the Subsidiaries of the Parent has engaged in improper or illegal accounting or auditing practices or maintains improper or inadequate internal accounting controls relating to the Parent and the Subsidiaries of the Parent, taken as a whole, and (ii) no attorney representing the Parent or any Subsidiary of the Parent has made a report to the Parent's chief legal officer, chief executive officer or Board of Directors (or any committee thereof) pursuant to the SEC's Standards of Professional Conduct for Attorneys (17 CFR Part 205).

5.7 Broker's Fees. Neither Parent, Merger Sub nor any of their respective Subsidiaries, nor any of their respective officers or directors on behalf of the Parent or any of the Parent's Subsidiaries, has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated by this Agreement. For clarity, a financial advisor retained by the Parent in connection with the transactions contemplated by this Agreement and described in Section 5.7 of the Parent Disclosure Letter shall not be considered to be a "broker" or "finder" for purposes of this Section 5.7.

5.8 Absence of Certain Changes or Events.

(a) Since December 31, 2018, no event has occurred which has had or would reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Except as contemplated by this Agreement or permitted under Section 6.3, since December 31, 2018, Parent and its Subsidiaries have carried on their respective businesses in all material respects in the ordinary course of business, and neither the Parent nor any of its Subsidiaries has engaged in any material transaction that was not in the ordinary course of business consistent with past practice.

(c) Since December 31, 2018, there has been no incident of damage, destruction or loss of any property owned by the Parent or any of its Subsidiaries or used in the operation of their businesses, whether or not covered by insurance, having a replacement cost or fair market value in excess of \$100,000. Without limiting the generality of the foregoing, since December 31, 2018 and through the date of this Agreement, neither the Parent nor any of its Subsidiaries has taken any action that would have been prohibited by Section 6.1 or 6.3 if it had been taken after the date hereof and prior to the Closing Date.

5.9 Legal Proceedings.

(a) Neither Parent, Merger Sub nor any of their respective Subsidiaries is a party to any, and there are no pending or, to the Knowledge of Parent, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature (i) against Parent, Merger Sub or any of Parent's Subsidiaries that would reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect or (ii) challenging the validity or propriety of the transactions contemplated by this Agreement.

(b) There is no injunction, order, judgment, decree or regulatory restriction of any Governmental Entity specifically imposed upon Parent, Merger Sub or any of their respective Subsidiaries or the assets of Parent, Merger Sub or any of their respective Affiliates which has resulted in or would reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

5.10 Taxes.

(a) (i) Each of Parent and its Subsidiaries has (A) duly and timely filed (including pursuant to applicable extensions granted without penalty) all Tax Returns required to be filed by it, and such Tax Returns are true, correct and complete in all material respects, and (B) timely paid all Taxes due and payable by it (including taxes required to be withheld by it and regardless of whether shown as due on such Tax Returns), or, in the case of Taxes not yet due and payable, established an adequate accrual in accordance with GAAP on its financial statements for the payment of all such Taxes (excluding any accrual for deferred Taxes established to reflect timing differences between book and Tax income); and (ii) there are no Liens for Taxes upon the assets of either Parent or its Subsidiaries except for statutory liens for current Taxes not yet due or Liens for Taxes that are being contested in good faith by appropriate proceedings and for which reserves adequate in accordance with GAAP have been provided.

(b) There are no disputes, audits, examinations, investigations or proceedings pending or threatened in writing in respect of any Taxes or Tax Returns of the Parent or any of its Subsidiaries, and neither the Parent nor any of its Subsidiaries is a party to any litigation or administrative proceeding relating to Taxes, in each case, other than in respect of matters for which adequate reserves have been established in accordance with GAAP.

(c) Neither the Parent nor any of its Subsidiaries will be required, as a result of a change in accounting method, an installment sale or an open transaction for, or during, a Tax period beginning on or before the Effective Time, to include any adjustment under Section 481(c) of the Code (or any similar provision of state, local or foreign law) in taxable income for any Tax period beginning on or after the Effective Time, or to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period beginning on or after the Effective Time.

(d) Neither the Parent nor any of its Subsidiaries (i) is a party to any Tax allocation, sharing or indemnity contract or arrangement, (ii) has been a member of an "affiliated group" (other than a group the common parent of which is the Parent) filing a consolidated federal income tax return, or (iii) has any liability for Taxes of any Person (other than the Parent and its Subsidiaries) arising from the application of Treasury Regulation section 1.1502-6 or any analogous provision of state, local or non-U.S. law, or as a transferee or successor, by contract or otherwise.

(e) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or non-U.S. law) has been entered into by or with respect to Parent or any of its Subsidiaries.

(f) Neither Parent nor any of its Subsidiaries has been a "distributing corporation" or a "controlled corporation" in any distribution occurring during the last two (2) years prior to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(g) Neither Parent nor any of its Subsidiaries has granted any waiver of any federal, state, local or non-U.S. statute of limitations with respect to, or granted any extension of a period for the assessment or payment of, any Tax, which waiver or extension has not since expired.

(h) Neither the Parent nor any of its Subsidiaries has "participated", within the meaning of Treasury Regulations Section 1.6011-4(c)(3), in any of the transactions described in Treasury Regulations Section 1.6011-4(b)(2), (3), (4), (5) or (6).

(i) Neither the Parent nor any of its Subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that prevents, or would reasonably be expected to prevent, the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

5.11 Employee Benefit Plans.

(a) Section 5.11(a) of the Parent Disclosure Letter sets forth a true and complete list or description of each employee welfare benefit plan and employee pension benefit plan within the meaning of ERISA, Sections 3(1) and 3(2), each other compensation, consulting, employment agreement, each stock option, stock purchase, stock appreciation right, other stock based, life, health, disability or other insurance or benefit, bonus, deferred or incentive compensation, severance or separation, profit sharing, retirement, or other employee benefit plan, practice, policy or arrangement of any kind (whether oral or written, qualified or nonqualified, funded or unfunded, and including any that have been frozen or terminated) covering current or former employees, directors, or independent contractors of the Parent or the Subsidiaries which the Parent or the Subsidiaries maintain or are required to contribute to as of the date of this Agreement (collectively, the "**Parent Benefit Plans**"). Copies of the Parent Benefit Plan documents (and, if applicable, related trust or funding agreements, insurance policies and service provider

agreements) and all amendments not already incorporated thereto and written descriptions if not reduced to a written document, have been made available to Parent together with the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) required to be filed, the most recent summary plan description and the most recent IRS determination letter or opinion letter issued with respect to any Parent Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(b) Neither the Parent nor any entity that would have ever been considered as a single employer with the Parent or part of the same "controlled group" as the Parent for purposes of Section 414(b), (c), (m) or (o) of the Code (a "**Parent ERISA Affiliate**") has ever maintained, contributed to or been required to contribute to any Parent Benefit Plan that (i) is a "multiemployer plan" as defined in Sections 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, (iii) is a "welfare benefit plan" as defined in Section 3(1) of ERISA that provides for post-retirement medical, life insurance or other welfare-type benefits to any former employees of the Parent (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state law regarding medical continuation coverage), (iv) is a "multiple employer plan" as defined in Section 413(c) of the Code or (v) is a "multiple employer welfare arrangement" within the meaning of 3(40)(A) of ERISA.

(c) The Parent Benefit Plans and their related trusts intended to qualify under Sections 401(a) and 501(a) of the Code are subject to a favorable determination or opinion letter from the IRS (or are entitled to rely on such a letter issued to the provider of a master, prototype, volume submitter or similar plan) and, to the Knowledge of the Parent, nothing has occurred that is expected to result in the revocation of such qualified status by the IRS.

(d) The Parent Benefit Plans have been maintained and administered in all material respects in accordance with their terms and applicable laws.

(e) As of the date of this Agreement, there are no suits, actions, disputes, claims (other than routine claims for benefits) or arbitrations, or any audits, examinations or administrative proceedings before any Governmental Entity pending or, to the Knowledge of the Parent, threatened, with respect to any Parent Benefit Plan or any related trust or other funding medium thereunder or with respect to the Parent in its capacity as the plan sponsor or fiduciary thereof, and no Parent Benefit Plan is currently the subject of a submission under IRS Employee Plans Compliance Resolution System, nor under the Department of Labor's Delinquent Filer Voluntary Compliance Program, and the Parent does not anticipate any such submission of any Parent Benefit Plan.

(f) Neither the Parent nor any of its Subsidiaries nor, to the Knowledge of the Parent, any fiduciary, trustee, or administrator of any Parent Benefit Plan or Parent ERISA Affiliate, has engaged in, or in connection with the transactions contemplated by this Agreement will engage in, any transaction that would be a non-exempt "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

(g) The execution of this Agreement and the consummation of the transaction contemplated by this Agreement will not result in a "partial termination" of any Parent Benefit Plan within the meaning of Section 411(d)(3) of the Code.

(h) All contributions required to be made under the terms of any Parent Benefit Plan, or applicable law, with respect to any period ending prior to the date of this Agreement have been paid or have been timely accrued on the audited financial statements to the extent required by GAAP, and none of the Parent Benefit Plans has any material unfunded liabilities as of the date of this Agreement that are not so reflected in such audited financial statements.

(i) Each Parent Benefit Plan that constitutes in any part a "nonqualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code and any award thereunder, in each case that is subject to Section 409A of the Code, (i) has at all times been operated in compliance in all respects with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder and (ii) either (A) has at all times been in a form which complies with the requirements of Section 409A of the Code or (B) has been timely amended under guidance issued pursuant to Section 409A of the Code so that its terms and provisions comply in all material respects with the requirements of Section 409A of the Code. No payment to be made under any Parent Benefit Plan is, or to the Knowledge of the Parent, will be, subject to the penalties of Section 409A(a)(1) of the Code.

(j) The per share exercise price of each Parent Equity Award providing for an option to purchase shares of Parent Common Stock is no less than the fair market value of a share of Parent Common Stock on the date of grant of such Parent Equity Award, determined in a manner consistent with Section 409A of the Code.

(k) Each Parent Benefit Plan maintained, sponsored or contributed to for the benefit of employees located outside the United States (each, a "**Parent Non-U.S. Plan**") (A) complies in all material respects with applicable law, (B) is fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions, to the extent such Parent Non-U.S. Plan is intended to be funded and/or book-reserved, (C) has been registered to the extent required, and has been maintained in good standing with applicable governmental authorities, and (D) if intended to qualify for special Tax treatment, meets all requirements for such treatment. No Parent Non-U.S. Plan contains or has ever contained a defined benefit provision or otherwise provided any defined benefit pensions. Neither the Parent nor any of its Subsidiaries, nor any of their respective agents or delegates, have breached any fiduciary obligation with respect to the administration or investment of any Parent Non-U.S. Plan. None of the Parent Non-U.S. Plans (other than pension plans) provide for retiree benefits or for benefits to retired employees or to the beneficiaries or dependents of retired employees. All employee data necessary to administer each Parent Non-U.S. Plan in accordance with its terms and conditions and all applicable laws is in possession of the Parent and its Subsidiaries and such data is complete, correct, and in a form which is sufficient for the proper administration of such Parent Non-U.S. Plan.

(l) The Parent and its Subsidiaries have, for purposes of each Parent Benefit Plan and for all other purposes, correctly classified in all material respects all individuals performing services to the Parent and/or its Subsidiaries as common law employees, leased employees, or independent contractors, as applicable.

(m) The execution and performance of this Agreement will not (i) constitute a stated triggering event under any Parent Benefit Plan that will result in any payment (whether of severance pay or otherwise) becoming due to any employee of the Parent, its Subsidiaries or any Parent ERISA Affiliate, (ii) accelerate the time of payment or vesting or increase the amount of compensation due under any Parent Benefit Plan, (iii) cause any individual to accrue or receive additional benefits, service or accelerated rights to payment of benefits under any Parent Benefit Plan, (iv) directly or indirectly cause the Parent, its Subsidiaries or any Parent ERISA Affiliate to transfer or set aside any assets to fund or otherwise provide for benefits for any individual, (v) result in a requirement to pay any tax "gross-up" or similar "make-whole" payments to any employee, director or consultant of the Parent, its Subsidiaries or any Parent ERISA Affiliate or (vi) result in any "parachute payment" as defined in Section 280G(b)(2) of the Code that could subject any Person to liability for Tax under Section 4999 of the Code or cause the loss of a deduction to the Parent or any of its Subsidiaries under Section 280G of the Code.

5.12 Compliance With Applicable Law.

(a) Parent and each of its Subsidiaries hold all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses under and pursuant to, and have complied with and are not in violation under, any applicable law, statute, order, rule or regulation of any Governmental Entity relating to Parent or any of its Subsidiaries, except where the failure to hold such license, franchise, permit or authorization or such non-compliance or violation would not, individually or in the aggregate, reasonably be expected to result in a Parent Material Adverse Effect, and neither Parent nor any of its Subsidiaries has received written notice of any violations of any of the above which, individually or in the aggregate, would reasonably be expected to result in a Parent Material Adverse Effect.

(b) The Parent and each of its Subsidiaries (i) is, and since January 1, 2018 has been, in compliance with (A) all written policies of the Parent and each of its Subsidiaries pertaining to the logical and physical security of electronic data stored or used by the Parent or any of its Subsidiaries (the "**Parent Privacy Policy**"), and (B) all applicable laws pertaining to privacy, data protection, user data or Parent Personal Information; and (ii) has implemented and maintained commercially reasonable administrative, technical and physical safeguards to protect such Parent Personal Information against unauthorized access and use, in each case of clause (i) and (ii) except as would not, individually or in the aggregate, reasonably be likely to result in a Parent Material Adverse Effect. There has been no loss, damage or unauthorized access, disclosure, use or breach of security of Parent Personal Information maintained by or on behalf of the Parent or any of its Subsidiaries, except in each case as would not, individually or in the aggregate, reasonably be likely to result in a Parent Material Adverse Effect. No Person (including any Governmental Entity) has made any written claim or commenced any action with respect to unauthorized access, disclosure or use of Parent Personal Information maintained by or on behalf of any of the Parent or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be likely to result in a Parent Material Adverse Effect. None of (1) the execution, delivery, or performance of this Agreement or (2) the consummation of any of the transactions contemplated by this Agreement, including the Merger, will violate any Parent Privacy Policy or any law pertaining to privacy, data protection user data or Parent Personal Information, except in each case as would not, individually or in the aggregate, reasonably be likely to result in a Parent Material Adverse Effect. "**Parent Personal Information**" means all data or information controlled, owned, stored, used or processed by the Parent or any of its Subsidiaries relating to an identified or identifiable customer or natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver's license number, account number, personal identification number, health or medical information (or any other unique identifier or one or more factors specific to the Person's physical, physiological, mental, economic or social identity), whether such information is in individual or aggregate form and regardless of the media in which it is contained.

(c) Since the enactment of the Sarbanes-Oxley Act, Parent has been and is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act. Parent is in compliance with the applicable listing standards of the NYSE American, including those related to corporate governance.

5.13 Certain Contracts.

(a) As of the date hereof, neither the Parent nor any of its Subsidiaries is a party to or is bound by any contract, arrangement, commitment or understanding (whether written or oral) (i) which is a material contract (as defined in Item 601(b)(10) of Regulation S-K of the SEC) to be performed after the date of this Agreement, (ii) which restricts the rights of the Parent or any of its Subsidiaries to compete in any material respect in any line of business in any geographic area or with any Person, or which requires exclusive referrals of business or requires the Parent or any of its Subsidiaries to offer specified products or services to their customers on an exclusive basis, (iii) with or to a labor union or guild (including any collective bargaining agreement), (iv) which relates to the incurrence of indebtedness (other than capital leases) in the principal amount of \$500,000 or more, (v) which grants any Person a right of first refusal, right of first offer or similar right with respect to any material properties, assets or businesses of the Parent or its Subsidiaries, (vi) which involves the purchase of assets or interests, other than in the ordinary course of business, with a purchase price of \$500,000 or more in any single case or \$500,000 in all such cases, (vii) which involves the sale of assets, other than in the ordinary course of business, with a purchase price of \$500,000 or more in any single case or \$500,000 in all such cases, or (viii) which involved payments by or to the Parent or any of its Subsidiaries in fiscal year 2018 of more than \$500,000 or which would reasonably be expected to involve payments by or to the Parent or any of its Subsidiaries during fiscal year 2019 of more than \$500,000. Each contract, arrangement, commitment or understanding of the type described in this Section 5.13(a), whether or not set forth in Section 5.13(a) of the Parent Disclosure Letter, is referred to herein as a "**Parent Contract**", and neither the Parent nor any of its Subsidiaries has received written notice of any material violation of a Parent Contract by any of the other parties thereto. The Parent has made available to the Company (which requirement may be satisfied by posting such information in the online data room established by the Parent prior to the date hereof) all contracts which involved payments by or to the Parent or any of its Subsidiaries in fiscal year 2018 of more than \$500,000 or which would reasonably be expected to involve payments by or to the Parent or any of its Subsidiaries during fiscal year 2019 of more than \$500,000 other than any such contract that is terminable at will on one-hundred twenty (120) days or less notice without payment of a penalty in excess of \$10,000, and other than any contract entered into on or after the date hereof that is permitted under the provisions of Section 6.3.

(b) Except as would not reasonably be expected to result in, either individually or in the aggregate, a Parent Material Adverse Effect, (i) each Parent Contract is valid and binding on Parent and in full force and effect (other than due to the ordinary expiration of the term thereof), and, to the Knowledge of Parent, is valid and binding on the other parties thereto, in each case, as enforceability may be limited by the Bankruptcy and Equity Exceptions, (ii) the Parent and each of its Subsidiaries has in all material respects performed all obligations required to be performed by it to date under each Parent Contract, and (iii) no event or condition exists which constitutes or, after notice or lapse of time or both, would constitute a material default on the part of Parent or any of its Subsidiaries under any such Parent Contract.

5.14 Undisclosed Liabilities. Except for (a) liabilities that are fully reflected or reserved against on the consolidated balance sheet of Parent included in Parent's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019, (b) liabilities incurred in the ordinary course of business consistent with past practice, (c) liabilities arising under the terms of (but not from any breach or default under) any agreement, contract, commitment, license, permit, lease or other instrument or obligation that is either (x) disclosed in the Parent Disclosure Letter or (y) not required to be so disclosed by the terms of this Agreement (and including any of the foregoing types of instruments or obligations that are entered into or obtained after the date of this Agreement, as long as such action does not result in a breach of this Agreement), or (d) liabilities incurred pursuant to or in connection with this Agreement or the transactions contemplated hereby, neither Parent nor any of its Subsidiaries has any liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due).

5.15 Environmental Liability. Neither Parent nor any of its Subsidiaries has received any written notice of any legal, administrative, arbitral or other proceedings, claims, actions, causes of action or, to the Knowledge of Parent, private environmental investigations or remediation activities or governmental investigations of any nature seeking to impose, or that would reasonably be expected to result in the imposition, on Parent or any of its Subsidiaries of any liability or obligation arising under Environmental Laws, which liability or obligation would reasonably be expected to result in a Parent Material Adverse Effect. During, or, to the Knowledge of Parent, prior to the period of, (a) its or any of its Subsidiaries' ownership or operation of any of their respective current properties, (b) its or any of its Subsidiaries' participation in the management of any property, or (c) its or any of its Subsidiaries' holding of a security interest or other interest in any property, there were no releases or threatened releases of hazardous, toxic, radioactive or dangerous materials or other materials regulated under Environmental Laws in, on, under or affecting any such property which would reasonably be expected to result in a Parent Material Adverse Effect. Neither Parent nor

any of its Subsidiaries is subject to any agreement, order, judgment, decree, letter or memorandum by or with any Governmental Entity or third Person imposing any material liability or obligation pursuant to or under any Environmental Law that would reasonably be expected to result in a Parent Material Adverse Effect. Parent and its Subsidiaries are in compliance with all Environmental Laws, including possessing all material permits required for its currently conducted operations under applicable Environmental Laws, except, in each case, for any such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Parent Material Adverse Effect. Notwithstanding any other provision of this Agreement to the contrary (including [Section 5.12](#)), the representations and warranties of Parent in this [Section 5.15](#) constitute the sole representations and warranties of Parent with respect to any matter (including any liability) relating to Environmental Laws.

