

ASSET PURCHASE AGREEMENT

dated as of

May 4, 2023

between

TENERITY, LLC

and

CAPILLARY PTE LTD

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ASSET PURCHASE AGREEMENT

AGREEMENT (this “**Agreement**”) dated as of May 4, 2023 between Tenerity, LLC, a Delaware limited liability company (“**Seller**”), and Capillary Pte Ltd, a private company organized under the laws of Singapore (“**Buyer**”).

WITNESSETH:

WHEREAS, Seller, together with its Subsidiaries, owns and operates the Business (as defined below); and

WHEREAS, Buyer desires to purchase the Purchased Assets (as defined below) and assume the Assumed Liabilities (as defined below), in each case, from Seller and its Subsidiaries, and Seller and its Subsidiaries desire to sell the Purchased Assets and transfer the Assumed Liabilities to Buyer, upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

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

“**Accounting Policies**” means the accounting policies, principles, practices and methodologies, in each case, used in preparing the audited consolidated financial statements of Tenerity, Inc. and the Illustrative Adjustment Schedule; *provided* that in the event of any conflict between the accounting policies, principles, practices and methodologies used in preparing the audited consolidated financial statements of Tenerity, Inc. and Illustrative Adjustment Schedule, the latter shall control.

“**Action**” means any complaint, claim, arbitration, litigation, action, suit or proceeding, in each case by or before any arbitrator or Governmental Authority.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by Contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“**Applicable Law**” means, with respect to any Person, any federal, state, foreign or local law (including common law), constitution, treaty, convention, statute, ordinance, code, rule, regulation, Order, injunction, judgment, decree, ruling or other similar requirement enacted,

adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“Assignment and Assumption Agreement” means an Assignment and Assumption Agreement to be entered into at the Closing in substantially the form attached hereto as Exhibit A.

“Automatic Transfer Business Employee” means any Business Employee who falls within the scope of the Automatic Transfer Regulations and whose employment will automatically transfer to Buyer or one of its Subsidiaries pursuant to the Automatic Transfer Regulations in connection with the transactions contemplated by the Transaction Documents.

“Automatic Transfer Regulations” means the (i) the Acquired Rights Directive 77/187/EC, 98/50/EC and 2001/23/EC and all national legislation enacted to give effect to the Acquired Rights Directive 77/187/EC, 98/50/EC and 2001/23/EC in each member state of the European Economic Area and (ii) all other national legislation which effects the automatic transfer of employees on the sale or transfer or continuation of a business.

“Benefit Plan” means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA, (ii) employment, severance, change in control, transaction bonus, retention or similar plan, agreement, program or policy or (iii) other plan, agreement, program or policy providing for bonuses, equity or equity-based compensation or other forms of incentive or deferred compensation, medical, dental, vision, prescription or fringe benefits, vacation benefits, life insurance, relocation or expatriate benefits, disability or sick leave benefits, employee assistance program or post-employment or retirement benefits, in each case other than any plan, agreement, program or policy that is sponsored by a Governmental Authority.

“Business” means businesses of providing services pursuant to the Business Contracts and the Business Portion of Shared Contracts.

“Business Benefit Plan” means each Benefit Plan that is contributed to, sponsored, maintained or entered into by Seller or any of its direct or indirect Subsidiaries for the benefit of any Business Employee (or any beneficiary, or dependent thereof).

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“Business Employee” means any individual who, as of immediately prior to the Effective Time, is Employed by Seller or any of its Subsidiaries and who is listed on Section 1.01(a)(i) of the Disclosure Schedule under the heading “Business Employees”. Notwithstanding anything to the contrary herein, Section 1.01(a)(i) of the Disclosure Schedule may be updated from time to time by Seller prior to the Closing Date, but only after consultation with and approval of Buyer (with such approval not to be unreasonably withheld, conditioned or delayed); *provided*, that for

the avoidance of doubt, removal of any individual whose employment with Seller and its Subsidiaries has been terminated will not require any such consultation or approval.

“**Business Intellectual Property Rights**” means the Intellectual Property Rights set forth on Section 1.01(a)(ii) of the Disclosure Schedule.

“**Business Portion of Shared Contracts**” means the statements of work set forth on Section 1.01(a)(v) of the Disclosure Schedule, in each case with respect to the applicable Shared Contract.

“**Closing Date**” means the date on which the Closing occurs.

“**Code**” means the United States Internal Revenue Code of 1986.

“**Competition Laws**” means 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, lessening of competition or restraint of trade.

“**Confidentiality Agreement**” means the confidentiality agreement between Buyer and Seller dated as of December 22, 2022.

“**Contract**” means any legally binding executory contract, agreement, license, lease, instrument, indenture, promissory note or other legally binding commitment or undertaking.

“**Coronavirus**” means SARS-CoV2 or any diseases or infection resulting therefrom, including COVID-19 and any mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

“**COVID-19 Measures**” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, facility capacity limitation, social distancing, shut down, closure, sequester, safety or similar Applicable Law, directive or guidelines or recommendations promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to Coronavirus.

“**Cut-Off Date**” means December 31, 2022.

“**Debt Items Adjustment Amount**” means the amount, as of the Effective Time, of (i) deferred revenues (i.e., billings collected for services not yet performed as of the Effective Time) under the Business Contracts and the Business Portion of Shared Contracts; (ii) deposits being held under any Business Contracts or any Business Portion of Shared Contracts, which are required to be repaid to the customer thereunder; (iii) accrued bonuses in favor of Transferred Employees; and (iv) accrued gratuity in favor of Transferred Employees based in India. Schedule I sets forth an illustrative calculation of the purchase price adjustment. In the event of any

inconsistency between such calculation and the definition of “Debt Items Adjustment Amount”, Schedule I shall control.

“**Disclosure Schedule**” means the disclosure schedule delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

“**Employed**” means, with respect to a Business Employee as of an applicable date of determination, that as of such date such Business Employee (i) is actively employed, (ii) is absent from work on account of paid time off, vacation, sick or personal leave, short- or long-term disability or approved leave of absence or (iii) for whom an obligation to recall, rehire or otherwise return to employment exists under a contractual obligation or Applicable Law.

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

“**Escrow Agent**” means Citibank, N.A.

“**Escrow Agreement**” means an escrow agreement dated as of the Closing Date in customary form reasonably agreed between Buyer, Seller and the Escrow Agent.

“**Final Purchase Price**” means the Purchase Price (x) as set forth in the Closing Statement if Seller does not duly deliver a Dispute Notice or (y) if a Dispute Notice is delivered (i) as agreed between Seller and Buyer pursuant to Section 2.10(c) or (ii) in the absence of such agreement, as determined by the Accounting Referee pursuant to Section 2.10(c).

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

“**Governmental Authority**” means any United States, foreign, federal, state, provincial, municipal or local government, government agency, subdivision, court, administrative agency, commission, ministry, department, official or other authority or political subdivision thereof.