5.16 [Intellectual Property](#). Parent and its Subsidiaries own, or are validly licensed or otherwise have the right to use, all patents, patent applications, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights, trade secrets, designs, domain names, lists, data, databases, processes, methods, schematics, technology, know-how, documentation, and other proprietary intellectual property rights and any such rights in computer programs (collectively, "**Parent Intellectual Property Rights**") as used in their business as presently conducted. All patents and pending patent applications, and registrations and applications for trademarks, copyrights and domain names within the Parent Intellectual Property Rights is listed in [Section 5.16](#) of the Parent Disclosure Letter, except where the failure to have the right to use such Parent Intellectual Property Rights, individually or in the aggregate, has not had and would not reasonably be expected to result in a Parent Material Adverse Effect. No actions, suits or other proceedings are pending or, to the Knowledge of Parent, threatened that Parent or any of its Subsidiaries is infringing, misappropriating or otherwise violating the rights of Parent or any of its Subsidiaries with respect to any Parent Intellectual Property Right owned by Parent or any of its Subsidiaries, except for such infringement, misappropriation or violation that, individually or in the aggregate, would not reasonably be expected to result in a Parent Material Adverse Effect. Notwithstanding any other provision of this Agreement to the contrary, the representations and warranties of Parent in this [Section 5.16](#) constitute the sole representations and warranties of Parent with respect to any matter (including any liability) relating to intellectual property matters.

5.17 [Regulatory Matters](#).

(a) Parent and each of its Subsidiaries hold (i) all material approvals, authorizations, certificates and licenses issued by the State Regulators that are required for Parent and each of its Subsidiaries to conduct its business as presently conducted and (ii) all other material regulatory permits, approvals, licenses and other authorizations, including franchises, ordinances and other agreements granting access to public rights of way, issued or granted to Parent or any of its Subsidiaries by a Governmental Entity that are required for Parent and each of its Subsidiaries to conduct its business, as presently conducted (clause (i) and (ii) collectively, the "**Parent Licenses**").

(b) Each Parent License is valid and in full force and effect and has not been suspended, revoked, canceled or adversely modified, except where the failure to be in full force and effect, or the suspension, revocation, cancellation or modification of which would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect. No Parent License is subject to (i) any conditions or requirements that have not been imposed generally upon licenses in the same service, unless such conditions or requirements would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect, or (ii) any pending regulatory proceeding or judicial review before a Governmental Entity, unless such pending regulatory proceeding or judicial review would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect. To the Knowledge of Parent, there has been no event, condition or circumstance that would preclude any Parent License from being renewed in the ordinary course (to the extent that such Parent License is renewable by its terms), except where the failure to be renewed would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

(c) The licensee of each Parent License is in compliance with each Parent License and has fulfilled and performed all of its obligations with respect thereto, including all reports, notifications and applications required by the rules, regulations, policies, instructions and orders of the State Regulators, and the payment of all regulatory fees and contributions, except (i) for exemptions, waivers or similar concessions or allowances and (ii) where such failure to be in compliance, fulfill or perform its obligations or pay such fees or contributions would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

5.18 [Labor Matters](#).

(a) Neither the Parent nor any of its Subsidiaries is a party to or is bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization involving any employees of the Parent, nor is the Parent or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiary has committed an unfair labor practice (within the meaning of the National Labor Relations Act) or seeking to compel the Parent or any such

Subsidiary to bargain with any labor organization as to wages or terms and conditions of employment, nor is there any strike or other material labor dispute involving its or any of its Subsidiaries' employees pending or, to the Knowledge of the Parent, threatened, nor, to the Knowledge of the Parent, is there any activity involving its or any of its Subsidiaries' employees seeking to certify a collective bargaining unit or engaging in other organizational activity.

(b) As of the date of this Agreement, there is no written labor or employment-related charge, complaint or claim of any sort against the Parent or any Subsidiary of the Parent pending or, to the Knowledge of the Parent, threatened, before any Governmental Entity.

(c) Since January 1, 2018, the Parent and the Parent Subsidiaries have been and are in compliance with (i) all applicable laws respecting employment and employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, harassment, non-discrimination in employment, workers' compensation, unemployment compensation and the collection and payment of withholding or payroll Taxes and similar Taxes and (ii) all obligations of the Parent and the Parent Subsidiaries under any employment agreement, consulting agreement, severance agreement, collective bargaining agreement or any similar employment or labor-related agreement or understanding, except, in each case, any such noncompliance that would not, individually or in the aggregate, have, or would reasonably be expected to have, a Parent Material Adverse Effect. Since January 1, 2018, all independent contractors and consultants providing personal services to the Parent and the Parent Subsidiaries have been properly classified as independent contractors for purposes of all applicable laws, including applicable laws with respect to employee benefits, and all employees of the Parent and the Parent Subsidiaries have been properly classified under the FLSA.

(d) Since January 1, 2018, the Parent and its Subsidiaries have complied with all applicable laws, rules and regulations relating to labor, labor relations or employment, including, without limitation, any provisions thereof relating to equal employment opportunity, wages, hours, overtime regulation, employee safety and health, immigration control, drug testing, termination pay, vacation pay, fringe benefits, collective bargaining and the payment and/or accrual of the same and all Taxes, insurance and all other costs and expenses applicable thereto, and neither the Parent nor any of its Subsidiaries is liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing.

5.19 Real Property. Neither the Parent nor any of its Subsidiaries owns any real property. Section 5.19 of the Parent Disclosure Letter sets forth the street addresses of all real property used or held for use in the business of the Parent or any of its Subsidiaries, which Parent or any of its Subsidiaries leases, operates, occupies, or subleases in connection with such business or upon which any tangible assets of the Parent or any of its Subsidiaries are located and all instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in Parent or any of its Subsidiaries or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable).

5.20 Title to Property.

(a) Personal Property. The Parent and its Subsidiaries have good and valid title to, or a valid leasehold interest in, or with respect to licensed assets only, a valid license to use, all tangible personal property owned by them on the date hereof, free and clear of all Liens other than Parent Permitted Liens, except where the failure to have such title, valid leasehold or valid license would not reasonably be expected to result in, either individually or in the aggregate, a Parent Material Adverse Effect. With respect to personal property used in the business of the Parent and its Subsidiaries which is leased rather than owned, neither the Parent nor any Subsidiary thereof is in default under the terms of any such lease the loss of which would reasonably be expected to result in, either individually or in the aggregate, a Parent Material Adverse Effect.

(b) Leased Property. All material leases of real property and all other leases material to the Parent and its Subsidiaries under which the Parent or a Subsidiary, as lessee, leases real or personal property (the "**Parent Leased Real Property**") are valid and binding in accordance with their respective terms, there is not under such lease any material existing default by the Parent or such Subsidiary or, to the Knowledge of the Parent, the lessors thereunder, or any event which with notice or lapse of time would constitute such a default, and in the case of real estate leases the Parent or such Subsidiary quietly enjoys the premises provided for in such lease except, in each case, as would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect. Except as would not reasonably be expected to result in, in the aggregate, a Parent Material Adverse Effect, to the Knowledge of the Parent, there does not exist any condemnation or eminent domain proceeding that affects any Parent Leased Real Property.

As used herein, "**Parent Permitted Liens**" means (i) Liens disclosed in Section 5.20 of the Parent Disclosure Letter, (ii) Liens for current Taxes not yet due and payable and other standard exceptions commonly found in title policies in the jurisdiction where the property is located, (iii) such encumbrances and imperfections of title, if any, as do not materially detract from the value of the properties and do not materially interfere with the present or proposed use of such properties or otherwise materially impair

such operations, (iv) Liens imposed or promulgated by laws with respect to real property and improvements, including zoning regulations, (v) mechanics', carriers', workmen's, repairmen's and similar Liens incurred in the ordinary course of business or (vi) Liens that would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect.

5.21 Transactions with Affiliates. As of the date of this Agreement, there are no, and there are not and have not been since January 1, 2018 any transactions, or series of related transactions, agreements or understandings that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the Securities Act that have not been disclosed at the times they would be required to be disclosed pursuant to the Securities Act and the rules and regulations promulgated thereunder in the Parent's filings with the SEC prior to the date of this Agreement.

5.22 Insurance. The Parent and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Parent reasonably has determined to be prudent in accordance with industry practice (taking into account the cost and availability of such insurance), except as would not reasonably be expected to result in, individually or in the aggregate, a Parent Material Adverse Effect. The Parent and its Subsidiaries are in compliance with their insurance policies and are not in default under any of the terms thereof, except for any such non-compliance or default that would not reasonably be expected to result in a Parent Material Adverse Effect. Each such policy is outstanding and in full force and effect (other than due to the ordinary expiration of the term thereof). All premiums and other payments due under any such policy have been paid.

5.23 No Business Activities by Merger Sub. All of the outstanding capital stock of Merger Sub is owned by Parent. Merger Sub is not a party to any contract and has not conducted any activities other than in connection with the organization of such Merger Sub, the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby. Merger Sub has no Subsidiaries.

5.24 Ownership of Company Capital Stock; No Other Agreements. Neither Parent, Merger Sub nor any of their respective Subsidiaries or, to the Knowledge of Parent, any of their respective Affiliates or associates (as such term is defined under the Exchange Act) (a) beneficially owns, directly or indirectly, or (b) is a party to any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of, in case of either clause (a) or (b), any Company Capital Stock, in each case, except in accordance with this Agreement, including the Merger. None of Parent, Merger Sub, or any of their respective Subsidiaries or, to the Knowledge of Parent, any of their respective Affiliates or associates (as such term is defined under the Exchange Act) has entered into any contract or agreement with any officer or director of the Company in connection with the transactions contemplated by this Agreement.

5.25 Anti-Takeover Provisions. Assuming the accuracy of the representations and warranties of Company set forth in Section 4, the Parent Board has taken all action necessary to render inapplicable to this Agreement and the transactions contemplated hereby, including the Merger, the restrictions on business combinations set forth in Section 203 of the DGCL. To the Knowledge of the Parent, no other state anti-takeover statute or regulation applies to this Agreement or any of the transactions contemplated hereby, including the Merger.

5.26 Acknowledgement of Parent. Parent acknowledges and agrees that it has conducted its own independent review and analysis of the business, assets, condition and operations of the Company and its Subsidiaries. In entering into this Agreement, Parent has relied solely upon its own investigation and analysis and the representations and warranties, covenants and agreements of the Company contained in this Agreement and Parent (a) acknowledges that, other than as set forth in this Agreement, none of the Company nor any of its respective directors, officers, employees, Affiliates, agents or representatives makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Parent or its agents or representatives prior to the execution of this Agreement, and (b) agrees, to the fullest extent permitted by law, that none of the Company nor any of its respective directors, officers, employees, Affiliates, agents or representatives shall have any liability or responsibility whatsoever to Parent on any basis (including in contract, tort or otherwise) based upon any information provided or made available, or statements made, to Parent prior to the execution of this Agreement.

5.27 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Section 5, none of Parent, Merger Sub nor any other Person makes any other express or implied representation or warranty with respect to the Parent, Parent's Subsidiaries, Merger Sub or the transactions contemplated by this Agreement, and Parent disclaims any other representations or warranties, whether made by Parent, Merger Sub or any of their respective Affiliates, officers, directors, employees, agents or representatives. Except for the representations and warranties expressly contained in this Section 5, each of Parent and Merger Sub hereby disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing, including via any online data room) to the Company or any of its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to the Company by any director, officer, employee, agent, consultant, or representative of Parent or any of its Affiliates).

6. COVENANTS RELATING TO CONDUCT OF BUSINESS

6.1 Conduct of Business of the Company and Parent Prior to the Effective Time. Except as expressly contemplated or permitted by this Agreement, including pursuant to Sections 6.2 and 6.3, or as required by applicable law, rule or regulation, during the period from the date of this Agreement to the Effective Time, each of Parent and the Company shall, and shall cause each of its Subsidiaries to, (a) conduct its business in the ordinary course and (b) use commercially reasonable efforts to maintain and preserve substantially intact its business organization and the goodwill of those having business or other third-party relationships with it, including Governmental Entities, and retain the services of its present officers and key employees.

6.2 Company Forbearances. Except (i) as set forth in Section 6.2 of the Company Disclosure Letter, (ii) as expressly contemplated or permitted by this Agreement, (iii) as required by applicable law, rule or regulation, or by any Governmental Entity, (iv) as required by a Company Benefit Plan or any agreement in effect on the date hereof of which Parent has been notified and provided a true and correct copy prior to the date of this Agreement, and (v) with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), during the period from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any of its Subsidiaries to:

(a) (i) adjust, split, combine or reclassify its capital stock, (ii) set any record or payment dates for the payment of any dividends or distributions on its capital stock or make, declare or pay any dividend or make any other distribution on any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock, except that any wholly owned Subsidiary of the Company may declare and pay dividends to its parent and other wholly owned Subsidiaries of the Company, (iii) directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock (except pursuant to the exercise of stock options or vesting of restricted Company Common Stock outstanding as of the date hereof or permitted to be issued under this Section 6.2 or pursuant to the surrender of shares to the Company or the withholding of shares by the Company to cover tax withholding obligations or to pay any applicable exercise price under the Company Stock Plans or as required by Section 7.15), or (iv) grant any stock appreciation rights or grant any Person any right to acquire any shares of its capital stock, or issue, or commit to issue, sell, grant, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, sale grant, disposition, pledge or other encumbrance of, any additional shares of capital stock, any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any additional shares of capital stock, or any other securities in respect of, in lieu of, or in substitution for, any shares of its capital stock outstanding on the date of this Agreement (except pursuant to the exercise of outstanding stock options or vesting or settlement of awards under the Company Stock Plans outstanding as of the date hereof or permitted to be issued under this Section 6.2);

(b) sell, transfer, mortgage, encumber or otherwise dispose of any of its material assets or material properties to any Person (other than a direct wholly owned Subsidiary), by merger, consolidation, asset sale or other business combination (including formation of a joint venture) or cancel, release or assign any indebtedness to any such Person or any claims held by any such Person, in each case, except (i) in the ordinary course of business consistent with past practice, including sales of repossessed assets, (ii) dispositions of obsolete or worthless assets, (iii) sales of loans, receivables and other assets in the ordinary course of business consistent with past practice and (iv) sales of immaterial assets which involve the sale of assets with a purchase price of \$250,000 or less in any single case or \$250,000 in all such cases;

(c) make any investment or acquisition, by purchase or other acquisition of stock or other equity interests, by merger, consolidation, asset purchase or other business combination, or by contributions to capital; or make any material purchases of any property or assets, in or from any other Person other than a wholly owned Subsidiary of the Company, except (i) as otherwise permitted by this Section 6.2 and (ii) other acquisitions in the ordinary course of business and, in any case, involving consideration in an aggregate amount not in excess of \$2,000,000;

(d) enter into, renew, extend, amend or terminate any contract, lease or agreement that is or would be a Company Contract;

(e) other than general pay increases, including in connection with promotions, made in the ordinary course of business consistent with past practice, for employees, directors or independent contractors generally or as provided by any agreement in effect on the date hereof (true and correct copies of which have been delivered to Parent prior to the date of this Agreement), (i) increase, or commit to increase, the compensation or severance payable (including by granting or increasing the rate or terms of any salary, bonus, pension or other compensation except pursuant to the terms of any Company Benefit Plan), (ii) pay any severance other than in the ordinary course of business consistent with past practice or (iii) except as may be required, or advisable, to comply with applicable law or contract, amend, establish or enter into any Company Benefit Plan, or other pension, retirement, profit-sharing, severance, retention or welfare benefit plan or agreement or incentive or employment, agreement with

or for the benefit of any employee, director or independent contractor or accelerate the vesting of any stock options or other stock-based compensation;

(f) amend its Certificate of Incorporation, bylaws or similar governing documents or similar organizational documents of any of Subsidiary of the Company;

(g) enter into any new material line of business outside of its existing business;

(h) assign, transfer, lease, cancel, fail to renew or fail to extend any material Permit issued by any Governmental Entity or any State Regulator;

(i) incur any indebtedness for borrowed money, issue any debt securities or assume, guarantee or endorse or otherwise become responsible for the obligations of another Person, or make any loans, advances of capital contributions to, or investments in, any other Person, in each case, except in the ordinary course of business consistent with past practice;

(j) make or change any material Tax election or settle or compromise any material Tax liability of the Company or any of its Subsidiaries;

(k) make any material changes in its accounting methods or method of Tax accounting, practices or policies, except as may be required under applicable law, rule, regulation or GAAP;

(l) effect or permit, with respect to the Company and any Subsidiary of the Company, a "plant closing" or "mass layoff", as such terms are defined under the Worker Adjustment and Retraining Act of 1988, as amended;

(m) account for, manage or treat accounts receivable (including accelerating the collection thereof) or accounts payable (including delaying the payment thereof) in any manner other than in the in the ordinary course of business consistent with past practice;

(n) except as permitted by this Agreement, take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Section 8.1 or 8.2 not being satisfied; or

(o) agree to, or make any commitment to, take or announce any of the actions prohibited by this Section 6.2.

6.3 Parent Forbearances. Except (i) as set forth in Section 6.3 of the Parent Disclosure Letter, (ii) as expressly contemplated or permitted by this Agreement, (iii) as required by applicable law, rule or regulation, or by any Governmental Entity, (iv) as required by a Parent Benefit Plan or any agreement in effect on the date hereof of which the Company has been notified and provided a true and correct copy prior to the date of this Agreement, and (v) with the prior written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), during the period from the date of this Agreement to the Effective Time, Parent shall not, and shall not permit any of its Subsidiaries to:

(a) (i) adjust, split, combine or reclassify its capital stock, (ii) set any record or payment dates for the payment of any dividends or distributions on its capital stock or make, declare or pay any dividend or make any other distribution on any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock, except that any wholly owned Subsidiary of the Parent may declare and pay dividends to its parent and other wholly owned Subsidiaries of the Parent, (iii) directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or any securities or obligations convertible into or exchangeable for any shares of its capital stock (except pursuant to the Parent Stock Buyback Program, the exercise or vesting of Parent Equity Awards outstanding as of the date hereof or pursuant to the surrender of shares to the Parent or the withholding of shares by the Parent to cover tax withholding obligations or to pay any applicable exercise price under the Parent Common Stock Plans), or (iv) grant any stock appreciation rights or grant any Person any right to acquire any shares of its capital stock, or issue, or commit to issue, sell, grant, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, sale grant, disposition, pledge or other encumbrance of, any additional shares of capital stock (except pursuant to the exercise or vesting or settlement of Parent Equity Awards outstanding as of the date hereof), any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any additional shares of capital stock, or any other securities in respect of, in lieu of, or in substitution for, any shares of its capital stock outstanding on the date of this Agreement;

(b) sell, transfer, mortgage, encumber or otherwise dispose of any of its material assets or material properties to any Person (other than a direct wholly owned Subsidiary), by merger, consolidation, asset sale or other business combination (including formation of a joint venture) or cancel, release or assign any indebtedness to any such Person or any claims held by

any such Person, in each case, except (i) in the ordinary course of business consistent with past practice, including sales of repossessed assets, (ii) dispositions of obsolete or worthless assets, (iii) sales of loans, receivables and other assets in the ordinary course of business consistent with past practice and (iv) sales of immaterial assets which involve the sale of assets with a purchase price of \$250,000 or less in any single case or \$250,000 in all such cases;

(c) make any investment or acquisition, by purchase or other acquisition of stock or other equity interests, by merger, consolidation, asset purchase or other business combination, or by contributions to capital; or make any material purchases of any property or assets, in or from any other Person other than a wholly owned Subsidiary of the Parent, except (i) as otherwise permitted by this Section 6.3 and (ii) other acquisitions in the ordinary course of business and, in any case, involving consideration in an aggregate amount not in excess of \$250,000;

(d) enter into, renew, extend, amend or terminate any contract, lease or agreement that is or would be a Parent Contract;

(e) other than general pay increases, including in connection with promotions, made in the ordinary course of business consistent with past practice, for employees, directors or independent contractors generally or as provided by any agreement in effect on the date hereof (true and correct copies of which have been delivered to the Company prior to the date of this Agreement), (i) increase, or commit to increase, the compensation or severance payable (including by granting or increasing the rate or terms of any salary, bonus, pension or other compensation except pursuant to the terms of any Parent Benefit Plan), (ii) pay any severance other than in the ordinary course of business consistent with past practice or (iii) except as may be required, or advisable, to comply with applicable law or contract, amend, establish or enter into any pension, retirement, profit-sharing, severance, retention or welfare benefit plan or agreement or incentive or employment, agreement with or for the benefit of any employee, director or independent contractor or accelerate the vesting of any stock options or other stock-based compensation;

(f) amend its Certificate of Incorporation, bylaws or similar governing documents or similar organizational documents of any of Subsidiary of the Parent;

(g) enter into any new material line of business outside of its existing business;

(h) assign, transfer, lease, cancel, fail to renew or fail to extend any material Permit issued by any Governmental Entity or any State Regulator;

(i) incur any indebtedness for borrowed money, issue any debt securities or assume, guarantee or endorse or otherwise become responsible for the obligations of another Person, or make any loans, advances of capital contributions to, or investments in, any other Person, in each case, except in the ordinary course of business consistent with past practice;

(j) make or change any material Tax election or settle or compromise any material Tax liability of the Parent or any of its Subsidiaries;

(k) make any material changes in its accounting methods or method of Tax accounting, practices or policies, except as may be required under applicable law, rule, regulation or GAAP;

(l) effect or permit, with respect to the Parent and any Subsidiary of the Company, a "plant closing" or "mass layoff", as such terms are defined under the Worker Adjustment and Retraining Act of 1988, as amended;

(m) account for, manage or treat accounts receivable (including accelerating the collection thereof) or accounts payable (including delaying the payment thereof) in any manner other than in the in the ordinary course of business consistent with past practice;

(n) except as permitted by this Agreement, take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Section 8.1 or 8.3 not being satisfied; or

(o) agree to, or make any commitment to, take or announce any of the actions prohibited by this Section 6.3.

7. ADDITIONAL AGREEMENTS

7.1 Private Placement.

(a) Prior to the Parties' execution of this Agreement, the Parent shall have received a commitment from, or on behalf of, Foundry Group Select Fund, L.P., in a form reasonably satisfactory to the Parent (which may be set forth in a Support Agreement, side letter or other document) (the "**Foundry Commitment**"), for the purchase of at least (i) an initial tranche of \$2,500,000 of the Parent's securities to be issued in the Private Placement (the "**Closing Foundry Investment**") and (ii) a second tranche of up to \$500,000 of the Parent's securities.

(b) Prior to the Closing, Parent shall have conducted one or more offerings of shares of its Preferred Stock to "accredited investors" within the meaning of Rule 501 under the Securities Act in a private placement intended to be exempt from registration under Section 4(a)(2) of the Securities Act (the "**Private Placement**"). Parent shall use commercially reasonable efforts to raise aggregate cash proceeds in the Private Placement of at least \$2,500,000 after payment of all expenses, discounts, fees and commissions associated with such private placement (the "**Target Net Proceeds**"). The net cash proceeds raised in the Private Placement shall be released in full to the Parent no later than the date of Closing.

7.2 Information Statement.

(a) Promptly following the date hereof, the Company shall, with the assistance of Parent, prepare an information statement relating to the Company Required Vote (as amended or supplemented from time to time, the "**Information Statement**"). Parent and the Company shall cooperate with one another in connection with the preparation of the Information Statement and shall furnish all information concerning such party as the other party may reasonably request in connection with the preparation of the Information Statement. The Company will cause the Information Statement (in a form reasonably acceptable to Parent) to be delivered to the Company Stockholders.

(b) If at any time prior to the Effective Time any information relating to the Company, Parent or Merger Sub, or any of their respective Affiliates, directors or officers, is discovered by the Company, Parent or Merger Sub which should be set forth in an amendment or supplement to the Information Statement so that such Information Statement would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties and an appropriate amendment or supplement to the Information Statement describing such information shall be delivered to the Company Stockholders.

7.3 Company Stockholder Approval. The Company shall, in accordance with its Certificate of Incorporation and Bylaws and applicable law, use commercially reasonable efforts to solicit and obtain the approval of the Company Stockholders pursuant to a written consent of the Company Stockholders (the "**Written Consent**"). A copy of this Agreement or a brief summary thereof, the Company Recommendation, the appraisal rights notice required pursuant to Section 262 of the DGCL and a copy of such Section 262 shall be included in the Information Statement, which shall accompany the Written Consent.

7.4 Proxy Statement.

(a) Following the Effective Time, Parent shall:

(i) prepare and file with the SEC as soon as is reasonably practicable proxy materials of Parent (the "**Proxy Statement**") under the Exchange Act with respect to the Parent Stockholder Meeting;

(ii) use commercially reasonable efforts to have, as promptly as is reasonably practicable, the Proxy Statement cleared by the SEC under the Exchange Act;

(iii) cause the Proxy Statement to be mailed to Parent's stockholders as promptly as is reasonably practicable after the Proxy Statement is cleared by the SEC under the Exchange Act;

(iv) take all such action as shall be required under applicable state blue sky or securities laws in connection with the transactions contemplated by this Agreement, including the Parent Stock Issuance and Parent Stock Issuance Conversion; and

(v) use commercially reasonable efforts to (x) cause the shares of Parent Common Stock to be issued pursuant to the Parent Stock Issuance Conversion to be approved for listing on the NYSE American, subject to official notice of issuance, and (y) receive all necessary approval for the Merger and the other transactions contemplated by this Agreement under Section 341 of the NYSE American Company Guide.

(b) If either Parent or the Company becomes aware of any information that should be disclosed in an amendment or supplement to the Proxy Statement under Section 7.4(a), such party shall (i) promptly inform the other party thereof, (ii) provide the other party (and its counsel) with a reasonable opportunity to review and comment on the amendment or supplement to the Proxy Statement prior to it being filed with the SEC, (iii) provide the other party with a copy of such amendment or supplement promptly after it is filed with the SEC, and (iv) cooperate, if appropriate, in mailing such amendment or supplement to the stockholders of Parent.

7.5 Access to Information.

(a) Upon reasonable prior notice and subject to applicable law, each of Parent and the Company shall, and shall cause each of their Subsidiaries to, afford to the directors, officers, managers, members, partners, employees, investment bankers, advisors, consultants, accountants, counsel, agents and representatives (collectively "**Representatives**") of the other party access, during normal business hours during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records, and to its officers, employees, accountants, counsel and other representatives, in each case in a manner not unreasonably disruptive to the operation of the business of Parent or the Company and their Subsidiaries, and, during such period, Parent and the Company shall, and shall cause their Subsidiaries to, make available to Parent or the Company, as applicable all information concerning its business, properties and personnel as Parent or the Company may reasonably request. At the request of Parent or the Company, the other party shall use its commercially reasonable efforts to comply with its obligations under the preceding sentence by providing electronic access to such documents and information on the online data rooms established by each of the Company and Parent prior to the date hereof. Notwithstanding any other provision of this Agreement, neither the Company nor any of its Subsidiaries, on the one hand, nor Parent nor any of its Subsidiaries on the other hand, shall be required to provide access to or to disclose information where such access or disclosure would (A) violate or prejudice the rights of its customers or employees, (B) jeopardize the attorney-client privilege of the institution in possession or control of such information, (C) contravene, violate or breach any law, rule, regulation, order, judgment, decree or fiduciary duty or any binding agreement entered into prior to the date of this Agreement in the ordinary course of business consistent with past practice or (D) be adverse to its interests in any pending or threatened litigation between the parties hereto over the terms of this Agreement.

(b) All information and materials furnished pursuant to this Agreement shall be subject to the provisions of the Mutual Non-Disclosure and Confidentiality Agreement, dated March 1, 2019, between Parent and the Company (the "**Confidentiality Agreement**"). The Company makes no representation or warranty as to the accuracy of any information provided pursuant to Section 7.5(a), and neither Parent nor Merger Sub may rely on the accuracy of any such information, in each case other than as expressly set forth in the Company's representations and warranties contained in Section 4. Parent makes no representation or warranty as to the accuracy of any information provided pursuant to Section 7.5(a), and Company may not rely on the accuracy of any such information, other than as expressly set forth in Parent and Merger Sub's representations and warranties contained in Section 5.

7.6 Further Actions.

(a) Subject to the terms and conditions of this Agreement, each of Parent, Merger Sub and the Company shall, and shall cause their respective Subsidiaries to, use their commercially reasonable efforts (i) to take, or cause to be taken, all actions necessary, proper or advisable to comply promptly with all legal requirements which may be imposed on such party or its Subsidiaries with respect to the Merger and, subject to the conditions set forth in Section 8 hereof, to consummate the transactions contemplated by this Agreement (including under Section 7.4(a)(v)); and (ii) to promptly prepare, file and provide to third parties and Governmental Entities all applications, statements, notices, petitions, registrations, requests, declarations and filings which are necessary or advisable to consummate the transactions contemplated by this Agreement, including the Merger, New Parent Incentive Plan, Parent Stock Issuance and Parent Stock Issuance Conversion, to obtain (and to cooperate with the other party to obtain) as promptly as practicable all material permits, Consents, registrations, authorizations and exemptions of or from all third parties and Governmental Entities which are necessary or advisable to consummate the transactions contemplated by this Agreement, including the Merger, New Parent Incentive Plan, Parent Stock Issuance, Parent Stock Issuance Conversion and under Section 7.4(a)(v), and to comply with the terms and conditions of all such permits, Consents, registrations, authorizations and exemptions of all such third parties and Governmental Entities. Parent and the Company shall, upon request, furnish each other with all information concerning themselves, their Subsidiaries, stockholders and Representatives and such other matters as may be reasonably necessary or advisable in connection with any application, statement, notice, petition, registration, request, declaration or filing made or provided by or on behalf of Parent, the Company or any of their respective Subsidiaries to any Governmental Entity in connection with this Agreement, the Merger, New Parent Incentive Plan, Parent Stock Issuance, Parent Stock Issuance Conversion and the other transactions contemplated by this Agreement.

(b) In furtherance and not in limitation of Section 7.6(a), each of Parent and the Company shall (i) promptly following the date hereof make or cause to be made, in consultation and cooperation with the other, all registrations, declarations,

filings, applications and other notices and submissions required to be filed with or submitted to any State Regulators in order to obtain all required Consents from the State Regulators as soon as practicable and (ii) promptly take all other appropriate actions reasonably necessary, proper or advisable to obtain such required Consents from the State Regulators as soon as practicable.

(c) If any objections are asserted with respect to the transactions contemplated hereby under any applicable Regulatory Law, or if any legal proceeding, whether judicial or administrative, is instituted by any Governmental Entity challenging any of the transactions contemplated hereby as violating any Regulatory Law, each party shall use its commercially reasonable efforts to (i) oppose or defend against any action to prevent or enjoin consummation of this Agreement and the transactions contemplated hereby and (ii) take such action as reasonably necessary to overturn any regulatory action by any Governmental Entity to block consummation of this Agreement and the transactions contemplated hereby, including by defending any legal proceeding, whether judicial or administrative, brought by any Governmental Entity in order to avoid entry of, or to have vacated, overturned or terminated, including by appeal if necessary, in order to resolve any such objections or challenge as such Governmental Entity may have to such transactions under any applicable Regulatory Law so as to permit consummation of the transactions contemplated hereby. For purposes of this Agreement, "**Regulatory Law**" means (A) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, the Federal Trade Commission Act, as amended, and all other statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition, whether in the communications/digital networking industry or otherwise, through merger or acquisition, (B) the Communications Act of 1934, as amended, or the rules, regulations, written policies and orders of the Federal Communications Commission or any similar state telecommunications laws and the rules, regulations, written policies and orders of State Regulators and (C) any other applicable laws, rules, regulations, practices and orders of any other Governmental Entities regulating competition and/or the telecommunication, data communications and digital networking industries.

(d) Each of Parent and its Subsidiaries, on the one hand, and the Company and its Subsidiaries, on the other hand, shall keep the other party promptly informed of any material communication regarding any of the transactions contemplated hereby in connection with any filings, investigations with, by or before any Governmental Entity relating to this Agreement or the transactions contemplated hereby, including any proceedings initiated by a private party. If any party hereto or affiliate thereof shall receive a request for additional information or documentary material from any Governmental Entity with respect to the transactions contemplated hereby pursuant to any Regulatory Law with respect to which any such filings have been made, then such party shall use its commercially reasonable efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request. In connection with and without limiting the foregoing, to the extent reasonably practicable and unless prohibited by applicable law or by the applicable Governmental Entity, the parties hereto agree to (i) give each other reasonable advance notice of all meetings with any Governmental Entities relating to the transactions contemplated hereby, (ii) give each other an opportunity to participate in each of such meetings, (iii) keep the other party reasonably apprised with respect to any material oral communications with any Governmental Entity regarding the transactions contemplated hereby, (iv) cooperate in the filing of any analyses, presentations, memoranda, briefs, arguments, opinions or other written communications explaining or defending the transactions contemplated hereby, articulating any regulatory or competitive argument and/or responding to requests or objections made by any Governmental Entity, (v) provide each other with a reasonable advance opportunity to review and comment upon, and consider in good faith the views of the other with respect to, all written communications (including any analyses, presentations, memoranda, briefs, arguments and opinions) with a Governmental Entity regarding the transactions contemplated hereby, (vi) provide each other (or outside counsel of each party hereto, as appropriate) with copies of all written communications to or from any Governmental Entity relating to the transactions contemplated hereby and (vii) cooperate and provide each other with a reasonable opportunity to participate in, and consider in good faith the views of the other with respect to, all material deliberations with respect to all efforts to satisfy the conditions set forth in Section 8.1(b) and Section 8.1(c).

(e) Nothing in this Section 7.6 shall be deemed to prevent the Company or the Company Board from taking any action they are permitted or required to take under, and in compliance with, Section 7.9 or are required to take under applicable law.

7.7 Employees: Employee Benefit Plans.

(a) Parent shall, or shall cause the Surviving Company and its Subsidiaries to, use commercially reasonable efforts to, and in accordance with applicable law, (i) give those employees who are, as of the Effective Time, employed by the Company and its Subsidiaries (the "**Continuing Employees**"), full credit for purposes of determining eligibility and vesting (but not for purposes of any benefit accruals) under any Parent Benefit Plans or other arrangements maintained by Parent, including, but not limited to, vacation and paid time off accruals (other than any defined benefit or equity-based plans) (collectively, the "**Parent Plans**") for such Continuing Employees' service with the Company or any of its Subsidiaries (or any predecessor entity) to the same extent recognized by the Company and its Subsidiaries; (ii) waive all limitations as to preexisting conditions, exclusions

and waiting periods with respect to participation and coverage requirements applicable to the Continuing Employees under any Parent Plan that is a welfare benefit plan that such employees may be eligible to participate in after the Effective Time to the same extent waived by the Company and its Subsidiaries or otherwise not subject to a limitation by the Company and its Subsidiaries; (iii) provide credit under any such welfare plan for any co-payments, deductibles and out-of-pocket expenditures for the remainder of the coverage period during which any transfer of coverage of any Continuing Employee occurs; and (iv) honor in accordance with their terms all Company Benefit Plans or arrangements or collective bargaining agreements maintained by the Company immediately prior to the Effective Time.

(b) From a period of one (1) year from and after the Effective Time, Parent shall, or shall cause the Surviving Company and its Subsidiaries to, provide to the Continuing Employees levels of compensation and benefit arrangements that are no less favorable in the aggregate than either the (i) levels of compensation and benefits provided to the Continuing Employees immediately prior to the Effective Time or (ii) the levels of compensation and benefit arrangements that are provided to similarly situated employees of Parent. From and after the Effective Time, Parent and the Surviving Company shall keep in full force and effect, and comply with the terms and conditions of, any employment, severance or change of control agreement (including, without limitation, any such agreements in the form of offer letters) in effect as of the date of this Agreement or entered into or amended after the date of this Agreement in compliance with Section 6.2 hereof between or among the Company or any of its Subsidiaries and any of its or their employees.

(c) The Company shall: (i) terminate any Company Benefit Plan which is a defined contribution plan that includes a cash or deferred arrangement that is designed to qualify under Section 401(k) of the Code, effective as of the Business Day preceding the Closing Date; (ii) terminate or withdraw from, as applicable, the PEO arrangement and any other Company Benefit Plans if so requested by Parent in writing at least ten (10) days preceding the Closing Date, with such terminations to be effective as of the Closing Date or, if later, as required pursuant to contractual notice requirements, if any; and (iii) in each case, provide timely notice of termination to the PEO, relevant service providers or insurance carriers, as applicable.

(d) The provisions of this Section 7.7 are for the sole benefit of the parties to this Agreement and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any Person (including for the avoidance of doubt any Continuing Employees, present or former employees or directors, consultants or independent contractors of the Company or any of its Subsidiaries, Parent or any of its Subsidiaries, or on or after the Effective Time, the Surviving Company or any of its Subsidiaries), other than the parties hereto and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 7.7) under or by reason of any provision of this Agreement. Nothing contained in this Section 7.7 or elsewhere in the Agreement shall be construed to prevent, from and after the Effective Time, the termination of employment of any individual Continuing Employee or, subject to the provisions of Sections 7.7(a) and 7.7(b), any change in the employee benefits available to any Continuing Employee or the amendment or termination of any particular plan in accordance with its terms.

7.8 Indemnification; Directors' and Officers' Insurance.

(a) From and after the Effective Time, each of Parent and the Surviving Company shall jointly and severally: (i) indemnify and hold harmless each individual who served as a director or officer of the Parent, the Company, Merger Sub or any of their respective Subsidiaries prior to the Effective Time (collectively, the "**Indemnified Parties**") (in such Person's capacity as such and not as stockholders of the Company or any of its Subsidiaries) to the fullest extent required, authorized or permitted by Delaware law, as now or hereafter in effect, in connection with any Claim and any judgments, fines (including excise taxes), penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement) resulting therefrom; and (ii) promptly pay on behalf of or, within thirty (30) days after any request for advancement, advance to each of the Indemnified Parties, to the fullest extent required, authorized or permitted by Delaware law, as now or hereafter in effect, any Expenses incurred in defending, serving as a witness with respect to or otherwise participating in any Claim in advance of the final disposition of such Claim, including payment on behalf of or advancement to the Indemnified Party of any Expenses incurred by such Indemnified Party in connection with enforcing any rights with respect to such indemnification and/or advancement, in each case without the requirement of any bond or other security, but in the case of advancement of Expenses upon receipt of an undertaking, to the extent required by applicable law, from such Indemnified Party to repay such advanced Expenses if it is determined by a court of competent jurisdiction in a final order that such Indemnified Party was not entitled to indemnification hereunder with respect to such Expenses. In the event any Claim is brought against any Indemnified Party, Parent and the Surviving Company shall each use all commercially reasonable efforts to assist in the vigorous defense of such matter, provided that neither Parent nor the Surviving Company shall settle, compromise or consent to the entry of any judgment in any Claim (in which indemnification could be sought by such Indemnified Party hereunder) without the prior written consent of such Indemnified Party if and to the extent the claimant seeks any non-monetary relief (including any admission of liability or guilt) from such Indemnified Party. Notwithstanding the foregoing, an Indemnified Party shall be entitled to control the defense of any action, suit, investigation or proceeding with counsel of its

own choosing reasonably acceptable to Parent and Parent and the Surviving Company shall cooperate in the defense thereof; provided, that Parent shall not be liable for the fees of more than one counsel for all Indemnified Parties, other than local counsel, unless a conflict of interest shall be caused thereby. The indemnification and advancement obligations of Parent and the Surviving Company pursuant to this Section 7.8 shall extend to acts or omissions occurring at or before the Effective Time and any Claim relating thereto (including, but not limited to, any acts or omissions occurring in connection with the approval of this Agreement by the Company Board and the Company's stockholders and the consummation of the transactions contemplated hereby and any Claim relating thereto) and all rights to indemnification and advancement conferred hereunder shall continue as to an individual who has ceased to be a director or officer of the Company or its Subsidiaries at or prior to the Effective Time and shall inure to the benefit of such individual's heirs, executors and personal and legal representatives. In connection with any determination as to whether the Indemnified Parties are entitled to the benefits of this Section 7.8, the burden of proof shall be on Parent and the Surviving Company to establish that an Indemnified Party is not so entitled. As used in this Section 7.8(a), (A) the term "**Claim**" means any threatened, asserted, pending or completed action, suit or proceeding, or any inquiry or investigation, whether instituted by the Company, any Governmental Entity or any other party, that any Indemnified Party in good faith believes might lead to the institution of any such action, suit or proceeding, whether civil, criminal, administrative, investigative or other, including any arbitration or other alternative dispute resolution mechanism, arising out of or pertaining to matters that relate to such Indemnified Party's duties or service as a director or officer of the Company, Parent, Merger Sub or any of their respective Subsidiaries, any employee benefit plan maintained by any of the foregoing at or prior to the Effective Time and any other Person at the request of the Company, Parent, Merger Sub or any of their respective Subsidiaries; and (B) the term "**Expenses**" means reasonable attorneys' fees and all other costs, expenses and obligations (including experts' fees, travel expenses, court costs, retainers, transcript fees, duplicating, printing and binding costs, as well as telecommunications, data, postage and courier charges) paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to investigate, defend, be a witness in or participate in, any Claim for which indemnification is authorized pursuant to this Section 7.8(a), including any action relating to a claim for indemnification or advancement brought by an Indemnified Party.