“**Illustrative Adjustment Schedule**” means the Illustrative Adjustment Schedule attached as Schedule I hereto.

“**Indebtedness**” means (i) all obligations for borrowed money, (ii) all obligations evidenced by notes, bonds, debentures, letters of credit (to the extent drawn) or other instruments, (iii) all obligations for the deferred purchase price of property or services (other than current liabilities to the extent included in the calculation of the Debt Items Adjustment Amount hereunder) , (iv) all obligations under capitalized leases (determined in accordance with GAAP), (v) all interest, fees, penalties and other expenses with respect to indebtedness described in the foregoing clauses (i)-(iv), and (vi) any outstanding guarantees (other than product warranties made in the ordinary course of business) of any obligations of the type described in clauses (i) through (v) above, but excluding (A) any guarantees of performance under contractual obligations in the ordinary course of business and (B) any employee-, compensation- or benefits-related liabilities or obligations.

“Intellectual Property Rights” means all rights in and to any Trademark, patent, trade secret, copyright, computer software, invention, know-how and similar types of proprietary intellectual property rights, including any registrations or applications therefor and goodwill appurtenant thereto.

“IRS” means the United States Internal Revenue Service.

“IT Assets” means any and all computers, servers, workstations, routers, hubs, switches, data communication lines and all other information technology equipment, including all documentation related to the foregoing.

“knowledge of Seller,” “Seller’s knowledge” or any other similar knowledge qualification in this Agreement means the actual knowledge of Greg Miller, Brian Fisher, Lynn Doonan, Rich Pitrolo, Domenico Licheri, Torrey Martin or Loic Blondel, after reasonable inquiry.

“Liability” means any liability, cost, expense, debt or obligation of any kind, character, or description, and whether known or unknown, accrued, absolute, contingent or otherwise, and regardless of when asserted or by whom.

“Licensed Software” means the software listed on Section 5.03(a) of the Disclosure Schedule.

“Lien” means, with respect to any property or asset, any mortgage, lien, lease, right of way, pledge, charge, security interest or other encumbrance in respect of such property or asset. For the avoidance of doubt, “Lien” does not include any licenses, sublicenses, or similar grants of rights to Intellectual Property Rights.

“Letter Agreement” means that certain Letter Agreement between Buyer and Seller dated as of April 25, 2023.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that had, or would reasonably be expected to have, a material adverse effect on the business, financial condition or results of operations of the Business, taken as a whole, except for any such effect resulting from or arising in connection with (i) changes in the financial, securities, currency, international trade, capital or credit markets, including in interest rates or currency exchange rates, (ii) changes in economic, regulatory or political conditions generally, (iii) changes (including changes or proposed changes of Applicable Law or the interpretation or enforcement thereof) or conditions affecting generally the industries in which the Business operates or the industries in which suppliers and customers of the Business operate, (iv) changes in Applicable Law, GAAP or other applicable accounting or regulatory standards or principles, or in the enforcement, implementation or authoritative interpretations thereof, (v) actual or threatened acts of war, sabotage or terrorism, cyberattacks or natural disasters (including hurricanes, tornadoes, floods, earthquakes and other weather-related events), epidemics or pandemics (including Coronavirus and any developments related thereto) or any escalation or worsening of the

foregoing, (vi) the announcement of this Agreement or the other Transaction Documents or pendency or consummation of the transactions contemplated hereby, or any facts or circumstances relating to Buyer, including the impact of any of the foregoing on the relationships, contractual or otherwise, of the Business with third parties, (vii) any failure of the Business to meet any internal or industry financial estimates, forecasts or projections for any period (it being understood that any effect that has contributed to such failure may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect, unless it is otherwise excluded from the definition thereof pursuant to a clause other than this clause (vii)), (viii) changes attributable to actions or omissions by or on behalf of Buyer or any of its Affiliates, (ix) any actions taken or omitted to be taken by Seller or any of its Affiliates that are required, expressly contemplated or permitted to be taken pursuant to this Agreement or (x) the bankruptcy, insolvency or other financial distress of any client, customer, supplier or vendor of the Business; provided, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Business compared to other participants in the industries in which the Business operates (in which case, only the incremental disproportionate adverse effect may be taken into account in determining whether a Material Adverse Effect has occurred).

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

“Offer Business Employee” means any Business Employee (other than an Automatic Transfer Business Employee) who is, as of immediately prior to the Effective Time, employed by Seller or any of its Subsidiaries.

“Order” means any order, writ, injunction, decree, judgment, award, settlement or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority.

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

“Post-Closing Tax Period” means any Tax period beginning after the Closing Date; and, with respect to a Straddle Tax Period, the portion of such Tax period beginning after the Closing Date.

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

“Prepaid Adjustment Amount” means the unamortized portion of prepaid license fees, as of the Effective Time, for the Magento software license agreement that is included in the Purchased Assets. Schedule I sets forth an illustrative calculation of the purchase price

adjustment. In the event of any inconsistency between such calculation and the definition of “Prepaid Adjustment Amount”, Schedule I shall control.

“**Related Party**” means, with respect to any specified Person, (a) any Affiliate of such specified Person, (b) any Person who serves as a director, officer, general partner, managing member or in a similar capacity of such specified Person or any of its Affiliates, (c) any immediate family member of any Person described in clause (a) or (b), and (d) any other Person who holds, individually or together with such other Person’s Affiliates and any members of such other Person’s immediate family, directly or indirectly, more than 5% of the outstanding voting power, equity or ownership interests of such specified Person.

“**Representative**” means, with respect to any Person, such Person’s directors, officers, employees, counsel, financial advisors, auditors, agents and other authorized representatives.

“**Retained Business**” means any business now, previously or hereafter conducted by Seller or any of its Subsidiaries or Affiliates, other than the Business.

“**Seller Retained Marks**” means any and all (i) trademarks, service marks, logos, trade dress, trade names, corporate names, domain names and other source or business identifiers (“**Trademarks**”) of Seller or any of its Affiliates (other than any Trademarks included in the Business Intellectual Property Rights), including any Trademarks containing “Tenerity” and (ii) Trademarks derived from, confusingly similar to or including any of the foregoing.

“**Shared Contracts**” means the Contracts set forth on Section 1.01(a)(iii) of the Disclosure Schedule.

“**Straddle Tax Period**” means a Tax period that begins on or before the Closing Date and ends thereafter.

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

“**Tax**” means any U.S. federal, state, local or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever (including withholding on amounts paid to or by any Person in respect thereof), together with any interest, penalty, addition to tax or additional amount imposed by any Taxing Authority.

“**Tax Return**” means any report, return, document, declaration or other information or filing required to be supplied to any Taxing Authority with respect to Taxes and any amendments thereto, including information returns and any documents with respect to or

accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“**Taxing Authority**” means any Governmental Authority responsible for the imposition or collection of Taxes.