(b) From the Effective Time and for a period of six (6) years thereafter, Parent and the Surviving Company shall keep in full force and effect, and comply with the terms and conditions of, any agreement in effect as of the date of this Agreement between or among the Company or any of its Subsidiaries or the Parent or any of its Subsidiaries and, in each case, any Indemnified Party providing for the indemnification of and advancement of expenses to such Indemnified Party.

(c) Without limiting any of the obligations under Section 7.8(a), Parent agrees that all rights to indemnification and advancement of expenses and all limitations of liability existing in favor of the Indemnified Parties as provided in the Certificate of Incorporation or Bylaws of the Company, Parent or Merger Sub or in the corresponding constituent documents of any of their Subsidiaries as in effect as of the date of this Agreement with respect to matters occurring on or prior to the Effective Time shall survive the Merger and shall continue in full force and effect thereafter, without any amendment thereto.

(d) If Parent or the Surviving Company or any of its successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving Person of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any Person, then, in each such case, proper provisions shall be made so that the successors and assigns of Parent and the Surviving Company, as the case may be (including Parent's ultimate parent entity, if applicable), assume all of the obligations of Parent and the Surviving Company set forth in this Section 7.8.

(e) Prior to the Effective Time, the Company shall cause coverage to be extended under the Company's existing directors' and officers' insurance policies and the Company's existing fiduciary liability insurance policies (collectively, "**D&O Insurance**"), in each case for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under the Company's existing policies with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of the Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). If the Company for any reason fails to obtain such "tail" insurance policies as of the Effective Time, the Parent shall continue to maintain in effect, for a period of at least six years from and after the Effective Time, the D&O Insurance in place as of the date hereof with the Company's current insurance carrier or with an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under the Company's existing policies as of the date hereof, or the Parent shall purchase from the Company's current insurance carrier or from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are no less favorable than as provided in the Company's existing policies as of the date hereof.

(f) The provisions of this Section 7.8 shall survive the consummation of the Merger and (i) are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party and his or her heirs and representatives and (ii) are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise. The obligations of Parent or the Surviving Company under this Section 7.8 shall not be terminated or modified in such a manner as to adversely affect the rights of any Indemnified Party under this Section 7.8 without the consent of such affected Indemnified Party. Parent shall cause the Surviving Company to perform all of the obligations of the Surviving Company under this Section 7.8. Parent and the Surviving Company, jointly and severally, shall pay all expenses, including reasonable fees and expenses of counsel, that an Indemnified Party may incur in enforcing the indemnity and other obligations provided for in this Section 7.8.

7.9 Acquisition Proposals.

(a) Except as permitted by this Section 7.9, Parent and Company shall, and each shall instruct its Subsidiaries and Representatives to, from and after the date hereof until the earlier of the Effective Time and the date on which this Agreement is terminated pursuant to Section 9.1: (i) not, directly or indirectly, (A) initiate, solicit or knowingly encourage or knowingly facilitate any inquiries, expressions of interest, proposals or offers that constitute or would reasonably be expected to lead to an Acquisition Proposal, (B) engage in or otherwise participate in any discussions or negotiations regarding an Acquisition Proposal or that would reasonably be expected to lead to an Acquisition Proposal (other than, in response to an unsolicited inquiry, to ascertain facts from the Person making such Acquisition Proposal for the sole purpose of informing itself about such Acquisition Proposal and the Person that made it and to refer the inquiring Person to this Section 7.9), (C) provide (including through access to any data room) any non-public information to any Person relating to the Parent or the Company, or any of their respective Subsidiaries with respect to an Acquisition Proposal or that the Parent or Company reasonably expects would be used for the purposes of formulating an Acquisition Proposal, (D) enter into any agreement, letter of intent, memorandum of understanding, agreement in principle or Contract with respect to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement entered into in accordance with the terms of this Agreement) (each, an “**Alternative Acquisition Agreement**”), (E) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Parent or the Company, or (F) resolve or agree to do any of the foregoing; and (ii) immediately cease and cause to be terminated all discussions, negotiations, solicitation or encouragement with any Persons that may be ongoing with respect to an Acquisition Proposal as of the date hereof. Promptly (and in any event within forty-eight (48) hours) after the date hereof, the Parent or Company, as applicable, shall terminate or cause to be terminated access to any data room or other access to the data of the Parent or Company, as applicable, in each case relating to or in connection with, any potential Acquisition Proposal and shall instruct each Person that has previously executed a confidentiality agreement in connection with such Person’s consideration of an Acquisition Proposal to return to the Parent or Company, as applicable, or destroy any non-public information previously furnished to such Person or to any Representatives of such Person by or on behalf of the Parent or Company, as applicable.

(b) Notwithstanding anything to the contrary contained in Section 7.9(a) or elsewhere in this Agreement, at any time following the date hereof, and prior to the Effective Time, if (i) the Parent receives a bona fide written Acquisition Proposal from a third party, (ii) such Acquisition Proposal was not solicited, initiated, encouraged, facilitated or otherwise obtained in breach, in any material respect, of the provisions of this Section 7.9 and (iii) the Parent Board determines in good faith after consultation with the Parent’s financial advisor and outside legal counsel that such Acquisition Proposal constitutes or could reasonably be expected to lead to a Superior Proposal, then the Parent and its Representatives may (A) provide information to such Person or group of Persons (including their respective Representatives and prospective equity and debt financing sources) if the Parent receives from such Person or group of Persons (or has received from such Person or group of Persons) an Acceptable Confidentiality Agreement, and (B) engage or participate in any discussions or negotiations with such Person or group of Persons and its Representatives; provided, that (x) the Parent shall promptly (and in any event within forty-eight (48) hours) make available to Company any material non-public information concerning the Parent or its Subsidiaries that is provided to any such Person or group of Persons which was not previously made available to Company and (y) the Parent shall give Company written notice of such determination promptly (and in any event within forty-eight (48) hours) after the Parent Board makes such determination. It is understood and agreed that any contacts, disclosures, discussions or negotiations permitted under this Section 7.9(b), including any public announcement that the Parent or the Parent Board has made any determination required under this Section 7.9(b) to take or engage in any such actions, shall not constitute a Change of Recommendation or otherwise constitute a basis for Company to terminate this Agreement pursuant to Section 9.1.

(c) Except as set forth in Section 7.9(d) or in Section 7.9(e), the Parent Board and the Company Board following the date hereof, shall not (i) publicly withhold, withdraw, amend, qualify or modify (or publicly propose to withhold, withdraw, amend, qualify or modify), in each case in a manner adverse to Company or Parent, as applicable, the Parent Recommendation or Company Recommendation, as applicable, or any other approval, recommendation or declaration of advisability by the Parent Board or Company Board, as applicable, or any such committee of this Agreement, the Merger or any

of the other transactions contemplated hereby, (ii) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Company or Parent, as applicable, (iii) fail to include the Company Recommendation in the Information Statement (in the case of the Company) or the Parent Recommendation in the Proxy Statement (in the case of the Parent), (iv) publicly adopt, approve or recommend, or publicly propose to adopt, approve or recommend, any Acquisition Proposal, (v) following the initial public announcement of any Acquisition Proposal (other than by the commencement of a tender offer or exchange offer), fail to issue a public press release within ten (10) Business Days of such public announcement that the Parent Board or Company Board, as applicable, recommends rejection of such Acquisition Proposal and reaffirms the Parent Recommendation or Company Recommendation as applicable, (vi) following the initial public announcement of any Acquisition Proposal that is structured as a tender offer or exchange offer by a third party for equity securities of the Parent or Company, as applicable, fail to recommend against acceptance by the Parent's stockholders or Company's stockholders, as applicable, of such tender offer or exchange offer (including for these purposes, by taking any position contemplated by Rule 14e-2 under the Exchange Act other than recommending rejection of such tender offer or exchange offer) within ten (10) Business Days of commencement of such tender offer or exchange offer or (vii) publicly announce its intention, authorize or resolve to take, or that it will fail to take, as applicable, any such foregoing actions (any of the foregoing, a "**Change of Recommendation**").

(d) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, if the Parent has received a bona fide written Acquisition Proposal from a third party that was not solicited, initiated, encouraged, facilitated or otherwise obtained in breach, in any material respect, of the provisions of this Agreement and that the Parent Board determines in good faith, after consultation with the Parent's outside legal counsel and financial advisors, as applicable, constitutes a Superior Proposal (after giving effect to all of the adjustments to the terms and conditions of this Agreement that have been proposed by the Company in writing during the Notice Period provided pursuant to this Section 7.9 to which Company has irrevocably committed), then the Parent Board may effect a Change of Recommendation.

(e) Nothing contained in this Section 7.9 or elsewhere in this Agreement shall be deemed to prohibit the Parent or the Parent Board, or any committee thereof from (i) making any disclosure to the Parent's stockholders if, in the good faith judgment of the Parent Board, after consultation with its outside legal counsel, failure to make such disclosure could reasonably be likely to be inconsistent with its fiduciary duties under applicable law, (ii) complying with its disclosure obligations under applicable law or the NYSE American, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) or Item 1012(a) of Regulation M-A under the Exchange Act (or any similar communication to stockholders), or (iii) making any "stop-look-and-listen" communication to stockholders of the Parent pursuant to Rule 14d-9(f) under the Exchange Act (or any similar communications to stockholders of the Parent). The Parent shall in no event be deemed to violate this Section 7.9 as a result of responding to any unsolicited proposal or inquiry solely by advising the Person making such proposal or inquiry of the terms of this Section 7.9.

(f) The Parent shall promptly (and, in any event, within forty-eight (48) hours), notify Company in writing, if, from and after the date hereof, any Acquisition Proposal, or any inquiry, expression of interest, proposal, offer or request for information that would reasonably be expected to result in an Acquisition Proposal, is received by the Parent or any of its Representatives, indicating (except to the extent prohibited by applicable law) the identity of the Person or group of Persons making such Acquisition Proposal and a description of the material terms and conditions of any such inquiry, expression of interest, proposal, offer or request for information or Acquisition Proposal, including copies of any proposed Alternative Acquisition Agreements and any related financing commitments (which may be redacted for provisions related to fees and other economic "flex" terms that are customarily redacted in connection with transactions of such type), and thereafter shall keep Company reasonably informed of the status and terms of any such Acquisition Proposal (including any material changes, modifications or amendments thereto).

(g) Notwithstanding anything to the contrary contained in this Agreement, from and after the date hereof, the Parent shall be permitted to terminate, waive, amend or release any provision of any confidentiality, "standstill" or similar obligation of any Person if the Parent Board determines in good faith after consultation with its outside legal counsel that failure to take such action could reasonably be expected to be inconsistent with its fiduciary obligations under applicable law.

(h) As used in this Section 7.9, the following terms shall have the following definitions:

(i) "**Acceptable Confidentiality Agreement**" means a confidentiality agreement that contains provisions as to the treatment of confidential information that are no less favorable in any material respect to the disclosing party than those contained in the Confidentiality Agreement (except for such changes necessary for disclosing party to comply with its obligations under this Agreement).

(ii) "**Acquisition Proposal**" means an inquiry, proposal, or offer from, or indication of interest in making a proposal or offer by, any Person or group relating to any transaction or series of related transactions (other than the

transactions contemplated by this Agreement), involving any: (A) direct or indirect acquisition of assets of such party hereto or its Subsidiaries (including any voting equity interests of Subsidiaries, but excluding sales of assets in the ordinary course of business) equal to 20% or more of the fair market value of such party's consolidated assets or to which 20% or more of such party's net revenues or net income on a consolidated basis are attributable; (B) direct or indirect acquisition of 20% or more of the voting equity interests of such party hereto or any of its Subsidiaries whose business constitutes 20% or more of the consolidated net revenues, net income, or assets of such party and its Subsidiaries, taken as a whole; (C) tender offer or exchange offer that if consummated would result in any Person or group (as defined in Section 13(d) of the Exchange Act) beneficially owning (within the meaning of Section 13(d) of the Exchange Act) 20% or more of the voting power of such party hereto or any of its Subsidiaries whose business constitutes 20% or more of the consolidated net revenues, net income or assets of such party and its Subsidiaries, taken as a whole; (D) merger, consolidation, other business combination, or similar transaction involving such party hereto or any of its Subsidiaries, pursuant to which such Person or group (as defined in Section 13(d) of the Exchange Act) would own 20% or more of the consolidated net revenues, net income, or assets of such party and its Subsidiaries, taken as a whole; (E) liquidation, dissolution (or the adoption of a plan of liquidation or dissolution), or recapitalization or other significant corporate reorganization of such party hereto or one or more of its Subsidiaries which, individually or in the aggregate, generate or constitute 20% or more of the consolidated net revenues, net income, or assets of such party and its Subsidiaries, taken as a whole; or (F) any combination of the foregoing.

(iii) "**Superior Proposal**" means a bona fide written Acquisition Proposal with respect to the Parent or its Subsidiaries (except that, for purposes of this definition, each reference in the definition of "Acquisition Proposal" to "20%" shall be "50%"), that the Parent Board determines in good faith (after consultation with outside legal counsel and such party's financial advisor) is more favorable from a financial point of view to the holders of the Parent's common stock than the transactions contemplated by this Agreement, taking into account: (A) all financial considerations; (B) the identity of the third party making such Acquisition Proposal; (C) the anticipated timing, conditions (including any financing condition or the reliability of any debt or equity funding commitments) and prospects for completion of such Takeover Proposal; (D) the other terms and conditions of such Acquisition Proposal and the implications thereof on the Parent, including relevant legal, regulatory, and other aspects of such Acquisition Proposal deemed relevant by the Parent; and (E) any revisions to the terms of this Agreement and the Merger proposed by the Company during the Notice Period set forth in Section 7.9.

7.10 Section 16 Matters. Prior to the Effective Time, the Parent Board and Company Board shall take all such steps as may be required and permitted to cause the transactions contemplated by this Agreement, including any dispositions or acquisitions of shares of Parent Common Stock (including derivative securities with respect to such Parent Common Stock) by each individual who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Parent and/or Surviving Company, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

7.11 Tax Treatment as Reorganization.

(a) Each of Parent, the Company and the Surviving Company shall use its reasonable best efforts to take such actions so as to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code. Neither Parent nor the Company nor any of their respective Affiliates shall take any action prior to the Closing, and Parent shall not take any action or fail to take any action (and shall prevent the Surviving Company from taking any action or failing to take any action) following the Closing, that would cause the Merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code. Parent and the Surviving Company shall report the Merger for income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, including the filing of the statement required by Treasury Regulations Section 1.368-3, unless otherwise required by a taxing authority pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

7.12 New Parent Incentive Plan. The Parent will enter into a new equity incentive compensation plan mutually agreeable to the Company and the Parent for the issuance of Parent Common Stock and other equity compensation of the Parent in connection with future Parent Equity Awards (the "**New Parent Incentive Plan**"), subject to the Parent obtaining the Parent Required Vote at the Parent Stockholder Meeting. The New Parent Incentive Plan will initially authorize 2,590,476 shares.

7.13 Board of Directors of Parent After the Effective Time. Prior to the Closing, Parent shall take all such action as may be reasonably necessary to cause (i) two (2) members of the Parent Board prior to the Effective Time to execute and deliver to the Company at or before the Effective Time resignation letters, and (ii) the Company Board Designees to be appointed to the Parent Board effective as of the Effective Time.

7.14 Parent Consent as Sole Stockholder of Merger Sub. Parent shall deliver to Company within five (5) Business Days of the date of this Agreement evidence of its approval, as the sole stockholder of Merger Sub, of the adoption of this Agreement and approval of the transactions contemplated hereby, including the Merger.

7.15 Conversion of July NPA. Prior to Closing, the Company will (i) convert all amounts owed (including any outstanding principal, accrued and unpaid interest, fees, prepayment penalties, and amounts owed by the Company under Section 2.2 of the July NPA) under all tranches of Notes of the Company issued pursuant to the July NPA, into shares of the Company's Series E Preferred Stock as set forth in Section 2.1; and (ii) terminate the July NPA, all notes outstanding under the July NPA and the Security Agreement, dated July 31, 2019, by and among the Company, as borrower, and the lenders party to the July NPA (collectively, the "**Note Conversion and Termination**").

8. CONDITIONS PRECEDENT

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

(a) This Agreement shall have been approved by the Company Required Vote.

(b) All Consents or authorizations that are required to be obtained from any State Regulator and are set forth in Section 8.1(b) of the Company Disclosure Letter or Section 8.1(b) of the Parent Disclosure Letter or identified following the date hereof, notice of which will be promptly provided to the other parties hereto, in each case in connection with the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect and shall be free of any conditions, statements or conclusions of fact or law adverse to any party hereto or their respective Affiliates which conditions, statements or conclusions of fact or law would individually or, in the aggregate, result in a Company Material Adverse Effect or Parent Material Adverse Effect.

(c) No order, injunction, statute, rule, regulation or decree shall have been issued, enacted, entered, promulgated or enforced by a Governmental Entity that prohibits, precludes, restrains, enjoins or makes illegal the consummation of the Merger, New Parent Incentive Plan or Parent Stock Issuance.

(d) No statute, rule or regulation shall have been enacted or promulgated by any federal or state Governmental Entity of competent jurisdiction which prohibits the consummation of the Merger or the Parent Stock Issuance.

8.2 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction or waiver at or prior to the Effective Time of the following conditions:

(a) The representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a particular date, which shall be true and correct in all respects as of that date); however, unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, results or would result in a Company Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer to the foregoing effect.

(b) The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer to such effect.

(c) Since the date of this Agreement, there shall not have been any Company Material Adverse Effect or any event, change, or effect that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(d) The Company shall have delivered to the Parent Support Agreements executed by each of the Company's directors and each of the Company's executive officers listed on Exhibit A attached hereto, pursuant to which each such director, executive officer has agreed, among other things, to vote all of the Company Capital Stock owned by such director or executive officer in favor of the approval of this Agreement and the transactions contemplated hereby, subject to the terms of the Support Agreement.

(e) No greater than five percent (5%) of the issued and outstanding shares of Company Capital Stock shall be Dissenting Shares as of the Closing Date.

(f) Foundry Group Select Fund, L.P. shall have fulfilled its obligations under the Foundry Commitment and the Closing Foundry Investment shall have closed with the cash proceeds thereof delivered to the Parent.

8.3 Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver at or prior to the Effective Time of the following conditions:

(a) The representations and warranties of the Parent and Merger Sub set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a particular date, which shall be true and correct in all respects as of that date); however, unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, results or would result in a Parent Material Adverse Effect. Company shall have received a certificate signed on behalf of the Parent by its Chief Executive Officer to the foregoing effect.

(b) Each of Parent and Merger Sub shall have performed in all material respects all of its respective obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by its Chief Executive Officer to such effect.

(c) Since the date of this Agreement, there shall not have been any Parent Material Adverse Effect or any event, change, or effect that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

(d) The Parent shall have delivered to the Company Support Agreements executed by each of the Parent's directors and each of the Parent's executive officers listed on Exhibit A attached hereto, pursuant to which each such director and executive officer has agreed, among other things, to vote all of the Parent Common Stock owned by such director or executive officer in favor of the approval of this Agreement and the transactions contemplated hereby, subject to the terms of the Support Agreement.

(e) Parent shall have raised at least the Target Net Proceeds in the Private Placement and on the other terms and conditions set forth in Section 7.1(b), and caused such proceeds to be released in full to Parent no later than the date of Closing.

(f) Parent shall have executed and delivered to Foundry Group Select Fund, L.P. a registration rights agreement providing for the filing by the Parent of a Registration Statement on Form S-3 or other appropriate form under the Securities Act to permit registration of the sale of shares of Parent Common Stock issued to Foundry Group Select Fund, L.P. pursuant to the Parent Stock Issuance Conversion.

9. TERMINATION AND AMENDMENT

9.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action taken or authorized by the Board of Directors of the terminating party or parties, notwithstanding any requisite approval of this Agreement by the stockholders of the Company or Parent, and whether before or after the stockholders of the Company have approved this Agreement by Written Consent, as follows (the date of any such termination, the "**Termination Date**"):

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

(b) by either Parent or the Company:

(i) if the Effective Time shall not have occurred on or before November 30, 2019 (the "**Outside Date**"); provided, however, that if by the Outside Date, any of the conditions set forth in Section 8.1(b) or Section 8.1(c) shall not have been satisfied but the other conditions set forth in Sections 8.1 through 8.3 shall have been satisfied, the Outside Date may be extended for one or more periods of up to thirty (30) days per extension by each of Parent and the Company, in its respective discretion, up to an aggregate extension so that the Outside Date, as so extended, shall not be later than the twelve (12) month anniversary of the date hereof (in which case any references to the Outside Date herein shall mean the Outside Date as extended); and provided further that the right to terminate this Agreement under this Section 9.1(b)(i) shall not be available to a party whose breach of any representation, warranty, covenant, or agreement set forth in this Agreement has been the cause of, or resulted in, the failure of the Merger to be consummated on or before the Outside Date; or

(ii) if any Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced, or entered any law or order making illegal, permanently enjoining, or otherwise permanently prohibiting the consummation of the Merger, the Parent Stock Issuance, or the other transactions contemplated by this Agreement, and such law or order shall have become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(b)(ii) shall not be available to any party whose breach of any representation, warranty, covenant, or agreement set

forth in this Agreement has been the cause of, or resulted in, the issuance, promulgation, enforcement, or entry of any such law or order;

(c) by the Company:

(i) if: (A) the Parent Board shall have made a Change of Recommendation; or (B) the Parent shall have breached or failed to perform in any material respect any of its covenants and agreements set forth in Section 7.9; or

(ii) if there shall have been a breach of any representation, warranty, covenant, or agreement on the part of the Parent set forth in this Agreement such that the conditions to the Closing of the Merger set forth in Section 8.3(a) or Section 8.3(b), as applicable, would not be satisfied and, cannot be cured by the Parent or, if capable of being cured, shall not have been cured by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days following receipt of written notice from Company describing such breach or failure in reasonable detail; provided, that Company shall have given the Parent at least 30 days written notice prior to such termination stating Company's intention to terminate this Agreement pursuant to this Section 9.1(c); provided further, that Company shall not have the right to terminate this Agreement pursuant to this Section 9.1(c)(ii) if Company is then in material breach of any representation, warranty, covenant, or obligation hereunder, which breach has not been cured.

(d) by Parent:

(i) if the Company shall have breached or failed to perform in any material respect any of its covenants and agreements set forth in Section 7.9;

(ii) if there shall have been a breach of any representation, warranty, covenant, or agreement on the part of the Company set forth in this Agreement such that the conditions to the Closing of the Merger set forth in Section 8.2(a) or Section 8.2(b), as applicable, would not be satisfied and, cannot be cured by the Company or, if capable of being cured, shall not have been cured by the earlier of (A) the Outside Date and (B) the date that is thirty (30) days following receipt of written notice from Parent describing such breach or failure in reasonable detail; provided further, that Parent shall not have the right to terminate this Agreement pursuant to this Section 9.1(d)(ii) if Parent is then in material breach of any representation, warranty, covenant, or obligation hereunder, which breach has not been cured.

9.2 Notice of Termination; Effect of Termination; Termination Fees.

(a) The party desiring to terminate this Agreement pursuant to Section 9.1 (other than pursuant to Section 9.1(a)) shall deliver written notice of such termination to each other party hereto specifying with particularity the reason for such termination, and any such termination in accordance with this Section 9.2 shall be effective immediately upon delivery of such written notice to the other parties hereto. Except as otherwise provided in this Article 9, if this Agreement is terminated pursuant to this Section 9, it will become void and of no further force and effect, with no liability on the part of any party to this Agreement (or any stockholder, director, officer, employee, agent, or Representative of such party) to any other party hereto (including any liability for any obligation to pay any consequential, special, multiple, punitive or exemplary damages, including damages arising from loss of profits, business opportunities or goodwill, in respect of any of the transactions contemplated hereby or thereby (including the Merger)), except: (i) with respect to Section 7.5(b), Section 7.9, this Section 9.2 and Article 10 (and any related definitions contained in any such Sections or Article), which shall remain in full force and effect; and (ii) with respect to any liabilities or damages incurred or suffered by a party, to the extent such liabilities or damages were the result of fraud or the willful and material breach by another party of any of its representations, warranties, covenants, or other agreements set forth in this Agreement.

(b) If this Agreement is terminated by: (i) Company pursuant to Section 9.1(c)(i) or Section 9.1(c)(ii), then the Parent shall pay to Company (by wire transfer of immediately available funds), within two Business Days after such termination, a fee in an amount equal to the Parent Termination Fee; or (ii) Parent pursuant to Section 9.1(d)(i) or Section 9.1(d)(ii), then Company shall pay to the Parent (by wire transfer of immediately available funds), within two Business Days after such termination, a fee in an amount equal to the Company Termination Fee; and

(c) As used in this Section 9.2:

(i) "**Company Termination Fee**" shall mean an amount equal to the actual, out-of-pocket expenses of the Company incurred in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated herein, but in no event greater than \$1,000,000 in the aggregate.

(ii) “**Parent Termination Fee**” shall mean an amount equal to the actual, out-of-pocket expenses of the Parent incurred in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated herein, but in no event greater than \$1,000,000 in the aggregate.

(d) The parties acknowledge that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement. The parties acknowledge that the Company Termination Fee and Parent Termination Fee, in the circumstances in which any such fee becomes payable, constitute liquidated damages and are not a penalty.

(e) There shall be deducted from any payments made pursuant to this Section 9.2 such amounts as may be required to be withheld therefrom under the Code or under any provision of U.S. state or local tax law.

9.3 Amendment. Subject to compliance with applicable law, this Agreement may be amended by the parties hereto, by action taken or authorized by their respective boards of directors, at any time before the Effective Time; provided, however, that after receipt of the Company Required Vote, there may not be any amendment of this Agreement which, by applicable law or in accordance with the rules of any relevant stock exchange, requires further approval of the Company’s stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

9.4 Extension; Waiver. At any time prior to the Effective Time, the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties of the other parties hereto contained herein or in any document delivered pursuant hereto and (c) waive compliance of the other parties hereto with any of the agreements or conditions contained herein; provided, however, that, after receipt of the Company Required Vote and Parent Required Vote, there may not be any extension or waiver of this Agreement which decreases the Merger Consideration (other than as any such adjustment to the Merger Consideration is provided for in this Agreement) or which adversely affects the rights of the Company’s or Parent’s stockholders hereunder without the approval of such stockholders. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10. GENERAL PROVISIONS

10.1 Nonsurvival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, except for those covenants and agreements contained herein and therein which by their terms apply in whole or in part after the Effective Time.

10.2 Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense, except that each of the Company and Parent shall bear and pay one-half of the costs and expenses incurred in connection with the filing and fees paid in respect of any regulatory filings, including filings made with the State Regulators and actions taken by the parties under Section 7.6.

10.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (a) on the date of actual delivery if delivered personally (with written confirmation of receipt), (b) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (c) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service, or (d) on the date of confirmation of receipt (or the first (1st) Business Day following such receipt if the date of such receipt is not a Business Day) of transmission by email, in each case to the intended recipient as set forth below (or to such other address or facsimile number as such party shall have specified in a written notice duly delivered to the other parties hereto):

(a) if to Parent or Merger Sub, to:

Glowpoint, Inc.
999 18th Street, Suite 1350S
Denver, CO 80202
Attention: Peter Holst

with a copy to:

Arnold & Porter Kaye Scholer LLP
370 Seventeenth Street, Suite 4400
Denver, CO 80202
Attention: Ron Levine

(b) if to the Company, to:

Oblong Industries, Inc.
923 E 3rd Street #107
Los Angeles, CA 90013
Attention: John Underkoffler

with a copy to:

Gunderson Dettmer Stough Villeneuve Franklin &
Hachigian, LLP
3570 Carmel Mountain Road, Suite 200
San Diego, California 92130
Attention: John Tolpa

10.4 Interpretation; Construction. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and the schedules hereto and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” Unless the context otherwise requires, “or” is not exclusive. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this Agreement shall be construed to require the Company, Merger Sub, Parent or any of their respective officers, directors, Subsidiaries or Affiliates to take any action which would violate or conflict with any applicable law (whether statutory or common), rule or regulation. This Agreement shall be construed without regard to any presumption or interpretation against the party drafting or causing any instrument to be drafted. All schedules accompanying this Agreement and all information specifically referenced in any such schedule form an integral part of this Agreement, and references to this Agreement include reference to them.

10.5 Entire Agreement. This Agreement (together with the exhibits hereto), the Company Disclosure Letter and the Parent Disclosure Letter constitute the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, other than the Confidentiality Agreement, which shall survive the execution and delivery of this Agreement and any termination of this Agreement.

10.6 Specific Performance. The parties acknowledge and agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions and that, accordingly, the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief sought in accordance with this Section 10.6 on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions in accordance with this Agreement to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

10.7 Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to any applicable conflicts of law provisions (except to the extent of mandatory provisions of federal law). Each of the parties hereto irrevocably submit to the exclusive jurisdiction and venue of the courts of the State of Colorado or of the United States of America, in each case located in the City and County of Denver, Colorado, for the purpose of any suit, action or other proceeding arising out of this Agreement, or any of the agreements or transactions contemplated hereby, which is brought by or against any other party hereto and hereby irrevocably agree (a) that all claims in respect of any such suit,

action or proceeding may be heard and determined in any such court and (b) not to commence any action suit or proceeding relating to this Agreement other than in such court. Each party hereto irrevocably and unconditionally waives and agrees not to assert in any such suit, action or proceeding, in each case, to the fullest extent permitted by applicable law, (i) any objection to the laying of venue of any such suit, action or proceeding brought in any such court, (ii) any claim that such party is not personally subject to the jurisdiction of any such court, and (iii) any claim that any such suit, action or proceeding is brought in an inconvenient forum. Each party hereto agrees that service of any process, summons, notice or document by U.S. registered mail addressed to such party shall be effective service of process for any action, suit or proceeding brought against such party in any such court. Each party hereto agrees that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon such party and may be enforced in any other courts to whose jurisdiction such party is or may be subject, by suit upon such judgment. The parties hereto further agree that all of the provisions of Section 10.11 relating to waiver of jury trial shall apply to any action, cause of action, claim, cross-claim or third-party claim referenced in this Section 10.7.

10.8 Severability. Any term or provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, and if any provision of this Agreement is determined to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable, in all cases so long as neither the economic nor legal substance of the transactions contemplated hereby is affected in any manner materially adverse to any party or its stockholders. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

10.9 Publicity. Parent, Merger Sub and the Company shall consult with each other before issuing any press release with respect to the Merger or this Agreement and shall not issue any such press release or make any such public statement without the prior consent of the other party, which shall not be unreasonably withheld or delayed; *provided, however*, that a party may, without the prior consent of the other party (but after prior consultation, to the extent practicable in the circumstances) issue such press release or make such public statement or SEC filing as may upon the advice of outside counsel be required by law or the rules and regulations of any applicable stock exchange (including the NYSE American). The parties have agreed upon the form of a joint press release announcing the Merger and the execution of this Agreement.

10.10 Assignment; Third Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations of any party hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Except for (a) the right of the Company's stockholders to receive the Merger Consideration at the Effective Time and (b) the rights of the Company's stockholders to pursue claims for damages and other relief, including equitable relief, for Parent's or Merger Sub's willful breach of this Agreement (provided, that the rights granted pursuant to this clause shall be enforceable on behalf of the stockholders only by the Company in its sole and absolute discretion), this Agreement (including the documents and instruments referred to herein) is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

10.11 Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.12 Counterparts; Delivery. This Agreement may be executed in multiple original, PDF or facsimile counterparts, each of which shall be deemed an original, and all of which taken together shall be considered one and the same agreement. Each executed signature page to this Agreement and to each agreement and certificate delivered by a party hereto pursuant to this Agreement may be delivered by any of the methods described in Section 10.3 hereof, provided that such delivery is effected in accordance with the notice information provided for in Section 10.3 hereof. In the event that any signature to this Agreement or any agreement or certificate delivered pursuant hereto, or any amendment thereof, is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a ".pdf" format data file to deliver any such signature page or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation or enforceability of a contract and each party hereto forever waives any such defense.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed by their respective officers hereunto duly authorized.

OBLONG INDUSTRIES, INC.

By: /s/ John Underkoffler
Name: John Underkoffler
Title: Chief Executive Officer

GLOWPOINT, INC.

By: /s/ Peter Holst
Name: Peter Holst
Title: President & Chief Executive Officer

GLOWPOINT MERGER SUB II, INC.

By: /s/ Peter Holst
Name: Peter Holst
Title: President & Chief Executive Officer

Signature Page to Agreement and Plan of Merger

Exhibit A

Directors and Executive Officers of Parent and Company Executing Support Agreements

Parent

Peter Holst
Jason Adelman
David Giangano
James Lusk
Richard Ramlall
David Clark

Company

John Underkoffler
Brad Feld

Exhibit B

Form of Support Agreement of Directors and Officers of Parent

VOTING AND SUPPORT AGREEMENT

This VOTING AND SUPPORT AGREEMENT, dated as of _____ (this "Agreement"), is entered into by and among Oblong Industries, Inc., a Delaware corporation ("Company"), and the undersigned signatory set forth on the signature page hereto under the heading "Parent Stockholder" (the "Parent Stockholder"). Company and Parent Stockholder are each sometimes referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings assigned to them in the Merger Agreement (as defined below).

WITNESSETH:

WHEREAS, Parent Stockholder is the beneficial or record owner and has either sole voting power or shared voting power over, such number of shares of Parent Capital Stock of Glowpoint, Inc., a Delaware corporation (the "Parent"), as is indicated opposite Parent Stockholder's name on Schedule A attached hereto, which (a) includes shares of Parent Capital Stock (i) acquired by means of purchase, dividend or distribution, or as a result of the exercise or vesting of any options, restricted shares or other equity-based awards under any Parent Stock Plan or the conversion of any convertible securities or otherwise or (ii) held by Parent Stockholder in a revocable trust or a retirement account but (b) does not include shares of Parent Capital Stock (i) subject to future vesting or (ii) that are not currently exercisable nor will become exercisable within 60 days of the date hereof;

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent, a wholly-owned subsidiary of Parent (the "Merger Sub") and the Company are entering into an Agreement and Plan of Merger (as amended from time to time, the "Merger Agreement") that provides, among other things, for the merger of Merger Sub with and into the Company, with the Company being the surviving entity (the "Merger"), upon the terms and subject to the conditions set forth in the Merger Agreement;

WHEREAS, as a condition and an inducement to Company's willingness to enter into the Merger Agreement, Company has required that Parent Stockholder agree, and Parent Stockholder has agreed to, enter into this Agreement with respect to all Parent Capital Stock that Parent Stockholder Beneficially Owns (including those owned of record);

WHEREAS, as a condition and an inducement to Company's willingness to enter into the Merger Agreement, Company has required that certain other Parent stockholders (the "Other Parent Stockholders") agree, and the Other Parent Stockholders have agreed, to enter into substantially similar voting and support agreements with respect to all Parent Capital Stock that such Other Parent Stockholders Beneficially Own (including those owned of record);

WHEREAS, prior to the date hereof, each of the Parent Board and the Company Board approved this Agreement and the transactions contemplated hereby for purposes of Section 203 of the DGCL; and

WHEREAS, Company desires that Parent Stockholder agrees, and Parent Stockholder is willing to agree, subject to the limitations herein, not to Transfer (as defined below) any of its Subject Securities (as defined below), and to vote its Subject Securities in a manner so as to facilitate consummation of the Merger and the other transactions contemplated by the Merger Agreement as promptly as reasonably practicable.

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

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Section 1 or elsewhere in this Agreement.

"Beneficially Own" or "Beneficial Ownership" has the meaning assigned to such term in Rule 13d-3 under the Exchange Act, and Parent Stockholder's beneficial ownership of securities shall be calculated in accordance with the provisions of such rule (in each case, irrespective of whether or not such rule is actually applicable in such circumstance). For the avoidance of doubt, Beneficially Own and Beneficial Ownership shall also include record ownership of securities.

"Beneficial Owners" shall mean Persons who Beneficially Own the referenced securities.

"Expiration Time" shall mean the earliest to occur of (a) the receipt of the Parent Required Vote, (b) such date and time as the Merger Agreement shall be terminated pursuant to Article IX thereof or (c) the termination of this Agreement by mutual written consent of the Parties.

"Permitted Transfer" shall mean, in each case, with respect to Parent Stockholder, so long as (a) such Transfer is in accordance with applicable law and (b) Parent Stockholder is, and at all times has been, in compliance with this Agreement, (A) any Transfer of Subject Securities by Parent Stockholder to an Other Parent Stockholder or to an Affiliate of Parent Stockholder, so long as such Affiliate, in connection with, and prior to, such Transfer, executes a Joinder to this Agreement in the form attached hereto as Exhibit I, pursuant to which such Affiliate agrees to become a party to this Agreement and be subject to the restrictions and obligations applicable to Parent Stockholder and otherwise become a party for all purposes of this Agreement (the "Joinder"); (B) any Transfer of Subject Securities (i) as a bona fide gift or gifts, (ii) by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or a member of the immediate family of Parent Stockholder, (iii) by operation of law, such as pursuant to a qualified domestic order or as required by a divorce settlement, in each case, so long as such transferee executes a Joinder or (iv) pursuant to net exercises in connection with option exercises or similar transactions under the Parent's equity incentive plans; or (C) any Transfer of Subject Securities in connection with the consummation of the Merger and as expressly provided for in the Merger Agreement; *provided* that no such Transfer shall relieve Parent Stockholder from its obligations under this Agreement, other than with respect to the Parent Common Stock transferred in accordance with the foregoing provision.

"Subject Securities" shall mean shares of Parent Common Stock, New Parent Stock and Parent Preferred Stock.

"Transfer" means (a) any direct or indirect offer, sale, lease, assignment, encumbrance, loan, pledge, grant of a security interest, hypothecation, disposition or other transfer (by operation of law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, lease, assignment, encumbrance, loan, pledge, hypothecation, disposition or other transfer (by operation of law or otherwise), of any capital stock or interest in any capital stock (or any security convertible or exchangeable into such capital stock), including in each case through the Transfer of any Person or any interest in any Person or (b) in respect of any capital stock or interest in any capital stock, to enter into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transaction is to be settled by delivery of securities, in cash or otherwise. For purposes of this Agreement, "capital stock" shall include interests in a partnership or limited liability company.

2. **Agreement to Retain Subject Securities.**

A. Transfer and Encumbrance of Subject Securities. Other than a Permitted Transfer, hereafter until the Expiration Time, Parent Stockholder shall not, with respect to any Subject Securities Beneficially Owned by Parent Stockholder, (a) Transfer any such Subject Securities, or (b) deposit any such Subject Securities into a voting trust or enter into a voting agreement or arrangement with respect to such Subject Securities or grant any proxy (except as otherwise provided herein) or power of attorney with respect thereto.

B. Injunction. Notwithstanding anything to the contrary in this Agreement, if at any time following the date hereof and prior to the Expiration Time a Governmental Entity of competent jurisdiction enters an order restraining, enjoining or otherwise prohibiting Parent Stockholder or its Affiliates from (a) consummating the transactions contemplated by the Merger Agreement or (b) taking any action pursuant to Section 3 or Section 4, then (i) the obligations of Parent Stockholder set forth in Section 3 and the irrevocable proxy and power of attorney in Section 4 shall be of no force and effect for so long as such order is in effect and, in the case of clause (b), solely to the extent such order restrains, enjoins or otherwise prohibits Parent Stockholder from taking any such action, and (ii) Parent Stockholder shall cause the Subject Securities to not be represented in person or by proxy at any meeting at which a vote of Parent Stockholder on the Merger is requested. Notwithstanding anything to the contrary in this Section 2(B), the restrictions set forth in Section 2(A) shall continue to apply with respect to the Subject Securities until the Expiration Time.

C. Additional Purchases: Adjustments. Parent Stockholder agrees that any shares of Parent Common Stock or Parent Preferred Stock and any other shares of capital stock or other equity that Parent Stockholder purchases or otherwise acquires after the execution of this Agreement and prior to the Expiration Time (the "New Parent Stock") shall be subject to the terms and conditions of this Agreement to the same extent as and shall constitute Subject Securities, and Parent Stockholder shall promptly notify Company of the existence of any New Parent Stock. In the event of any stock

split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares or the like of the capital stock of the Parent affecting the Subject Securities, the terms of this Agreement shall apply to the resulting securities.