“**Transaction Documents**” means, collectively, this Agreement, the Assignment and Assumption Agreement, each Foreign Transfer Agreement, the Transition Services Agreement, and the Escrow Agreement.

“**Transaction Expenses**” means the aggregate amount of any out-of-pocket legal, accounting, financial advisory and other advisory, transaction or consulting fees and expenses incurred by Seller or its Subsidiaries prior to the Closing in connection with the transactions contemplated by this Agreement that are unpaid as of the Closing.

“**Transfer Tax**” means any excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, property, transfer and similar Taxes, levies, charges, duties and fees (including any penalties and interest).

“**Transferred Employee**” means (i) any Automatic Transfer Business Employee who does not expressly object to the transfer of his or her employment pursuant to the Automatic Transfer Regulations and (ii) any Offer Business Employee who accepts (or is deemed to accept) an offer of employment from Buyer or any of its Subsidiaries in accordance with Article 9.

“**Transition Services Agreement**” means a Transition Services Agreement to be entered into between Buyer and Seller at the Closing in substantially the form attached hereto as Exhibit B.

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

Term	Section
1060 Schedule	2.06(c)
Accounting Referee Agreement	2.10(c)
Allocation Schedule	Recitals
Apportioned Obligations	2.06(b)
Apportionment Post-Closing Tax Period	8.03(a)
Apportionment Pre-Closing Tax Period	8.03(a)
Assumed Employee Liabilities	8.03(a)
Assumed Guaranty Liabilities	2.03(d)
Assumed Liabilities	7.06
Base Amount	2.03
Business Contracts	2.06(a)
Business Personal Property	2.01(b)
	2.01(a)

Term	Section
Buyer	Recitals
Buyer FSA Plan	9.06
Buyer Indemnitee	11.02(a)
Buyer Indemnities	11.02(a)
Closing	2.08(a)
Closing Statement	2.10(a)
Current Representation	7.04(a)
Damages	11.02(a)
Designated Person	7.04(a)
Dispute Notice	2.10(b)
Disputed Item	2.10(b)
Effective Time	2.08(a)
e-mail	13.01
End Date	12.01(a)(ii)
Enforceability Exceptions	3.02
Estimated Closing Statement	2.08
Estimated Purchase Price	2.08
Excluded Assets	2.02
Excluded Liabilities	2.04
Fees	2.11
Financial Statements	3.05
First Payment	2.08(b)(iii)
Foreign Transfer Agreement	2.09
Indemnified Party	11.03(a)
Indemnifying Party	11.03(a)
Notice Period	11.04
Permits	3.13
Permitted Liens	3.11(b)(viii)
Phase Out Period	6.02
Potential Contributor	11.06
Process Agent	13.06
Purchase Price	2.06(a)
Purchased Assets	2.01
Qualifying Offer	9.01
Refundable Transfer Taxes	8.02
Seller	Recitals
Seller FSA Plan	9.06
Seller Retained Intellectual Property	2.02(k)
Seller Tax Records	8.01
Seller Welfare Plan	9.05
Selling Entities	2.01
Substituted Guaranties	7.06
Third Party Claim	11.03(a)

Term	Section
Undisclosed Employee	9.02(d)
WARN	9.07

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law,” “laws” or to any Applicable Law shall be deemed to refer to such law or Applicable Law as amended from time to time, except as otherwise specified herein, and to any rules or regulations promulgated thereunder. All references to any time herein shall refer to Eastern Time. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in U.S. dollars. References to “ordinary course of business” shall be deemed to be followed by the words “consistent with past practices (with such practices taking into account the circumstances, including restrictions imposed by Applicable Law, guidance released by any Governmental Authority and health and safety considerations related to, Coronavirus).” The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2 PURCHASE AND SALE

Section 2.01. *Purchase and Sale of the Purchased Assets.* Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase (or cause one or more of its Subsidiaries to purchase) from Seller and its applicable Subsidiaries, and Seller agrees to, and to cause its applicable Subsidiaries (the Seller and such applicable

Subsidiaries, the “**Selling Entities**”) to, sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, to Buyer (or to such Subsidiary or Subsidiaries of Buyer, as determined by Buyer) at the Closing, free and clear of any Liens other than Permitted Liens, all of Seller’s and its applicable Subsidiaries’ right, title and interest in, to and under the following assets as the same shall exist as of the Effective Time (the “**Purchased Assets**”):

(a) all tangible personal property listed on Section 2.01(a) of the Disclosure Schedule and interests therein as well as all laptops currently used exclusively by Business Employees (the “**Business Personal Property**”);

(b) all transferable rights under all Contracts listed on Section 2.01(b) of the Disclosure Schedule (the “**Business Contracts**”);

(c) the Business Portion of Shared Contracts to the extent provided in Section 2.05(c);

(d) all Business Intellectual Property Rights;

(e) all customer data, terms and conditions, books, records, files and papers exclusively related to the Business, whether in hard copy or electronic format, including any information exclusively relating to any Tax imposed on the Purchased Assets that is an Assumed Liability (it being understood that Seller and its Subsidiaries shall be permitted to retain copies of such materials);

(f) to the extent permitted by Applicable Law, the personnel and human resources records of Seller or its applicable Subsidiary relating to the Transferred Employees;

(g) all rights to any claims of any nature to the extent solely related to the Business Contracts and the Business Portion of Shared Contracts, whether arising by way of counterclaim or otherwise, in each case solely to the extent arising from occurrences following the Effective Time; and

(h) all rights under warranties, indemnities and all similar rights against any Person to the extent related to the Business Contracts and the Business Portion of Shared Contracts, in each case solely to the extent arising from occurrences following the Effective Time.

Notwithstanding anything in this Agreement to the contrary, including the Disclosure Schedule, Seller and Buyer acknowledge and agree that it is their intent that all assets that are exclusively used in the Business are to be transferred to Buyer as a result of the transactions contemplated by this Agreement. Therefore, Buyer and Seller agree that, from the date of this Agreement through September 30, 2023, they will work in good faith to amend any list of Purchased Assets set forth in the Disclosure Schedule to evidence Buyer’s ownership of any assets of the Business that were, prior to the Closing Date, exclusively used in the Business but were not listed on the Disclosure Schedule at the time this Agreement was fully executed.