D. **Unpermitted Transfers: Involuntary Transfers.** Any Transfer or attempted Transfer of any Subject Securities in violation of this **Section 2** shall, to the fullest extent permitted by law, be null and void *ab initio*. If any involuntary Transfer of any of Parent Stockholder's Subject Securities shall occur, the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Subject Securities subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement.

3. **Agreement to Vote and Approve.** From and after the date hereof until the Expiration Time, at every meeting of the stockholders of the Parent called with respect to any of the following matters, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of the Parent with respect to any of the following matters, Parent Stockholder shall, and shall cause each holder of record of Subject Securities that are Beneficially Owned by Parent Stockholder on any applicable record date to (including via proxy), vote the Subject Securities: (a) in favor of (i) the approval of the New Parent Incentive Plan and the Parent Stock Issuance Conversion, and (ii) any proposal to adjourn or postpone such meeting of stockholders of the Parent to a later date if there are not sufficient votes to approve the New Parent Incentive Plan and the Parent Stock Issuance Conversion; and (b) against (i) any action or agreement that would reasonably be expected to result in any condition to the consummation of the Merger set forth in Article VIII of the Merger Agreement not being fulfilled, (ii) any Acquisition Proposal, (iii) any action which would materially delay, materially postpone or materially adversely affect the consummation of the New Parent Incentive Plan and the Parent Stock Issuance Conversion, or dilute, in any material respect, the benefit of the transactions contemplated thereby to Company or to Company's stockholders, and (iv) any action which would result in a breach of any representation, warranty, covenant or agreement of the Parent in the Merger Agreement. The obligations specified in this **Section 3** shall apply whether or not (x) the board of directors of the Parent (or any committee thereof) makes a Change of Recommendation or (y) the Parent breaches any of its representations, warranties, agreements or covenants set forth in the Merger Agreement.

4. **Irrevocable Proxy.** Parent Stockholder hereby revokes any and all previous proxies granted with respect to Parent Stockholder's Subject Securities. By execution of this Agreement, Parent Stockholder hereby appoints and constitutes Company, until the Expiration Time (at which time this proxy shall automatically be revoked), with full power of substitution and resubstitution, as Parent Stockholder's true and lawful attorney-in-fact and proxy (which proxy is irrevocable and which appointment is coupled with an interest, including for purposes of Section 212 of the DGCL), to the fullest extent of Parent Stockholder's rights with respect to the Subject Securities Beneficially Owned by Parent Stockholder, to vote such Subject Securities solely with respect to the matters set forth in **Section 3** hereof and Parent Stockholder shall retain the authority to vote its Subject Securities in its discretion on all other matters. Parent Stockholder and the Company (or its substitute hereunder) shall have the right to vote the Subject Securities in accordance with this Agreement on the matters set forth in **Section 3** and Parent Stockholder shall be obligated to so vote the Subject Securities.

5. **Representations and Warranties of Parent Stockholder.** Parent Stockholder represents and warrants to Company as follows:

A. **Due Authority.** Parent Stockholder has the full power and authority to make, enter into and carry out the terms of this Agreement and to grant the irrevocable proxy as set forth in **Section 4** hereof. This Agreement has been duly and validly executed and delivered by such Parent Stockholder and constitutes a valid and binding agreement of Parent Stockholder enforceable against it in accordance with its terms.

B. **Ownership of the Subject Securities.** As of the date hereof, Parent Stockholder (a) Beneficially Owns the shares of Subject Securities indicated on **Schedule A** hereto opposite Parent Stockholder's name, free and clear of any and all Liens, other than those created by this Agreement or as set forth on **Schedule B-1**, and, (b) except as set forth on **Schedule B-2**, has sole voting power or shared voting power over all of the shares of Subject Securities Beneficially Owned by Parent Stockholder. As of the date hereof, Parent Stockholder does not Beneficially Own any capital stock or other securities of the Parent other than the shares of Subject Securities set forth on **Schedule A** opposite Parent Stockholder's name. As of the date hereof, Parent Stockholder does not Beneficially Own any rights to purchase or acquire any shares of capital stock of the Parent except as set forth on **Schedule A** opposite Parent Stockholder's name, or as set forth on **Schedule B-3**.

C. **No Conflict: Consents.**

i. The execution and delivery of this Agreement by Parent Stockholder does not, and the performance by Parent Stockholder of the obligations under this Agreement and the compliance by Parent Stockholder with any provisions hereof do not and will not: (i) conflict with or violate any law applicable to Parent Stockholder, or (ii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the shares of Subject Securities Beneficially Owned by Parent Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which such Parent Stockholder is a party or by which Parent Stockholder is bound which would materially adversely affect Parent Stockholder's ability to perform its obligations hereunder.

ii. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person, is required by or with respect to Parent Stockholder in connection with the execution and delivery of this Agreement or the performance by Parent Stockholder of its obligations hereunder.

D. Absence of Litigation. There is no threatened, legal, administrative, arbitral or other proceedings, claims or actions (" Proceedings") pending against, or, to the knowledge of such Parent Stockholder, threatened against or affecting, Parent Stockholder that would materially adversely affect the ability of such Parent Stockholder to perform Parent Stockholder's obligations hereunder.

E. Ownership of Company Capital Stock. As of the date hereof, Parent Stockholder does not Beneficially Own directly any shares of Company Capital Stock.

6. Termination. This Agreement shall terminate and shall have no further force or effect immediately as of and following the Expiration Time; *provided, however*, that (a) termination of this Agreement shall not relieve any party from liability for breach of this Agreement and (b) Section 10 (other than (x) the second and third sentences of Section 10(O) and (y) Section 10(P)) shall survive termination of this Agreement.

7. Notice of Certain Events. Parent Stockholder shall notify Company in writing promptly of (a) any fact, event or circumstance that would cause or constitute, a breach in any material respect of the representations and warranties of Parent Stockholder under this Agreement and (b) the receipt by Parent Stockholder of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with this Agreement; *provided, however*, that the delivery of any notice pursuant to this Section 7 shall not limit or otherwise affect the remedies available to any party.

8. No Solicitation. Parent Stockholder will not, and will cause its Representatives not to, and will not announce any intention to, directly or indirectly (A) initiate, solicit or knowingly encourage or knowingly facilitate any inquiries, expressions of interest, proposals or offers that constitute or would reasonably be expected to lead to an Acquisition Proposal, (B) engage in or otherwise participate in any discussions or negotiations regarding an Acquisition Proposal or that would reasonably be expected to lead to an Acquisition Proposal, (C) provide (including through access to any data room) any non-public information to any Person relating to the Company or the Parent, or any of their respective Subsidiaries with respect to an Acquisition Proposal or that the Company or Parent reasonably expects would be used for the purposes of formulating an Acquisition Proposal, (D) enter into any agreement, letter of intent, memorandum of understanding, agreement in principle or Contract with respect to any Acquisition Proposal, (E) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Company or the Parent, or (F) resolve or agree or publicly propose to, or permit the Parent or any of its Subsidiaries or any of its or their Representatives to resolve or agree or publicly propose to take any of the actions referred to in clauses (A) - (E). Notwithstanding anything in this Agreement to the contrary, Parent Stockholder, directly or indirectly through one or more of its Representatives, may engage in the actions referred to in clauses (A)-(E) of this Section 8 with any Person if the Parent is permitted to engage in such actions with such Person pursuant to Section 7.9 of the Merger Agreement, in each case subject to the restrictions and limitations set forth in Section 7.9 of the Merger Agreement.

9. Waiver of Certain Actions.

A. Parent Stockholder hereby waives, and agrees not to exercise, any rights of appraisal or rights of dissent from the Merger that Parent Stockholder may have with respect to the Subject Securities.

B. Parent Stockholder hereby agrees not to commence or participate in, and to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, against Company, the Parent or any of their respective Subsidiaries or successors (i) challenging the validity of, or seeking to enjoin or delay the

operation of, any provision of this Agreement or the Merger Agreement (including any claim seeking to enjoin or delay the Closing) or (ii) alleging a breach of any duty of the Parent Board or Company Board in connection with the Merger Agreement, this Agreement or the transactions contemplated thereby or hereby.

10. **Miscellaneous.**

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

B. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns. Any purported assignment in violation of this Section 10(B) shall be void and shall not be deemed to prevent Company from engaging in any merger, consolidation or other business combination transaction.

C. **Amendments and Modifications.** No provision of this Agreement may be amended or modified unless such amendment or modification is in writing and signed by (a) Company, and (b) Parent Stockholder. 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 applicable law.

D. **Notices.** All notices, requests and other communications to any party under, or otherwise in connection with, this Agreement shall be in writing and shall be deemed to have been duly given (a) if delivered in person, upon delivery; (b) if transmitted by electronic mail ("e-mail"), upon confirmation of receipt of such e-mail; or (c) if transmitted by national overnight courier, upon delivery, in each case addressed as follows:

(a) if to Parent Stockholder, to:

Glowpoint, Inc.
999 18th Street, Suite 1350S
Denver, CO 80202
Attention: Peter Holst

with a copy to:

Arnold & Porter Kaye Scholer LLP
370 Seventeenth Street, Suite 4400
Denver, CO 80202
Attention: Ron Levine

(b) if to the Company, to:

Oblong Industries, Inc.
923 E 3rd Street #107
Los Angeles, CA 90013
Attention: John Underkoffler

with a copy to:

Gunderson Dettmer Stough Villeneuve Franklin &
Hachigian, LLP
3570 Carmel Mountain Road, Suite 200
San Diego, California 92130
Attention: John Tolpa

Or to such other address as any Party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective upon receipt.

E. Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or related to this Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof.

F. Submission to Jurisdiction. The Parties irrevocably submit to the jurisdiction of the Court of Chancery of the State of Delaware or, if the Court of Chancery of the State of Delaware or the Delaware Supreme Court determines that, notwithstanding Section 111 of the DGCL, the Court of Chancery does not have or should not exercise subject matter jurisdiction over such matter, the Superior Court of the State of Delaware and the federal courts of the United States of America located in the State of Delaware solely in connection with any dispute that arises in respect of the interpretation and enforcement of the provisions of this Agreement and the documents referred to in this Agreement or in respect of the transactions, and hereby waive, and agree not to assert, as a defense in any action, suit or Proceeding for interpretation or enforcement hereof or any such document that it is not subject thereto or that such action, suit or Proceeding may not be brought or is not maintainable in said courts or that venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the Parties irrevocably agree that all claims with respect to such action, suit or Proceeding shall be heard and determined exclusively by such a Delaware state or federal court. The Parties hereby consent to and grant any such court jurisdiction over the person of such Parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with such action, suit or Proceeding in the manner provided in Section 10(D) or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

G. Enforcement. The Parties agree that irreparable damage, for which monetary damages would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached by the Parties. Prior to the termination of this Agreement pursuant to Section 6, it is accordingly agreed that the Parties shall be entitled to an injunction or injunctions, or any other appropriate form of specific performance or equitable relief, to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, in each case in accordance with this Section 10(G), this being in addition to any other remedy to which they are entitled under the terms of this Agreement at law or in equity.

H. No Third Party Beneficiaries. Nothing in this Agreement express or implied, is intended to or shall confer upon any Person other than the Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

I. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (C) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 10(I).

J. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

K. Counterparts. This Agreement may be executed in two or more counterparts, including via electronic means (such as DocuSign, Adobe Sign, photocopy or scan of an original signature, or otherwise), all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all parties need not sign the same counterparts.

L. No Agreement Until Executed. This Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the Parties unless and until (a) the Parent Board approves the Merger Agreement, and the transactions and documents contemplated thereby, including this Agreement, (b) the Merger Agreement is executed and delivered by all parties thereto, and (c) this Agreement is executed and delivered by the Parties.

M. Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense, whether or not the Merger is consummated.

N. Action in Parent Stockholder Capacity Only. No Person executing this Agreement (or designee or Representative of such Person) who has been, is or becomes during the term of this Agreement a director or officer of the Parent shall be deemed to make any agreement or understanding in this Agreement in such Person's capacity as a director or officer of the Parent. The Parties acknowledge and agree that this Agreement is entered into by Parent Stockholder solely in its capacity as the Beneficial Owner of shares of Subject Securities, and not, if applicable, in such Parent Stockholder's capacity as a director, officer or employee of the Parent, and nothing in this Agreement shall (a) restrict in any respect any actions taken (or failure to take actions) by Parent Stockholder or its designees or Representatives who are a director or officer of the Parent solely in his or her capacity as a director or officer of the Parent or (b) be construed to prohibit, limit or restrict Parent Stockholder from exercising its fiduciary duties as a director or officer of the Parent. For the avoidance of doubt, nothing in this Section 10(N) shall in any way modify, alter or amend any of the terms of the Merger Agreement.

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

P. Obligation to Update Schedule A. Parent Stockholder agrees that in connection with any acquisitions or Transfers (to the extent permitted) of Subject Securities by Parent Stockholder, Parent Stockholder will, as promptly as practicable following the completion of thereof, notify Company in writing of such acquisition or Transfer and the Parties will update Schedule A to reflect the effect of such acquisition or Transfer.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their authorized representatives as of the date first above written.

OBLONG INDUSTRIES, INC.,

a Delaware corporation

By: _____
Name: _____
Title: _____

Signature Page to Voting and Support Agreement

[Parent Stockholder]

Signature Page to Voting and Support Agreement

SCHEDULE A

Parent Stockholder	Number of Shares of Parent Common Stock Beneficially Owned	Number of Shares of Parent Common Stock Owned of Record	Number and Designation of Shares of Parent Preferred Stock Beneficially Owned	Number and Designation of Shares of Parent Preferred Stock Owned of Record
	[]	[]	None	None

Schedule A to Voting and Support Agreement

SCHEDULE B-1

[Y]

Schedule B-1 to Voting and Support Agreement

SCHEDULE B-2

[Y]

Schedule B-2 to Voting and Support Agreement

SCHEDULE B-3

[Y]

Schedule B-3 to Voting and Support Agreement

EXHIBIT I

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder Agreement**") is executed by the undersigned (the "**Transferee**") pursuant to the terms of that certain Voting Agreement, dated as of _____, 20__ (the "**Voting Agreement**"), by and between Oblong Industries, Inc. a Delaware corporation, and the signatory thereto (the "**Parent Stockholder**"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Voting Agreement. By the execution of this Joinder Agreement, the Transferee agrees as follows:

(a) Acknowledgment. Transferee acknowledges that Transferee is the recipient of a Transfer of Subject Securities of Glowpoint, Inc., a Delaware corporation, subject to the terms and conditions of the Voting Agreement (the "**Transfer Securities**").

(b) Agreement. Transferee (i) agrees that the Transfer Securities shall be bound by and subject to the terms of the Voting Agreement, (ii) hereby adopts the Voting Agreement with the same force and effect as if Transferee were originally a party thereto and (iii) agrees to be subject to the restrictions and obligations applicable to the Parent Stockholder and otherwise become a party to the Voting Agreement for all purposes thereunder.

(c) Notice. Any notice required or permitted by the Voting Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

EXECUTED AND DATED this ____ day of _____, 20__.

TRANSFEREE

By: _____
Name: _____
Address: _____
Email: _____

ACCEPTED AND ACKNOWLEDGED:

OBLONG INDUSTRIES, INC.

By: _____
Name: _____
Title: _____

Exhibit C

Form of Support Agreement of Directors, Officers, Stockholders of Company

VOTING AND SUPPORT AGREEMENT

This VOTING AND SUPPORT AGREEMENT, dated as of _____ (this "Agreement"), is entered into by and among Glowpoint, Inc., a Delaware corporation ("Parent"), and the undersigned signatory set forth on the signature page hereto under the heading "Company Stockholder" (the "Company Stockholder"). Parent and Company Stockholder are each sometimes referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings assigned to them in the Merger Agreement (as defined below).

WITNESSETH:

WHEREAS, Company Stockholder is the beneficial or record owner and has either sole voting power or shared voting power over, such number of shares of Company Capital Stock of Oblong Industries, Inc., a Delaware corporation (the "Company"), as is indicated opposite Company Stockholder's name on Schedule A attached hereto, which (a) includes shares of Company Capital Stock (i) acquired by means of purchase, dividend or distribution, or as a result of the exercise or vesting of any options, restricted shares or other equity-based awards under any Company Stock Plan or the conversion of any convertible securities or otherwise or (ii) held by Company Stockholder in a revocable trust or a retirement account but (b) does not include shares of Company Capital Stock (i) subject to future vesting or (ii) that are not currently exercisable nor will become exercisable within 60 days of the date hereof;

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent, a wholly-owned subsidiary of Parent (the "Merger Sub") and the Company are entering into an Agreement and Plan of Merger (as amended from time to time, the "Merger Agreement") that provides, among other things, for the merger of Merger Sub with and into the Company, with the Company being the surviving entity (the "Merger"), upon the terms and subject to the conditions set forth in the Merger Agreement;

WHEREAS, as a condition and an inducement to Parent's willingness to enter into the Merger Agreement, Parent has required that Company Stockholder agree, and Company Stockholder has agreed to, enter into this Agreement with respect to all Company Capital Stock that Company Stockholder Beneficially Owns (including those owned of record);

WHEREAS, as a condition and an inducement to Parent's willingness to enter into the Merger Agreement, Parent has required that certain other company stockholders (the "Other Company Stockholders") agree, and the Other Company Stockholders have agreed, to enter into substantially similar voting and support agreements with respect to all Company Capital Stock that such Other Company Stockholders Beneficially Own (including those owned of record);

WHEREAS, prior to the date hereof, each of the Parent Board and the Company Board approved this Agreement and the transactions contemplated hereby for purposes of Section 203 of the DGCL; and

WHEREAS, Parent desires that Company Stockholder agrees, and Company Stockholder is willing to agree, subject to the limitations herein, not to Transfer (as defined below) any of its Subject Securities (as defined below), and to vote its Subject Securities in a manner so as to facilitate consummation of the Merger and the other transactions contemplated by the Merger Agreement as promptly as reasonably practicable.

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

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. When used in this Agreement, the following terms in all of their tenses, cases and correlative forms shall have the meanings assigned to them in this Section 1 or elsewhere in this Agreement.

"Beneficially Own" or "Beneficial Ownership" has the meaning assigned to such term in Rule 13d-3 under the Exchange Act, and Company Stockholder's beneficial ownership of securities shall be calculated in accordance with the provisions of such rule (in each case, irrespective of whether or not such rule is actually applicable in such circumstance). For the avoidance of doubt, Beneficially Own and Beneficial Ownership shall also include record ownership of securities.

"Beneficial Owners" shall mean Persons who Beneficially Own the referenced securities.

"Expiration Time" shall mean the earliest to occur of (a) the Effective Time, (b) such date and time as the Merger Agreement shall be terminated pursuant to Article IX thereof or (c) the termination of this Agreement by mutual written consent of the Parties.

"Permitted Transfer" shall mean, in each case, with respect to Company Stockholder, so long as (a) such Transfer is in accordance with applicable law and (b) Company Stockholder is, and at all times has been, in compliance with this Agreement, (A) any Transfer of Subject Securities by Company Stockholder to an Other Company Stockholder or to an Affiliate of Company Stockholder, so long as such Affiliate, in connection with, and prior to, such Transfer, executes a Joinder to this Agreement in the form attached hereto as Exhibit L, pursuant to which such Affiliate agrees to become a party to this Agreement and be subject to the restrictions and obligations applicable to Company Stockholder and otherwise become a party for all purposes of this Agreement (the "Joinder"); (B) any Transfer of Subject Securities (i) as a bona fide gift or gifts, (ii) by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or a member of the immediate family of Company Stockholder, (iii) by operation of law, such as pursuant to a qualified domestic order or as required by a divorce settlement, in each case, so long as such transferee executes a Joinder or (iv) pursuant to net exercises in connection with option exercises or similar transactions under the Company's equity incentive plans; or (C) any Transfer of Subject Securities in connection with the consummation of the Merger and as expressly provided for in the Merger Agreement; *provided* that no such Transfer shall relieve Company Stockholder from its obligations under this Agreement, other than with respect to the Company Common Stock transferred in accordance with the foregoing provision.

"Subject Securities" shall mean shares of Company Common Stock, New Company Stock and Company Preferred Stock.

"Transfer" means (a) any direct or indirect offer, sale, lease, assignment, encumbrance, loan, pledge, grant of a security interest, hypothecation, disposition or other transfer (by operation of law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, lease, assignment, encumbrance, loan, pledge, hypothecation, disposition or other transfer (by operation of law or otherwise), of any capital stock or interest in any capital stock (or any security convertible or exchangeable into such capital stock), including in each case through the Transfer of any Person or any interest in any Person or (b) in respect of any capital stock or interest in any capital stock, to enter into any swap or any other agreement, transaction or series of transactions that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such capital stock or interest in capital stock, whether any such swap, agreement, transaction or series of transaction is to be settled by delivery of securities, in cash or otherwise. For purposes of this Agreement, "capital stock" shall include interests in a partnership or limited liability company.

2. **Agreement to Retain Subject Securities.**

A. Transfer and Encumbrance of Subject Securities. Other than a Permitted Transfer, hereafter until the Expiration Time, Company Stockholder shall not, with respect to any Subject Securities Beneficially Owned by Company Stockholder, (a) Transfer any such Subject Securities, or (b) deposit any such Subject Securities into a voting trust or enter into a voting agreement or arrangement with respect to such Subject Securities or grant any proxy (except as otherwise provided herein) or power of attorney with respect thereto.

B. Injunction. Notwithstanding anything to the contrary in this Agreement, if at any time following the date hereof and prior to the Expiration Time a Governmental Entity of competent jurisdiction enters an order restraining, enjoining or otherwise prohibiting Company Stockholder or its Affiliates from (a) consummating the transactions contemplated by the Merger Agreement or (b) taking any action pursuant to Section 3 or Section 5, then (i) the obligations of Company Stockholder set forth in Section 3 and the irrevocable proxy and power of attorney in Section 5 shall be of no force and effect for so long as such order is in effect and, in the case of clause (b), solely to the extent such order restrains, enjoins or otherwise prohibits Company Stockholder from taking any such action, and (ii) Company Stockholder shall cause the Subject Securities to not be represented in person or by proxy at any meeting at which a vote of Company Stockholder on the Merger is requested. Notwithstanding anything to the contrary in this Section 2(B), the restrictions set forth in Section 2(A) shall continue to apply with respect to the Subject Securities until the Expiration Time.

C. Additional Purchases; Adjustments. Company Stockholder agrees that any shares of Company Common Stock or Company Preferred Stock and any other shares of capital stock or other equity that Company Stockholder purchases or otherwise acquires after the execution of this Agreement and prior to the Expiration Time (the "New Company")

Stock) shall be subject to the terms and conditions of this Agreement to the same extent as and shall constitute Subject Securities, and Company Stockholder shall promptly notify Parent of the existence of any New Company Stock. In the event of any stock split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares or the like of the capital stock of the Company affecting the Subject Securities, the terms of this Agreement shall apply to the resulting securities.

D. **Unpermitted Transfers; Involuntary Transfers.** Any Transfer or attempted Transfer of any Subject Securities in violation of this Section 2 shall, to the fullest extent permitted by law, be null and void *ab initio*. If any involuntary Transfer of any of Company Stockholder's Subject Securities shall occur, the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Subject Securities subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement.

3. **Agreement to Vote and Approve.** From and after the date hereof until the Expiration Time, at every meeting of the stockholders of the Company called with respect to any of the following matters, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of the Company with respect to any of the following matters, Company Stockholder shall, and shall cause each holder of record of Subject Securities that are Beneficially Owned by Company Stockholder on any applicable record date to (including via proxy), vote the Subject Securities: (a) in favor of (i) the approval of the Merger and adoption of the Merger Agreement, and (ii) any proposal to adjourn or postpone such meeting of stockholders of the Company to a later date if there are not sufficient votes to approve the Merger and adopt the Merger Agreement and (b) against (i) any action or agreement that would reasonably be expected to result in any condition to the consummation of the Merger set forth in Article VIII of the Merger Agreement not being fulfilled, (ii) any Acquisition Proposal, (iii) any action which would materially delay, materially postpone or materially adversely affect the consummation of the transactions contemplated by the Merger Agreement, including the Merger, or dilute, in any material respect, the benefit of the transactions contemplated thereby to Parent or to Parent's stockholders, and (iv) any action which would result in a breach of any representation, warranty, covenant or agreement of the Company in the Merger Agreement. The obligations specified in this Section 3 shall apply whether or not (x) the board of directors of the Company (or any committee thereof) makes a Change of Recommendation or (y) the Company breaches any of its representations, warranties, agreements or covenants set forth in the Merger Agreement.

4. **Written Consent of Company Stockholder.** By execution of this Agreement, the Company Stockholder consents, with respect to all Subject Securities that are Beneficially Owned by Company Stockholder as of the date hereof, to the Merger, the adoption by the Company of the Merger Agreement, and the execution by the Company of all other transactions contemplated by the Merger Agreement to be executed by the Company. The Company and its officers and directors are authorized to attach this Agreement to any written consent of the Company's stockholders as evidence of the Company Stockholder's consent to the items set forth in the foregoing sentence.

5. **Irrevocable Proxy.** Company Stockholder hereby revokes any and all previous proxies granted with respect to Company Stockholder's Subject Securities. By execution of this Agreement, Company Stockholder hereby appoints and constitutes Parent, until the Expiration Time (at which time this proxy shall automatically be revoked), with full power of substitution and resubstitution, as Company Stockholder's true and lawful attorney-in-fact and proxy (which proxy is irrevocable and which appointment is coupled with an interest, including for purposes of Section 212 of the DGCL), to the fullest extent of Company Stockholder's rights with respect to the Subject Securities Beneficially Owned by Company Stockholder, to vote such Subject Securities solely with respect to the matters set forth in Section 3 hereof and Company Stockholder shall retain the authority to vote its Subject Securities in its discretion on all other matters. Company Stockholder and the Parent (or its substitute hereunder) shall have the right to vote the Subject Securities in accordance with this Agreement on the matters set forth in Section 3 and Company Stockholder shall be obligated to so vote the Subject Securities.

6. **Further Agreements.**

A. **Conversion of Notes.** In order to enable the Company to fulfill its obligations under Sections 2.1(b) and 7.15 of the Merger Agreement, the Company Stockholder will, prior to the Effective Time, convert all amounts owed by the Company to the Company Stockholder (directly or indirectly, including any outstanding principal, accrued and unpaid interest, fees, prepayment penalties, and amounts owed by the Company under Section 2.2 of the July NPA) under all tranches of Notes of the Company issued pursuant to that certain Note Purchase Agreement, dated July 31, 2019, by and among the Company, as borrower, and the Company Stockholder and the other lenders party thereto (the "July NPA"), into shares of Series E Preferred Stock, par value \$0.0001 per share, of the Company.

- B. Registration Rights Agreement. In order to enable the Parent to fulfill its obligations under Section 8.3(f) of the Merger Agreement, the Company Stockholder will, prior to the Effective Time, execute and deliver a registration rights agreement, in a customary form reasonably satisfactory to the Company Stockholder and Parent, providing for the filing by the Parent of a Registration Statement on Form S-3 or other appropriate form under the Securities Act to permit registration for the sale of shares of Parent Common Stock issued to Foundry Group Select Fund, L.P. pursuant to the Parent Stock Issuance Conversion.
- C. Series E Commitment. The Company Stockholder hereby commits and agrees, subject to the terms and conditions set forth in this Section 6(C) and the terms of one or more stock purchase or other agreements, in customary form, regarding the investments that are the subject of this Section 6(C), that (i) simultaneous with the Closing of the Merger, it shall cause Foundry Group Select Fund, L.P. to (a) purchase shares of the Parent's Series E Convertible Preferred Stock, par value \$0.0001 per share, on the terms set forth in the term sheet attached as Exhibit II hereto ("Series E Term Sheet"), for an aggregate purchase price equal to \$2,500,000 (the "Initial Commitment"), and (b) transfer the purchase price of the Initial Commitment in full, in immediately available funds, to an account designated by the Parent; and (ii) upon written demand by the Parent, in the discretion of the Parent's management (which demand is expected to occur prior to December 31, 2019), cause Foundry Group Select Fund, L.P. to (a) purchase additional securities of the Parent as set forth under "Issuance; Investor Commitment" in the Series E Term Sheet, for an aggregate purchase price equal to the lesser of (x) \$500,000 and (y) the amount equal to \$3.75 million minus the gross proceeds of the Parent financings contemplated by the Series E Term Sheet (the "Second Commitment"), and (b) transfer the purchase price of the Second Commitment in full, in immediately available funds, to an account designated by the Parent. Foundry Group Select Fund, L.P. may effect the purchase of (i) a portion of the Initial Commitment above \$2,000,000 and (ii) a portion of the Second Commitment, through one or more co-investors designated by it. The amount of the Initial Commitment and/or the Second Commitment to be funded under this Section 6(C) may be reduced in an amount specified by Parent but only to the extent that Parent has consummated the transactions contemplated by the Merger Agreement with the Company Stockholder purchasing, or causing to be purchased, less than the full amount of the Initial Commitment and/or Second Commitment, as applicable.
7. **Representations and Warranties of Company Stockholder**. Company Stockholder represents and warrants to Parent as follows:
- A. Due Authority. Company Stockholder has the full power and authority to make, enter into and carry out the terms of this Agreement and to grant the irrevocable proxy as set forth in Section 5 hereof. This Agreement has been duly and validly executed and delivered by such Company Stockholder and constitutes a valid and binding agreement of Company Stockholder enforceable against it in accordance with its terms.
- B. Ownership of the Subject Securities. As of the date hereof, Company Stockholder (a) Beneficially Owns the shares of Subject Securities indicated on Schedule A hereto opposite Company Stockholder's name, free and clear of any and all Liens, other than those created by this Agreement or as set forth on Schedule B-1, and, (b) except as set forth on Schedule B-2, has sole voting power or shared voting power over all of the shares of Subject Securities Beneficially Owned by Company Stockholder. As of the date hereof, Company Stockholder does not Beneficially Own any capital stock or other securities of the Company other than the shares of Subject Securities set forth on Schedule A opposite Company Stockholder's name. As of the date hereof, Company Stockholder does not Beneficially Own any rights to purchase or acquire any shares of capital stock of the Company except as set forth on Schedule A opposite Company Stockholder's name, or as set forth on Schedule B-3.
- C. No Conflict; Consents.
- i. The execution and delivery of this Agreement by Company Stockholder does not, and the performance by Company Stockholder of the obligations under this Agreement and the compliance by Company Stockholder with any provisions hereof do not and will not: (i) conflict with or violate any law applicable to Company Stockholder, or (ii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the shares of Subject Securities Beneficially Owned by Company Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which such Company Stockholder
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is a party or by which Company Stockholder is bound which would materially adversely affect Company Stockholder's ability to perform its obligations hereunder.

ii. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person, is required by or with respect to Company Stockholder in connection with the execution and delivery of this Agreement or the performance by Company Stockholder of its obligations hereunder.

D. **Absence of Litigation.** There is no threatened, legal, administrative, arbitral or other proceedings, claims or actions (" Proceedings") pending against, or, to the knowledge of such Company Stockholder, threatened against or affecting, Company Stockholder that would materially adversely affect the ability of such Company Stockholder to perform Company Stockholder's obligations hereunder.

E. **Ownership of Parent Capital Stock.** As of the date hereof, Company Stockholder does not Beneficially Own directly any shares of Parent Capital Stock, other than in mutual funds or similar accounts.

8. **Termination.** This Agreement shall terminate and shall have no further force or effect immediately as of and following the Expiration Time; *provided, however*, that (a) termination of this Agreement shall not relieve any party from liability for breach of this Agreement and (b) Section 11 (other than (x) the second and third sentences of Section 11(Q) and (y) Section 11(P)) shall survive termination of this Agreement.

9. **Notice of Certain Events.** Company Stockholder shall notify Parent in writing promptly of (a) any fact, event or circumstance that would cause or constitute, a breach in any material respect of the representations and warranties of Company Stockholder under this Agreement and (b) the receipt by Company Stockholder of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with this Agreement; *provided, however*, that the delivery of any notice pursuant to this Section 8 shall not limit or otherwise affect the remedies available to any party.

10. **No Solicitation.** Company Stockholder will not, and will cause its Representatives not to, and will not announce any intention to, directly or indirectly (A) initiate, solicit or knowingly encourage or knowingly facilitate any inquiries, expressions of interest, proposals or offers that constitute or would reasonably be expected to lead to an Acquisition Proposal, (B) engage in or otherwise participate in any discussions or negotiations regarding an Acquisition Proposal or that would reasonably be expected to lead to an Acquisition Proposal, (C) provide (including through access to any data room) any non-public information to any Person relating to the Parent or the Company, or any of their respective Subsidiaries with respect to an Acquisition Proposal or that the Parent or Company reasonably expects would be used for the purposes of formulating an Acquisition Proposal, (D) enter into any agreement, letter of intent, memorandum of understanding, agreement in principle or Contract with respect to any Acquisition Proposal, (E) submit any Acquisition Proposal or any matter related thereto to the vote of the stockholders of the Parent or the Company, or (F) resolve or agree or publicly propose to, or permit the Company or any of its Subsidiaries or any of its or their Representatives to resolve or agree or publicly propose to take any of the actions referred to in clauses (A) - (E). Notwithstanding anything in this Agreement to the contrary, Company Stockholder, directly or indirectly through one or more of its Representatives, may engage in the actions referred to in clauses (A)-(E) of this Section 9 with any Person if the Company is permitted to engage in such actions with such Person pursuant to Section 7.9 of the Merger Agreement, in each case subject to the restrictions and limitations set forth in Section 7.9 of the Merger Agreement.

11. **Waiver of Certain Actions.**

A. Company Stockholder hereby waives, and agrees not to exercise, any rights of appraisal or rights of dissent from the Merger that Company Stockholder may have with respect to the Subject Securities.

B. Company Stockholder hereby agrees not to commence or participate in, and to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, against Parent, the Company or any of their respective Subsidiaries or successors (i) challenging the validity of, or seeking to enjoin or delay the operation of, any provision of this Agreement or the Merger Agreement (including any claim seeking to enjoin or delay the Closing) or (ii) alleging a breach of any duty of the Company Board or Parent Board in connection with the Merger Agreement, this Agreement or the transactions contemplated thereby or hereby.

12. **Miscellaneous.**

A. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement

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

B. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns. Any purported assignment in violation of this Section 11(B) shall be void and shall not be deemed to prevent Parent from engaging in any merger, consolidation or other business combination transaction.

C. Amendments and Modifications. No provision of this Agreement may be amended or modified unless such amendment or modification is in writing and signed by (a) Parent, and (b) Company Stockholder. 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 applicable law.

D. Notices. All notices, requests and other communications to any party under, or otherwise in connection with, this Agreement shall be in writing and shall be deemed to have been duly given (a) if delivered in person, upon delivery; (b) if transmitted by electronic mail ("e-mail"), upon confirmation of receipt of such e-mail; or (c) if transmitted by national overnight courier, upon delivery, in each case addressed as follows:

(a) if to Parent or Merger Sub, to:

Glowpoint, Inc.
999 18th Street, Suite 1350S
Denver, CO 80202
Attention: Peter Holst

with a copy to:

Arnold & Porter Kaye Scholer LLP
370 Seventeenth Street, Suite 4400
Denver, CO 80202
Attention: Ron Levine

(b) if to the Company Stockholder, to:

Oblong Industries, Inc.
923 E 3rd Street #107
Los Angeles, CA 90013
Attention: John Underkoffler

with a copy to:

Gunderson Dettmer Stough Villeneuve Franklin &
Hachigian, LLP
3570 Carmel Mountain Road, Suite 200
San Diego, California 92130
Attention: John Tolpa

with a copy to:

Foundry Group LLC
1050 Walnut St., Suite 210
Boulder, CO 80302
Attention: Jason M. Lynch

Or to such other address as any Party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective upon receipt.

E. Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or related to this Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof.

F. Submission to Jurisdiction. The Parties irrevocably submit to the jurisdiction of the Court of Chancery of the State of Delaware or, if the Court of Chancery of the State of Delaware or the Delaware Supreme Court determines that, notwithstanding Section 111 of the DGCL, the Court of Chancery does not have or should not exercise subject matter jurisdiction over such matter, the Superior Court of the State of Delaware and the federal courts of the United States of America located in the State of Delaware solely in connection with any dispute that arises in respect of the interpretation and enforcement of the provisions of this Agreement and the documents referred to in this Agreement or in respect of the transactions, and hereby waive, and agree not to assert, as a defense in any action, suit or Proceeding for interpretation or enforcement hereof or any such document that it is not subject thereto or that such action, suit or Proceeding may not be brought or is not maintainable in said courts or that venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the Parties irrevocably agree that all claims with respect to such action, suit or Proceeding shall be heard and determined exclusively by such a Delaware state or federal court. The Parties hereby consent to and grant any such court jurisdiction over the person of such Parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with such action, suit or Proceeding in the manner provided in Section 11(D) or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

G. Enforcement. The Parties agree that irreparable damage, for which monetary damages would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached by the Parties. Prior to the termination of this Agreement pursuant to Section 7, it is accordingly agreed that the Parties shall be entitled to an injunction or injunctions, or any other appropriate form of specific performance or equitable relief, to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, in each case in accordance with this Section 11(G), this being in addition to any other remedy to which they are entitled under the terms of this Agreement at law or in equity.

H. No Third Party Beneficiaries. Nothing in this Agreement express or implied, is intended to or shall confer upon any Person other than the Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

I. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (C) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 11(I).

J. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

K. Counterparts. This Agreement may be executed in two or more counterparts, including via electronic means (such as DocuSign, Adobe Sign, photocopy or scan of an original signature, or otherwise), all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all parties need not sign the same counterparts.

L. No Agreement Until Executed. This Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the Parties unless and until (a) the Company Board approves the Merger Agreement, and the transactions and documents contemplated thereby, including this Agreement, (b) the Merger Agreement is executed and delivered by all parties thereto, and (c) this Agreement is executed and delivered by the Parties.

M. Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense, whether or not the Merger is consummated.

N. Action in Company Stockholder Capacity Only. No Person executing this Agreement (or designee or Representative of such Person) who has been, is or becomes during the term of this Agreement a director or officer of the Company shall be deemed to make any agreement or understanding in this Agreement in such Person's capacity as a director or officer of the Company. The Parties acknowledge and agree that this Agreement is entered into by Company Stockholder solely in its capacity as the Beneficial Owner of shares of Subject Securities, and not, if applicable, in such Company Stockholder's capacity as a director, officer or employee of the Company, and nothing in this Agreement shall (a) restrict in any respect any actions taken (or failure to take actions) by Company Stockholder or its designees or Representatives who are a director or officer of the Company solely in his or her capacity as a director or officer of the Company or (b) be construed to prohibit, limit or restrict Company Stockholder from exercising its fiduciary duties as a director or officer of the Company. For the avoidance of doubt, nothing in this Section 11(N) shall in any way modify, alter or amend any of the terms of the Merger Agreement.

O. Documentation and Information. Company Stockholder shall not make any public announcement or statement regarding this Agreement and the transactions contemplated hereby without the prior written consent of Parent (such consent not to be unreasonably withheld), except as may be required by applicable law (provided that reasonable notice of any such disclosure will be provided to Parent); provided that the foregoing will not restrict or prohibit a Company Stockholder that is a venture capital fund from providing information about the subject matter of the Merger Agreement in communications with its limited partners and in connection with fundraising, marketing, informational, transactional or reporting activities. Company Stockholder consents to and hereby authorizes Parent and the Company to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Parent reasonably determines to be necessary in connection with the Merger and any transactions contemplated by the Merger Agreement, Company Stockholder's identity and ownership of the Subject Securities, the existence of this Agreement and the nature of Company Stockholder's commitments and obligations under this Agreement, and Company Stockholder acknowledges that Parent may, in Parent's sole discretion, file this Agreement or a form hereof with the SEC or any other Governmental Entity. Company Stockholder agrees to promptly give Parent any information it may reasonably require for the preparation of any such disclosure documents, and Company Stockholder agrees to promptly notify Parent of any required corrections with respect to any written information supplied by Company Stockholder specifically for use in any such disclosure document, if and to the extent that any such information shall have become false or misleading in any material respect.

P. Obligation to Update Schedule A. Company Stockholder agrees that in connection with any acquisitions or Transfers (to the extent permitted) of Subject Securities by Company Stockholder, Company Stockholder will, as promptly as practicable following the completion of thereof, notify Parent in writing of such acquisition or Transfer and the Parties will update Schedule A to reflect the effect of such acquisition or Transfer.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their authorized representatives as of the date first above written.