Section 2.02. *Excluded Assets.* Buyer expressly understands and agrees that all of the assets of Seller and its Subsidiaries other than the Purchased Assets shall remain the property of Seller or such Subsidiaries (collectively, the “**Excluded Assets**”), which shall include, the following:

- (a) all cash and cash equivalents on hand and in banks;
- (b) all leases of real property;
- (c) all tangible personal property and interests therein, other than the Business Personal Property;
- (d) all raw materials, work in process, finished goods, supplies and other inventories;
- (e) all bank accounts;
- (f) all insurance policies relating to the Business and all claims, credits, causes of action or rights thereunder;
- (g) all Permits;
- (h) all accounts receivable;
- (i) all rights to any claims of any nature available to or being pursued by Seller to the extent solely related to the Business Contracts and the Business Portion of Shared Contracts, whether arising by way of counterclaim or otherwise, in each case solely to the extent arising from occurrences prior to the Effective Time;
- (j) all of Seller’s rights under warranties, indemnities and all similar rights against any Person to the extent related to the Business Contracts and the Business Portion of Shared Contracts, in each case solely to the extent arising from occurrences prior to the Effective Time;
- (k) all Intellectual Property Rights owned by or licensed to Seller or any of its Affiliates (other than the Business Intellectual Property Rights), including the Seller Retained Marks and the Licensed Software (the “**Seller Retained Intellectual Property**”);
- (l) all books, records, files and papers, whether in hard copy or electronic format, prepared in connection with this Agreement or the transactions contemplated hereby, and all minute books and corporate records of Seller and its Subsidiaries;
- (m) all rights of Seller or any of its Subsidiaries arising under the Transaction Documents or the transactions contemplated thereby;
- (n) all assets sold or otherwise disposed of during the period from the date hereof until the Effective Time;

- (o) all assets of the Business Benefit Plans;
- (p) the personnel and human resources records of Seller or any of its Subsidiaries relating to employees of Seller or any of its Subsidiaries other than in relation to the Transferred Employees as contemplated by Section 2.01(e);
- (q) all Contracts other than the Business Contracts and the Business Portion of Shared Contracts;
- (r) any and all Tax records that relate to Taxes that are not Assumed Liabilities;
- (s) all Tax assets (including Tax refunds, credits, overpayments or similar items) of or with respect to the Seller or any of its Subsidiaries or relating to or arising out of the Purchased Assets for any Pre-Closing Tax Period;
- (t) all IT Assets owned by or licensed to Seller or any of its Affiliates, other than any IT Assets included in the Business Personal Property; and
- (u) the other property and assets described in Section 2.02(u) of the Disclosure Schedule.

Section 2.03. *Assumed Liabilities.* Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the Effective Time, to assume (or cause to be assumed) all Liabilities of Seller or any of its Subsidiaries (or any predecessor of any of the foregoing or any prior owner of all or part of the businesses or assets of any of the foregoing) to the extent relating to or arising out of the Purchased Assets or the Business (as currently or formerly conducted) of whatever nature, to the extent arising on or after the Effective Time (the “**Assumed Liabilities**”), including the following:

- (a) all Liabilities of Seller or any of its Subsidiaries arising under the Business Contracts and the Business Portion of Shared Contracts arising on or after the Effective Time;
- (b) all Liabilities arising out of or in connection with acts or omissions by or on behalf of the Business arising on or after the Effective Time;
- (c) all Liabilities or obligations arising out of any Action related to or arising out of the Business or the Purchased Assets arising on or after the Effective Time;
- (d) all Liabilities arising out of, or relating to, (i) the employment, and the termination of employment, of all Transferred Employees that arise on or after the Effective Time (including Liabilities arising under or with respect to the Automatic Transfer Regulations), (ii) any severance or other termination-related payments or benefits (including, without limitation, any termination indemnities, gratuities or similar benefits, including those arising under Applicable Law, contract, benefit plan or arrangement, collective bargaining agreement or otherwise) payable to any (x) Transferred Employee which were triggered on the transfer of such employee

from Seller or its relevant Affiliate to Buyer or its relevant Affiliate in connection with the transactions contemplated by the Transaction Documents or (y) Business Employee who does not receive, or who rejects, an offer of employment (or tripartite or similar agreement, as applicable) from Buyer or one of its Affiliates or who objects to the automatic transfer of their employment pursuant to the Automatic Transfer Regulations, (iii) any Benefit Plan to the extent such Liabilities transfer to, or are assumed by, Buyer or any of its Affiliates by operation of Applicable Law in connection with the transactions contemplated by the Transaction Documents, including any applicable termination indemnities, gratuities or similar arrangements and (iv) any Liabilities assumed by, or transferred to, Buyer or any of its Affiliates pursuant to Article 9 (including, without limitation, Section 9.02(e)) (clauses (i) through (iv), collectively, the “**Assumed Employee Liabilities**”);

(e) all Liabilities relating to or arising out of the Purchased Assets or the Business arising out of or in connection with any act, omission or circumstance occurring at any time on or after the Effective Time;

(f) all Liabilities arising after the Effective Time with respect to obligations to pay (in the case of items (ii), (iii), and (iv) included in the definition of the Debt Items Adjustment Amount) or perform services not yet provided or rendered on or prior to the Effective Time by Seller or its applicable Subsidiary (in the case of item (i) included in the definition of the Debt Items Adjustment Amount) in connection with items that are included in the Debt Items Adjustment Amount;

(g) all Liabilities for any Third Party Claim relating to, or arising out of, the use, application, defect, design or suitability of any product of the Business sold or distributed on or after the Effective Time; and

(h) any Liability with respect to Transfer Taxes or Apportioned Obligations, in each case that are the responsibility of Buyer under Article 8.

Buyer’s obligations under this Section 2.03 shall not be subject to offset or reduction, whether by reason of any actual or alleged breach of any representation, warranty or covenant contained in the Transaction Documents or any other agreement or document delivered in connection therewith or any right to indemnification hereunder or otherwise.

Section 2.04. *Excluded Liabilities.* Buyer is assuming only the Assumed Liabilities from Seller and its Subsidiaries and is not assuming any other Liability of Seller or any of its Subsidiaries of whatever nature, whether presently in existence or arising hereafter (including, for the avoidance of doubt, (a) any Indebtedness; (b) any Transaction Expenses; (c) any Liabilities for Taxes (including Transfer Taxes) that are the responsibility of Seller under Article 8; (d) except as expressly set forth in Section 9.02(e), all Liabilities to the extent arising out of or in connection with acts or omissions by or on behalf of the Business occurring prior to the Effective Time, including any Liabilities in respect of any pending or threatened claim to the extent arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets prior to the Effective Time; (e) except as otherwise provided in this

Agreement, including under Sections 9.01 and 9.02, all Liabilities arising out of or relating to the employment, and the termination of employment, of all Business Employees arising prior to the Effective Time or of any employees of Seller that are not Business Employees, in each case except for any Assumed Employee Liabilities; and (f) any Liabilities to the extent relating to or arising out of the Excluded Assets. All such other Liabilities shall be retained by and remain Liabilities of Seller or its Subsidiaries, as applicable (all such Liabilities not being assumed being herein referred to as the “**Excluded Liabilities**”).