GLOWPOINT, INC.,

a Delaware corporation

By: _____
Name: _____
Title: _____

[Company Stockholder]

Signature Page to Voting and Support Agreement

SCHEDULE A

Company Stockholder	Number of Shares of Company Common Stock Beneficially Owned	Number of Shares of Company Common Stock Owned of Record	Number and Designation of Shares of Company Preferred Stock Beneficially Owned	Number and Designation of Shares of Company Preferred Stock Owned of Record
	[]	[]	None	None

Schedule A to Voting and Support Agreement

SCHEDULE B-1

[Y]

Schedule B-1 to Voting and Support Agreement

SCHEDULE B-2

[Y]

Schedule B-2 to Voting and Support Agreement

SCHEDULE B-3

[Y]

Schedule B-3 to Voting and Support Agreement

EXHIBIT I

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder Agreement**") is executed by the undersigned (the "**Transferee**") pursuant to the terms of that certain Voting Agreement, dated as of _____, 20__ (the "**Voting Agreement**"), by and between Glowpoint, Inc. a Delaware corporation, and the signatory thereto (the "**Company Stockholder**"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Voting Agreement. By the execution of this Joinder Agreement, the Transferee agrees as follows:

(a) **Acknowledgment.** Transferee acknowledges that Transferee is the recipient of a Transfer of Subject Securities of Oblong Industries, Inc., a Delaware corporation, subject to the terms and conditions of the Voting Agreement (the "**Transfer Securities**").

(b) **Agreement.** Transferee (i) agrees that the Transfer Securities shall be bound by and subject to the terms of the Voting Agreement, (ii) hereby adopts the Voting Agreement with the same force and effect as if Transferee were originally a party thereto and (iii) agrees to be subject to the restrictions and obligations applicable to the Company Stockholder and otherwise become a party to the Voting Agreement for all purposes thereunder.

(c) **Notice.** Any notice required or permitted by the Voting Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

EXECUTED AND DATED this ____ day of _____, 20__.

TRANSFEEE

By: _____
Name: _____
Address: _____
Email: _____

ACCEPTED AND ACKNOWLEDGED:

GLOWPOINT, INC.

By: _____
Name: _____
Title: _____

Exhibit D

**GLOWPOINT, INC.
NON-BINDING TERM SHEET FOR
SERIES D CONVERTIBLE PREFERRED STOCK**

The following summary of indicative terms and conditions (the "Term Sheet") of the proposed issuance of Series D Convertible Preferred Stock (the "Issuance") by Glowpoint, Inc. (the "Company") to equity holders of Oblong Industries, Inc. ("Oblong" and, such equity holders, the "Investors") in connection with the proposed business combination of the Company and Oblong (the "Transaction") is intended solely as a basis for further discussion, and this Term Sheet does not constitute a commitment to enter into a transaction on the terms described herein or otherwise.

- Issuer:** Glowpoint, Inc., a Delaware corporation.
- Security:** The Company's Series D Convertible Preferred Stock, par value \$0.0001 per share (the "**Series D Preferred Stock**").
- Dividends:** 6.0% of the Accrued Value of the Series D Preferred Stock per annum, commencing on the first anniversary of the issuance of the Series D Preferred Stock. Prior to the first anniversary of the issuance of the Series D Preferred Stock no dividends will accrue on such stock. Dividends are cumulative and accrue daily in arrears.
- "**Accrued Value**" shall mean the original liquidation preference of \$2.85 per share of Series D Preferred Stock plus an additional amount equal to the dollar value of any other accrued but unpaid dividends.
- Cash dividends are payable when, as and if declared by the Company's Board of Directors (the "**Board**"). If the Board does not declare a cash dividend in respect of all or a portion of a dividend when due, the Accrued Value of the Series D Preferred Stock will be increased by a corresponding amount. Dividends shall be due once per year, on the anniversary of the issuance of the Series D Preferred Stock, commencing on the second anniversary of the issuance of the Series D Preferred Stock.
- Liquidation Preference:** Upon the liquidation, dissolution or winding-up of the Company, each holder of Series D Preferred Stock will be entitled, subject to the rights of any senior or pari passu securities of the Company issued and outstanding, to receive a liquidating distribution in cash in the amount equal to the greater of (i) the then-current Accrued Value of such shares of Series D Preferred Stock plus any other accrued but unpaid dividends thereon and (ii) the value such holder would have been entitled to receive had its shares of Series D Preferred Stock been converted into the underlying shares of Common Stock immediately prior thereto.
- Redemption:** The Series D Preferred Stock will not be redeemable.
- Automatic Conversion:** Following satisfaction of the Conversion Condition (as defined below), all Series D Preferred Stock will be automatically converted into a number of shares of the Company's Common Stock, par value \$0.0001 per share ("**Common Stock**"), equal to the then-current Accrued Value of the Series D Preferred Stock (plus any other accrued but unpaid dividends) divided by the then-current Conversion Price.
- "**Conversion Condition**" means the occurrence of both (i) approval of the conversion of the Series D Preferred Stock by the holders of more than 50.0% of the issued and outstanding shares of the Company's Common Stock, Series A-2 Preferred Stock and Series C Preferred Stock, voting together as a single class on an as-converted basis, present in person or by proxy, at a duly called and held meeting of the Company's stockholders; and (ii) receipt of all required authorizations and approvals from the NYSE American (or any such other exchange upon which the Company's securities are then listed for trading) for the listing of the Common Stock underlying the Series D Preferred Stock and the continued listing of the Company after closing of the Transaction and conversion of the Series D Preferred Stock.
- "**Conversion Price**" means, with respect to each share of Series D Preferred Stock, as of any conversion date or other applicable date of determination, \$2.85.
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The Series D Preferred Stock will not have any optional right of conversion, except as follows: In the event that the Conversion Condition is not satisfied and the Preferred Stock has not converted to Common Stock by the first anniversary of the issuance of the Series D Preferred Stock, then the holders thereof may demand, pursuant to a written instrument signed by the holders of not less than half of the then-outstanding shares of Series D Preferred Stock, the conversion of a portion (not to exceed the Maximum Demand Conversion Portion) of all then-outstanding shares of Series D Preferred Stock into Common Stock on a pro rata basis among all holders of Series D Preferred Stock. Series D Preferred Stock that is not converted in this manner shall remain subject to mandatory conversion upon the occurrence of the Conversion Condition.

"Maximum Demand Conversion Portion" shall mean the lesser of (i) the number of shares of Series D Preferred Stock convertible into a number of shares of Common Stock equal to 19.9% of the Company's outstanding shares of Common Stock as of immediately prior to the Effective Time of the Transaction; and (ii) the maximum number of shares of Series D Preferred Stock representing shares of Common Stock for which the NYSE American (or any such other exchange upon which the Company's securities are then listed for trading) will approve for listing on such exchange without approval of the Company's stockholders for the issuance thereof.

If the Certificate of Designations for the Series E Preferred Stock of the Company includes a similar right of optional conversion, the parties understand and agree that the Maximum Demand Conversion Portion applicable to the Series D and Series E Preferred Stock will be adjusted so as to not violate, on an aggregate basis, the stockholder approval limitations of the NYSE American.

Board of Directors; Series D Director Consent Right: The Board will consist of a total of five (5) members. The holders of Series D Preferred Stock, voting as a single class, will have the right but not the obligation to elect two (2) members of the Board (the **"Series D Directors"**), for so long as at least twenty percent (20%) of the original liquidation preference of the Series D Preferred Stock is outstanding.

For so long as at least twenty percent (20%) of the original liquidation preference of the Series D Preferred Stock is outstanding, the vote or written consent of at least 80% of the Company's directors (which vote or written consent must include at least one of the Series D Directors) will be necessary for the Company to issue or obligate itself to issue shares of Common Stock or securities convertible into Common Stock in a transaction or series of related transactions for gross proceeds of \$1,000,000 or more at a price per share of less than the Market Price of the Common Stock.

"Market Price" means the trailing 5-trading day dollar volume-weighted average sale price of the Company's Common Stock on the NYSE American (or any such other exchange upon which the Company's securities are then listed for trading).

Anti-dilution Provisions: The conversion price of the Series D Preferred Stock will be subject to proportional anti-dilution adjustment in the event of any stock split, stock dividend, combination or similar recapitalization or change with respect to the Common Stock.

Voting Rights: Other than (i) the Protective Provisions (as defined below) or (ii) the ability to elect the Series D Directors, the holders of the Series D Preferred Stock will have no voting rights.

Protective Provisions: For so long as at least twenty percent (20%) of the original liquidation preference of the Series D Preferred Stock is outstanding, the vote or written consent of the holders of a majority of the then-outstanding shares of Series D Preferred Stock voting together as a single class will be necessary for effecting or validating the following actions (whether consummated by merger, amendment, recapitalization, consolidation or otherwise) (the **"Protective Provisions"**):

1. liquidate, dissolve or wind-up the business and affairs of the Company, or consent to any of the foregoing;
 2. amend, alter or repeal any provision of the Company's organizational documents in any manner that adversely affects the powers, preferences or rights of the Series D Preferred Stock;
 3. create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock, other than Common Stock;
 4. (i) reclassify, alter or amend any existing security of the Company that is *pari passu* with the Series D Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Company, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series D Preferred Stock in respect of any such right, preference, or privilege, or (ii) reclassify, alter or amend any existing security of the Company that is junior to the Series D Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Company, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series D Preferred Stock in respect of any such right, preference or privilege;
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5. take or approve any of the foregoing actions with respect to a subsidiary of the Company; or
6. authorize, create or issue any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Company and its subsidiaries for borrowed money following such action, in excess of the amount outstanding or available for borrowing under the Silicon Valley Bank loan to be assumed by the Company in the Transaction, would exceed \$500,000.

Lock-Up:

Subject to the agreement by each of the Company's directors to reciprocal restrictions on transfers of their shares, the Investors will agree not to sell or transfer any shares of Series D Preferred Stock, the underlying shares of Common Stock received by Investors following any conversion, or, in each case, any other shares issued by stock dividend, stock distribution, stock split or otherwise with respect to such preferred or common stock, for a period of up to six (6) months following the original issuance date of the Series D Preferred Stock, excluding any transfers to an "affiliate" for no consideration, including without limitation, any general partner, officer, director or manager of an Investor and any venture capital or private equity fund now or hereafter existing that is controlled by one or more general partners or managing members of, or is under common investment management with, such Investor.

Registration Rights:

The Company will agree to file with the Securities and Exchange Commission (the "**SEC**") a resale shelf registration statement registering for resale the shares of Common Stock underlying the Series D Preferred Stock of Foundry Group Select Fund, L.P., including shares issued by stock dividend, stock distribution, stock split or otherwise, as soon as reasonably practicable following satisfaction of the Conversion Condition. The Company will also agree to use commercially reasonable efforts to cause the resale shelf registration statement to be declared effective by the SEC and to have the shares of Common Stock underlying all shares of Series D Preferred Stock listed on the NYSE American (or any such other exchange upon which the Company's securities are then listed for trading).



Glowpoint, Inc. and Oblong Industries Sign Definitive Merger Agreement,

Create Industry Leader for Next Generation Collaboration Solutions

DENVER, CO and LOS ANGELES, CA - September 16, 2019 - Glowpoint, Inc. (NYSE American: [GLOW](#)) ("Glowpoint" or the "Company"), a managed service provider of video collaboration and network applications, and Oblong Industries, Inc. ("Oblong"), a collaboration technology company headquartered in Los Angeles, CA, today announced that they have executed a Definitive Merger Agreement (the "Merger Agreement") relating to the proposed business combination of Glowpoint and Oblong (the "Merger").

At the closing of the Merger (the "Closing"), which is expected to occur prior to October 15, 2019, and in exchange for all outstanding equity of Oblong, (i) Oblong stockholders will be issued shares of Glowpoint's Series D Convertible Preferred Stock, which will be convertible into approximately 17.4 million shares of Glowpoint's common stock at a conversion price of \$2.85 per share, and (ii) Glowpoint will assume all outstanding options to purchase shares of Oblong's common stock. Glowpoint's Series D Preferred Stock will automatically convert into shares of Glowpoint's common stock, on a one-for-one basis, upon approval of such conversion by Glowpoint's stockholders at a stockholder meeting expected to be scheduled prior to year-end. Upon the Closing, the stockholders of Glowpoint existing prior to the transaction are expected to own approximately 25% of the combined company, and Oblong stockholders are expected to own approximately 75% of the combined company, in each case before giving effect to the issuance by Glowpoint of the Series E Convertible Preferred Stock discussed below or any shares issued pursuant to a new equity incentive plan of the combined company contemplated by the Merger Agreement.

Additionally, entities affiliated with existing Oblong stockholders, including Foundry Group and Greenspring Associates, have agreed to purchase \$3.75 million of Glowpoint's Series E Convertible Preferred Stock at a price of \$2.85 per share, which Preferred Stock will be automatically convertible into Glowpoint common stock on a one-for-one basis upon stockholder approval of such conversion. Of this \$3.75 million, \$2.5 million (the "Concurrent Financing") will be funded concurrently with the Closing and the remaining \$1.25 million may be called by Glowpoint at its discretion.

"This is a powerful business combination leveraging strengths of both companies combining Glowpoint's customer service reputation and support expertise around Oblong's impressive technology foundation of immersive remote collaboration and interaction. Our combined customer base includes a number of world class organizations who have embraced the idea of pushing the limits of collaboration beyond traditional functionality. We share a common vision of leveraging our capabilities through this partnership and look forward to building upon Oblong's compelling technology foundation and our shared vision of a next generation user experience for all," said Pete Holst, president and chief executive officer of Glowpoint.

John Underkoffler, founder and CEO of Oblong, said, "It's been tremendously energizing to find in Glowpoint an organization that shares our conviction around the central role that next-gen collaboration technologies will play through the 21st century. Oblong's Mezzanine™ product family--with our powerful multi-stream, multi-site, multi-screen, concurrent multi-user approach to content-rich collaborative work--has proven its value to a sizable marquee customer base, while the unique underlying UI technologies we've pioneered to power our products ensure a large and sustainable market lead. We view the fusion of Glowpoint's and Oblong's distinct capacities in a multiplicative rather than additive light. This is especially exciting and timely because of the immense scale of the commercial opportunity immediately before us. I couldn't be more enthusiastic to be working side by side with Pete and his team."

Brad Feld, a Managing Director at Oblong's lead investor, Foundry Group, stated, "As an investor in Oblong, I've seen the company develop numerous innovations in collaboration technology and user interface technology. At the same time, knowing and working with Pete Holst, Glowpoint's CEO, for over 20 years, I am confident the pairing of his leadership as the CEO of the combined company with the technology vision of John Underkoffler, Oblong's current CEO who is continuing as the chief technology officer of the combined company, will make an incredible combination."

Oblong has successfully developed next generation collaboration technologies including its flagship Mezzanine™ product and a beta version extending Mezzanine™ further to the cloud. Oblong holds 46 patents and 13 pending patents in the United States and an additional 28 issued and 31 pending patents globally, an IP portfolio that covers foundational techniques in the domains of multi-stream / multi-participant visual collaboration; spatial, gestural, and multi-device control of data environments; and UI mechanics for cloud-based remote content collaboration. In August 2019, Oblong won the Best Collaboration Platform Award from UC Today as well as the prestigious Red Dot award for the Oblong optical wand control device.

Pete Holst further stated, "The proliferation of cloud-based collaboration services from Zoom, Slack, and BlueJeans paired with sustained growth in enterprise ecosystems led by Cisco's Webex and Microsoft's Teams provides a diverse and large addressable market measured in hundreds of millions of users. Oblong's patented technologies expand on contemporary collaboration services by focusing on how content is distributed and disseminated in virtual meetings. I am excited about continuing to build upon the incredible foundation John and his talented team have created and look forward to partnering with them on new concepts and designs for the future of collaboration."

The Closing of the Merger is subject to, among other closing conditions, the receipt of all required approvals of Oblong's stockholders and any required third-party consents and regulatory clearances, no more than five percent (5.0%) of the issued and outstanding shares of Oblong's capital stock exercising their statutory appraisal rights, the closing of the Concurrent Financing, and the execution by Glowpoint of a registration rights agreement with Foundry Group Select Fund, L.P. Affiliates of Foundry Ventures have agreed to close and fund in full the Concurrent Financing concurrently with the Closing of the Merger. Certain Oblong stockholders (including affiliates of Foundry Ventures) have provided their consent to the Merger, and the Merger is expected to be approved by the written consent of the required number of Oblong's stockholders in the coming days. Glowpoint's stockholders are not required to vote to approve the Merger. In addition, Peter Holst and David Clark, the current Chief Executive Officer and Chief Financial Officer of Glowpoint, respectively, are expected to begin providing certain management services to Oblong prior to the Closing of the Merger.

Advisors

Arnold & Porter is acting as legal advisor to Glowpoint and Gunderson Dettmer is acting as legal advisor to Oblong.

About Oblong Industries

Oblong Industries's innovative technologies change the way people work, create, and communicate. With roots in more than two decades of research at the MIT Media Lab, Oblong's flagship product Mezzanine™ is the technology platform defining the next era of computing: multi-stream, concurrent multi-user, multi-screen, multi-device, and multi-location for dynamic and immersive visual collaboration. This focus continues with the debut of cloud-based Rumpus™ for purely virtual teams. Oblong is headquartered in Los Angeles and supplies Mezzanine™ systems to Fortune 500 enterprise customers and reseller partners. Learn more at www.oblong.com, and connect via Twitter, Facebook, LinkedIn, and Instagram.

About Glowpoint

Glowpoint, Inc. (NYSE American: [GLOW](https://www.glowpoint.com)) is a managed service provider of video collaboration and network applications. Our services are designed to provide a comprehensive suite of automated and concierge applications to simplify the user experience and expedite the adoption of video as the primary means of collaboration. Our customers include Fortune 1000 companies, along with small and medium sized enterprises in a variety of industries. To learn more please visit www.glowpoint.com.

Forward Looking and Cautionary Statements

This press release and any oral statements made regarding the subject of this release contain forward-looking statements as defined under Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and are made under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical facts, that address activities that Glowpoint or Oblong assumes, plans, expects, believes, intends, projects, estimates or anticipates (and other similar expressions) will, could, should or may occur in the future are forward-looking statements. Glowpoint's and Oblong's actual results may differ materially from their expectations, estimates and projections, and consequently you should not rely on these forward-looking statements as predictions of future events. Without limiting the generality of the foregoing, forward-looking statements contained in this press release include statements regarding Glowpoint's and Oblong' future performance and the anticipated financial impacts of the business combination, the success of any business development initiatives to be pursued by Glowpoint or Oblong, the satisfaction of the closing conditions to the business combination, and the timing or success of the completion of the business combination and concurrent private placement by Glowpoint. The forward-looking statements in this press release are based on management's current belief, based on currently available information, as to the outcome and timing of future events, and involve significant factors, risks, and uncertainties that may cause actual results in future periods to differ materially from such statements. Most of these factors are outside of the control of Glowpoint or Oblong and are difficult to predict, and include, among other things, (1) the occurrence of any event, change or other circumstances that could cause the termination of the Merger Agreement; (2) the outcome of any legal proceedings that may be instituted against Glowpoint or Oblong following this announcement and the pursuit of the Merger; (3) the inability to complete the business combination, including due to failure to obtain approval of the stockholders of Oblong or failure to satisfy any other conditions to closing included in the Merger Agreement; (4) the risk that the pursuit or execution of the business combination will disrupt current plans and operations as a result of the announcement and consummation of the business combination; (5) the ability to recognize the anticipated benefits of the business combination, which may be affected by, among other things, competition and the ability of

the combined company to grow and manage growth profitably and retain its key employees; (6) costs related to the negotiation and consummation of the business combination; (7) risks related to the disruption of the transaction to the parties and their management; (8) the effect of the announcement of the Merger Agreement on the parties' ability to retain and hire key personnel and maintain relationships with customers, suppliers and other third parties; and (9) other risks and uncertainties identified in Glowpoint's filings with the SEC, including in Glowpoint's Annual Report on Form 10-K for the year ending December 31, 2018 and in other filings made by Glowpoint with the SEC from time to time, including Glowpoint's Quarterly Report on Form 10-Q for the three months ended June 30, 2019. The foregoing list of factors is not exclusive. Glowpoint and Oblong caution readers not to place undue reliance upon any forward-looking statements, which speak only as of the date made. Any of these factors could cause Glowpoint's and Oblong' actual results and plans to differ materially from those in the forward-looking statements. Therefore, Glowpoint and Oblong can give no assurance that their future results will be as estimated. Glowpoint and Oblong do not intend to, and disclaim any obligation to, correct, update or revise any information contained herein to reflect any change in expectations or any change in events, conditions or circumstances on which any such statement is based, other than as required by applicable law.

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