Section 2.05. *Limitation on Assignment of Purchased Assets.* (a) Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder which is not assignable or transferable (i) without the consent of any Person other than Seller and its Subsidiaries, to the extent that such consent shall not have been given prior to the Closing or (ii) without violating any Applicable Law; *provided*, however, that Seller and Buyer and each of their respective Subsidiaries shall have the continuing obligation until twelve (12) months after the Closing to use commercially reasonable efforts to obtain all necessary consents to the assignment or transfer thereof, it being understood that other than general internal costs, overhead and use of internal personnel and assets or infrastructure, neither Seller, Buyer nor any of their respective Affiliates or Subsidiaries shall be required to expend money (other than de minimis costs and expenses), incur any Liability, commence any litigation or offer or grant any accommodation (financial or otherwise) to any third party to obtain such consents. Upon obtaining the requisite third-party consents thereto, such Purchased Asset shall promptly be transferred and assigned to Buyer hereunder at no additional cost.

(b) With respect to any Purchased Asset (other than Shared Contracts) or right thereunder that is not transferred and assigned to Buyer at the Closing by reason of Section 2.05(a), after the Closing, until the earlier of (i) the first anniversary of the Closing and (ii) such time as any requisite consent is obtained therefor and the same is transferred and assigned to Buyer, Buyer and Seller shall cooperate with each other and use their reasonable best efforts to obtain for Buyer, at no cost to Seller or Buyer or any of their respective Affiliates, an arrangement with respect thereto to provide for Buyer to obtain substantially comparable benefits therein and provide for Buyer to assume the obligations and bear the economic burdens associated therewith, and to otherwise put Buyer and Seller (and their respective Affiliates) in the position they would have been in had such Purchased Asset been transferred at the Closing. In furtherance of the foregoing, Seller shall, and shall cause its Affiliates to, without further consideration therefor, pay and remit to Buyer or its designee all monies, rights and other consideration received in respect of such Purchased Asset or right thereunder as promptly as reasonably practicable after receipt thereof.

(c) From and after the date hereof, Buyer and Seller shall use their respective commercially reasonable efforts to separate the Shared Contracts into separate Contracts effective as of the Closing or as promptly as practicable thereafter so that Buyer shall be entitled to rights and benefits and shall assume the related portion of Liabilities with respect to the Business Portion of Shared Contracts and Seller shall have the rights and benefits and shall

assume the related portion of Liabilities with respect to such Shared Contract to the extent related to the Retained Business (provided that, notwithstanding anything in this Agreement to the contrary, neither party shall be required to pay any amount to any third party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any Liability of the other party) to any third party to obtain any such separation). Upon such separation of such Shared Contract, the separated Contract will be a Purchased Asset or an Excluded Asset, as applicable. If the counterparty to any Shared Contract that is entitled under the terms of such Shared Contract to consent to the separation of such Shared Contract has not provided such consent prior to the Closing, the terms of Section 2.05(b) shall apply to such Contract, *mutatis mutandis*. The obligations to seek separation set forth in this Section 2.05(c) shall terminate on the first anniversary of the Closing or, if earlier with respect to any Shared Contract, upon the expiration of the term of such Shared Contract (without any obligation to renew or extend).

Section 2.06. Purchase Price; Allocation of Purchase Price.

(a) The purchase price for the Purchased Assets is (i) \$3,000,000, plus the Prepaid Adjustment Amount, minus the Debt Items Adjustment Amount (the “**Purchase Price**”). The Estimated Purchase Price shall be calculated and paid as provided in Section 2.08 and shall be subject to adjustment as provided in Section 2.10 and Section 2.12.

(b) Seller and Buyer shall work together in good faith to mutually agree upon, at least 15 days prior to the Closing Date, a schedule (the “**Allocation Schedule**”) allocating the Purchase Price among the Selling Entities, and the Purchased Assets sold by each Selling Entity in accordance with Section 1060 of the Code.

(c) Seller shall prepare and deliver to Buyer, within 45 days following the determination of the Final Purchase Price, a schedule (the “**1060 Schedule**”) allocating the Purchase Price among the Selling Entities in accordance with the Allocation Schedule, and the Purchased Assets sold by each Selling Entity in accordance with Section 1060 of the Code.

(d) If any subsequent payment hereunder is treated for Tax purposes as an adjustment to the Purchase Price, the 1060 Schedule shall be adjusted as mutually agreed upon in good faith by the parties.

(e) Buyer and Seller shall, and shall cause their respective Subsidiaries to, file all Tax Returns (including amended returns and claims for refunds) and information reports in a manner consistent with the Allocation Schedule and 1060 Schedule.

Section 2.07. Estimated Purchase Price. At least five Business Days prior to the Closing Date, Seller shall deliver to Buyer a statement (the “**Estimated Closing Statement**”) setting forth Seller’s good faith estimate of the amount of the Debt Items Adjustment Amount and the Prepaid Adjustment Amount as of the Effective Time. The Estimated Closing Statement

shall also set forth Seller's estimate of the Purchase Price based on the estimates set forth in the Estimated Closing Statement (the "**Estimated Purchase Price**").

Section 2.08. *Closing.* (a) The closing (the "**Closing**") of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall take place remotely by the exchange of signature pages for executed documents, as promptly as practicable (but no later than three (3) Business Days) after the date on which all of the conditions set forth in Article 10 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law, waiver of those conditions) have been satisfied (or, to the extent permitted by Applicable Law, waived); *provided*, that, notwithstanding the foregoing, the Closing shall not occur prior to the 30th day following the date hereof, unless otherwise agreed to by the parties hereto in writing. The Closing shall be deemed effective as of 11:59:59 p.m. on the day immediately prior to the Closing Date (the "**Effective Time**").

(b) At the Closing, Buyer shall deliver to Seller:

(i) a certificate, dated the Closing Date and signed by an executive officer of Buyer, pursuant to Section 10.03(c) hereof;

(ii) a duly executed counterpart to each Transaction Document to which Buyer or any Affiliate thereof is a party; and

(iii) \$1,500,000.00 in immediately available funds by wire transfer to an account or accounts designated by Seller by notice to Buyer (the "**First Payment**").

(c) At the Closing, Seller shall deliver to Buyer:

(i) a certificate, dated the Closing Date and signed by an executive officer of Seller, pursuant to Section 10.02(c) hereof; and

(ii) a duly executed counterpart to each Transaction Document to which Seller or any Affiliate thereof is a party.

(d) No later than December 29, 2023, Buyer and Seller shall deliver a joint instruction to the Escrow Agent for the release of an amount equal to (x) the Final Purchase Price minus (y) the First Payment in immediately available funds by wire transfer to an account or accounts designated by Seller by notice to Buyer (the "**Second Payment**"); *provided* that if there are not sufficient funds in escrow for the Seller to receive the entire amount of the Second Payment, then Buyer shall pay to Seller an amount of immediately available funds equal to such shortfall.

(e) At the Closing, Buyer shall deliver to an escrow account designated by the Escrow Agent an amount of immediately available funds equal to 100% of (i) the Estimated Purchase Price minus (ii) the First Payment, to be held by the Escrow Agent to secure Buyer's obligation to make the Second Payment.

Section 2.09. *Foreign Transfer Agreements.* The assignment of the Purchased Assets and the assumption of the Assumed Liabilities relating to any portion of the Business located outside of the United States will, to the extent required by Applicable Law, be effected pursuant to individual short-form acquisition agreements (each a “**Foreign Transfer Agreement**”) on a country-by-country basis; *provided* that, in each case, the Foreign Transfer Agreements shall serve purely to effect the assignment of the Purchased Assets and the assumption of the Assumed Liabilities in the applicable jurisdictions. For the avoidance of doubt, (i) the Foreign Transfer Agreements shall not have any effect on the value being given or received by Seller or Buyer, including the allocation of assets and Liabilities as between them, all of which shall be determined solely in accordance with this Agreement and (ii) in the event of any conflicts between any Foreign Transfer Agreement and this Agreement, the terms of this Agreement shall control in all respects. Seller and Buyers shall not, and shall cause their respective Affiliates not to, bring any claim for any cause of action under any Foreign Transfer Agreement.

Section 2.10. *Final Purchase Price Calculation.* (a) As promptly as practicable, but no later than 120 days after the Closing Date, Buyer will cause to be prepared and delivered to Seller a statement (the “**Closing Statement**”) setting forth Buyer’s calculation of (i) the Debt Items Adjustment Amount and the Prepaid Adjustment Amount, in each case as of the Effective Time and (ii) the Purchase Price calculated in accordance with Section 2.06(a) (using, for the avoidance of doubt, the calculations described in the foregoing clause (i)).

(b) If Seller disagrees with Buyer’s calculation of the Purchase Price as set forth in the Closing Statement, Seller may, within 60 days after delivery of the Closing Statement, deliver a written notice to Buyer (a “**Dispute Notice**”) disagreeing with such calculation and which specifies Seller’s calculation of (i) the Debt Items Adjustment Amount and the Prepaid Adjustment Amount, in each case as of the Effective Time and (ii) the Purchase Price calculated in accordance with Section 2.06(a) (using, for the avoidance of doubt, the calculations described in the foregoing clause (i)) in reasonable detail, including specifying Seller’s grounds for each point of disagreement. The Dispute Notice shall specify those items or amounts as to which Seller disagrees (each, a “**Disputed Item**”).

(c) If Seller duly delivers a Dispute Notice, Buyer and Seller shall, during the 30 days following such delivery, use their reasonable best efforts to reach agreement on each Disputed Item in order to determine the Purchase Price. If Buyer and Seller are unable to reach such agreement during such period, they shall promptly thereafter jointly retain a nationally recognized accounting firm, who shall not have any material relationship with Buyer or Seller or any of their respective Affiliates (the “**Accounting Referee**”) and cause such Accounting Referee promptly to review this Agreement and the Disputed Items for the purpose of calculating the Purchase Price. The Accounting Referee shall deliver to Buyer and Seller, as promptly as practicable, a written report setting forth such calculation. Such report shall be final and binding upon Buyer and Seller. The cost of such review and report shall be borne (i) by Buyer, if Buyer is awarded less than 50% of the aggregate value of all Disputed Items submitted to the Accounting Referee, (ii) by Seller, if Seller is awarded less than 50% of the aggregate value of all Disputed Items submitted to the Accounting Referee and (iii) otherwise equally by Buyer and

Seller. Buyer and Seller shall in good faith execute customary engagement documentation required by the Accounting Referee. The Accounting Referee shall determine, based solely on presentations by Buyer and Seller and their respective representatives, and not by independent review, only those Disputed Items still in dispute. In resolving any Disputed Item, the Accounting Referee shall be bound by the provisions of this Agreement and the application of the Accounting Policies. With respect to its determination of each such Disputed Item, the Accounting Referee may only decide the specific Disputed Items still under dispute by the parties and its decision for each such Disputed Item must be within the range of values assigned to each such Disputed Item in the Closing Statement and the Dispute Notice.

(d) Buyer and Seller agree that they will, and agree to cause their respective independent accountants and Subsidiaries to, cooperate and assist in the preparation of the Closing Statement and the calculation of the Purchase Price and in the conduct of the reviews referred to in this Section 2.10, including the making available to the extent necessary of books, records, work papers and personnel.

(e) For the avoidance of doubt, neither the calculations to be made pursuant to this Section 2.10 nor the purchase price adjustment to be made pursuant to Section 2.12 are intended to be used to adjust for errors or omissions that may be found with respect to the Financial Statements, for which Article 11 shall be the sole and exclusive remedy.

Section 2.11. *Fees and Expenses.* (a) Buyer agrees to pay to Seller (or its designee) any and all fees, costs and expenses (including, for the avoidance of doubt, third-party out-of-pocket expenses and any full-time equivalents, overhead, operating, administrative or similar costs) (the “Fees”) incurred by Seller or any of its Subsidiaries in connection with the Business on and following June 1, 2023 until the Closing; *provided* that all Fees that are (i) incurred outside of the ordinary course of business and (ii) exceed \$250,000.00 individually, must be approved by Buyer in writing prior to being incurred by Seller.

(b) No later than thirty (30) days after the date hereof, Seller shall submit an invoice to Buyer for any Fees payable pursuant to this Section 2.11 (the “**Invoice**”), which Invoice shall be in a format and contain a level of detail reasonably sufficient under the circumstances to support the Fees. Buyer shall pay the Invoice on or before the date that is thirty (30) days after receipt of such Invoice, by wire transfer of immediately available funds payable to the order of Seller pursuant to payment instructions specified on the Invoice.

Section 2.12. *Payments.* Any amount required to be paid by Buyer or Seller under this Agreement that is not paid within the period specified for such payment shall bear interest on a daily basis, from and including the date such payment was required to be made hereunder, to but excluding the date of payment, at a rate per annum equal to the rate of interest publicly announced by JPMorgan Chase Bank from time to time as its prime rate in effect at its office located at 270 Park Avenue, New York, New York in effect from time to time during the period from the date such payment was required to be made hereunder, to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated on the basis of a year of 365 days and the actual number of days elapsed.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedule (but subject to Section 13.12), Seller represents and warrants to Buyer that:

Section 3.01. *Limited Liability Company Existence and Power.* Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate powers required to carry on the Business as now conducted.

Section 3.02. *Limited Liability Company Authorization.* The execution, delivery and performance by Seller of this Agreement and the consummation by Seller or any of its Subsidiaries of the transactions contemplated hereby are within Seller's and any such Subsidiaries' corporate powers and have been duly authorized by all necessary corporate action. The execution, delivery and performance of each other Transaction Document to which Seller or any of its Subsidiaries is a party, by Seller and any such Subsidiary, and the consummation of the transactions contemplated thereby, are within Seller's and any such Subsidiary's corporate or similar authority and power and have been, or will be prior to their execution, delivery and performance, duly authorized by all necessary corporate or similar action on the part of Seller and any such Subsidiary. Assuming due and valid execution by each other party hereto, this Agreement constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity (collectively, the "**Enforceability Exceptions**")). Assuming due and valid execution by each other party thereto, each other Transaction Document to which Seller or any of its Subsidiaries is a party constitutes or, upon the execution and delivery thereof by Seller and any such Subsidiary, shall constitute, a valid and binding agreement of Seller and any such Subsidiary, enforceable against Seller and any such Subsidiary in accordance with its terms, subject to the Enforceability Exceptions.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by Seller of each Transaction Document to which it is a party and the consummation by Seller and any of its Subsidiaries of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority and none of Seller nor any Subsidiary of Seller is required to provide any notice, declaration or filing or receive the consent or approval of any Governmental Authority with respect to any of the foregoing, other than (i) compliance with any applicable Competition Laws; and (ii) any such action or filing as to which the failure to make or obtain would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.04. *Noncontravention.* The execution, delivery and performance by Seller of the Transaction Documents to which it is a party and the consummation of the transactions by Seller and any of its Subsidiaries contemplated hereby and thereby do not and will not, (i) violate

any provision of the certificate of formation or operating agreements of Seller, (ii) assuming compliance with the matters referred to in Section 3.03, violate any Applicable Law, (iii) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller or to a loss of any benefit to which Seller or any of its applicable Subsidiaries is entitled under any provision of a Business Contract or Shared Contract or (iv) result in the creation or imposition of any material Lien on any Purchased Asset, except for any Permitted Liens, with such exceptions, in the case of each of clauses (ii) through (iv), as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.05. *Financial Statements.* The unaudited statements of profit and loss for the existing customers of the Business for the 12-month periods ended on December 31, 2021 and December 31, 2022, as set forth on Section 3.05 of the Disclosure Schedule (the “**Financial Statements**”), fairly present in all material respects the results of operations of the Business for the periods then ended; *provided*, in each case, that the Financial Statements and the foregoing representations and warranties are qualified by the fact that the Business has not operated as a separate standalone entity and therefore the Financial Statements do not include all of the costs necessary for the Business to operate as a separate standalone entity, nor do they necessarily represent the financial, operating or other results of the Business had the Business been operated as a standalone entity.

Section 3.06. *Undisclosed Liabilities.* Neither Seller nor any of its Subsidiaries has any claims or Liabilities in respect of the Business that would be required to be reflected on an audited balance sheet of the Business (including the notes thereto) in accordance with GAAP, except for (i) Liabilities arising under Contracts entered into in the ordinary course of business (other than as a result of breach of Contract, tort, infringement or violation of Applicable Law), (ii) Liabilities reflected on the Financial Statements, (iii) Liabilities arising under or incurred in connection with this Agreement or any other Transaction Document, (iv) Liabilities incurred subsequent to the Cut-Off Date in the ordinary course of business consistent with past practice, (v) Liabilities relating to a subject matter that is addressed in any other representations and warranties contained in this Article 3 or in Article 8 or Article 9 or (vi) other Liabilities that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.07. *Absence of Certain Changes.* Since the Cut-Off Date, (a) the Business has been conducted in all material respects in the ordinary course consistent with past practices and (b) there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.08. *Business Contracts.* Each Business Contract and Shared Contract is a valid and binding agreement of Seller or its applicable Subsidiary party thereto and is in full force and effect, and neither Seller nor such applicable Subsidiary nor, to the knowledge of Seller as of the date hereof, any other party thereto is in default or breach under the terms of any such Business Contract or Shared Contract, except for any such defaults or breaches which

would not reasonably be expected, individually or in the aggregate, to be material to the Business, taken as a whole.

Section 3.09. *Litigation.* As of the date hereof, there is no Action pending against or in respect of the Business and, to the knowledge of Seller, there is no Action threatened against Seller or any of its Subsidiaries in respect of the Business, in each case except for such Actions as would not reasonably be expected, individually or in the aggregate, to be material to the Business, taken as a whole.

Section 3.10. *Compliance with Laws.* Since January 1, 2020, neither Seller nor any of its Subsidiaries has been in violation of, and to the knowledge of Seller, has not been under investigation with respect to and has not been threatened to be charged with or given notice of any violation of, any Applicable Law relating to the conduct of the Business, except for violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 3.11. *Properties; Liens.* (a) As of the date hereof, neither Seller nor any of its Subsidiaries owns, leases or subleases any real property used exclusively in the conduct of the Business.

(b) Seller has good and valid title to all of the Purchased Assets, except as would not reasonably be expected, individually or in the aggregate, to be material to the Business, taken as a whole. No material Purchased Asset is subject to any Lien, except for:

- (i) Liens disclosed in Section 3.11(b) of the Disclosure Schedule;
- (ii) Liens for Taxes, assessments and similar charges that are not yet due and payable, or, if due, not delinquent or that are being contested in good faith;
- (iii) mechanic's, materialman's, carrier's, repairer's, worker's, warehouseman's and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable, or, if due, not delinquent or that are being contested in good faith;
- (iv) statutory or contractual Liens of landlords or Liens on the landlord's or prior landlord's interests;
- (v) Liens constituting licenses, sublicenses or covenants not to sue in respect of Intellectual Property Rights granted in the ordinary course of business;
- (vi) Purchase money Liens and Liens securing rental payments under capital lease arrangements;

(vii) Liens and/or title exceptions created by any of the documents to be executed in connection with the Closing or this Agreement, whether prior to, at or after the Closing; or

(viii) Liens and/or title exceptions created by or resulting from the acts or omissions of Buyer or any of its Affiliates, employees, officers, directors, agents, representatives, contractors, invitees or licensees (clauses (b)(i) – (viii) of this Section 3.11(b) are, collectively, the “**Permitted Liens**”).

(c) The furniture, fixtures, machinery, equipment, and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such furniture, fixtures, machinery, equipment, and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material to the Business, taken as a whole.

Section 3.12. *Intellectual Property.* (a) Seller or one of its Subsidiaries is the owner of all right, title and interest in and to all material Business Intellectual Property Rights, free and clear of any Liens other than Permitted Liens.

(b) (i) To the knowledge of Seller, all current and former employees, consultants and independent contractors of Seller or any of its Subsidiaries who have participated in the development of any material Business Intellectual Property Rights have assigned to Seller or one of its Subsidiaries all of such Person’s right, title, and interest in and to such material Business Intellectual Property Rights and (ii) Seller and its Subsidiaries have taken reasonable measures in accordance with normal industry practice to protect the confidentiality of all material Business Intellectual Property Rights the value of which to their business is contingent upon maintaining the confidentiality thereof.

(c) (i) No material proceedings are pending or, to the knowledge of Seller, threatened, which challenge the ownership, validity, or enforceability of any material Business Intellectual Property Rights, or which allege that the conduct of the Business infringes, dilutes, misappropriates, or otherwise violates the Intellectual Property Rights of any third party and (ii) to the knowledge of Seller, no third party is infringing, diluting, misappropriating, or otherwise violating any material Business Intellectual Property Right.

(d) Seller and its Subsidiaries are in compliance in all material respects with all Applicable Laws relating to the collection, use, storage, processing and disclosure of personally identifiable information collected or stored by or on behalf of the Business.

Section 3.13. *Permits.* Seller and its Subsidiaries possess all governmental permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemption of, or filings or registrations with, or issued by, any Governmental Authority necessary for the operation of the Business as it is conducted as of the date of this Agreement, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (the

“Permits”). The Permits are valid and in full force and effect. Neither Seller nor any of its Subsidiaries is in default, and no condition exists that with notice or lapse of time or both would constitute a default, under the Permits, except as would not reasonably be expected, individually or in the aggregate, to be material to the Business, taken as a whole.

Section 3.14. *Finders’ Fees.* Except as disclosed on Section 3.14 of the Disclosure Schedule, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document.

Section 3.15. *Employee Benefit Plans and Labor Matters.* (a) Section 3.15(a) of the Disclosure Schedule lists each material Business Benefit Plan. For each material Business Benefit Plan, Seller has made available to Buyer a copy of, as applicable, (i) the governing plan document (or a summary thereof, or in the case of individual agreements that are based on a form agreement, a copy of such form), (ii) the most recent summary plan description and (iii) the current IRS determination letter.

(b) Other than as set forth in Section 3.15(b) of the Disclosure Schedule, no Business Benefit Plan (i) is subject to Title IV of ERISA or is a Multiemployer Plan or (ii) provides any material post-retirement medical, dental or life insurance benefits to any Business Employee (other than coverage mandated by Applicable Law).

(c) Each Business Benefit Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and has received a favorable determination or opinion letter from the IRS or has applied to the IRS for such a letter within the applicable remedial amendment period. Each Business Benefit Plan has been maintained in all material aspects in compliance with its terms and Applicable Law, including ERISA and the Code.

(d) No material Action (other than routine claims for benefits) is pending against or, to Seller’s knowledge, is threatened against, any Business Benefit Plan before any Governmental Authority.

(e) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or in combination with another event, (i) entitle any Business Employee to any severance, change in control or similar material payments or benefits or provide for any material increase in such payments or benefits under any Business Benefit Plan, (ii) accelerate the time of payment or vesting of any compensation or benefits, or materially increase the amount of compensation or benefits due to any Business Employee, under any Business Benefit Plan or (iii) result in the payment of any amount that would not be deductible under Section 280G of the Code.

(f) Since January 1, 2020, the Seller has been, with respect to the Business Employees, in compliance in all material aspects with all Applicable Laws relating to labor and employment, including those relating to labor management relations, wages, hours, overtime, discrimination,

sexual harassment, civil rights, affirmative action, work authorization, immigration, safety and health and continuation coverage under group health plans.

(g) Except as set forth in Section 3.15(g) of the Disclosure Schedule, neither the Seller nor any of its Subsidiaries is a party to or subject to, or currently negotiating in connection with entering into, any collective bargaining agreement with respect to any Business Employee. There is no material labor strike, slowdown, lockout or stoppage pending or, to Seller's knowledge, threatened by the Business Employees. There are no material unfair labor practice complaints pending or, to the knowledge of the Seller, threatened against the Business by any Business Employee before any Governmental Authority. There are no material organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit relating to any Business Employee currently pending, or to the knowledge of Seller, threatened by the Business Employees against the Business.

Section 3.16. *Taxes.*

(a) All material Taxes that will have been required to be paid on or prior to the date hereof, the non-payment of which would result in a Lien (other than a Permitted Lien) on any Purchased Asset, have been paid.

(b) Adequate reserves in accordance with GAAP applied on a basis consistent with that of preceding periods have been established for the payment of all material Taxes that arise from or with respect to the Purchased Assets and are incurred in or attributable to the Pre-Closing Tax Period, the non-payment of which would result in a Lien (other than a Permitted Lien) on any Purchased Asset.

Section 3.17. *Sufficiency.* Except as set forth on Section 3.17 of the Disclosure Schedule, and assuming receipt of all required consents, approvals and authorizations, on the Closing Date the Purchased Assets are adequate in all material respects to conduct the Business as it is conducted as of the date of this Agreement (taking into account any property or services provided under the Transition Services Agreement and all other Transaction Documents, and except for Intellectual Property Rights, IT Assets, insurance and the Excluded Assets).

Section 3.18. *No Other Representations and Warranties.* EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS (INCLUDING ARTICLE 3 AND ARTICLE 8 HEREOF), NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER OR ITS AFFILIATES, THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS, THE PURCHASED ASSETS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS, THE ASSUMED LIABILITIES OR ANY OTHER RIGHTS OR OBLIGATIONS TO BE TRANSFERRED OR ASSUMED PURSUANT HERETO, AND SELLER DISCLAIMS ANY OTHER REPRESENTATIONS, WARRANTIES, FORECASTS, PROJECTIONS, STATEMENTS OR

INFORMATION, WHETHER MADE OR FURNISHED BY SELLER OR ANY OF ITS AFFILIATES OR ANY OF ITS OR THEIR REPRESENTATIVES.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that:

Section 4.01. *Corporate Existence and Power.* Buyer is a private company duly formed, validly existing and in good standing under the laws of Singapore. Buyer has all requisite corporate powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its businesses as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not reasonably be expected to prevent or materially delay the transactions contemplated by this Agreement or any other Transaction Document to which Buyer or any of its Affiliates is a party.

Section 4.02. *Corporate Authorization.* The execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby are within the corporate powers of Buyer and have been duly authorized by all necessary corporate action. The execution, delivery and performance of each other Transaction Document to which Buyer or any of its Affiliates is a party, by Buyer and any such Affiliates, and the consummation of the transactions contemplated thereby, are within Buyer's and any such Affiliate's corporate, partnership or similar authority and power and have been, or will be prior to their execution, delivery and performance, duly authorized by all necessary corporate, partnership or similar action on the part of Buyer and any such Affiliate. Assuming due and valid execution by each other party hereto, this Agreement constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to the Enforceability Exceptions. Assuming due and valid execution by each other party thereto, each other Transaction Document to which Buyer or any of its Affiliates is a party constitutes or, upon the execution and delivery thereof by Buyer and any such Affiliate, shall constitute, a valid and binding agreement of Buyer and any such Affiliate, enforceable against Buyer and any such Affiliate in accordance with its terms, subject to the Enforceability Exceptions.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Buyer of each Transaction Document to which it is a party and the consummation by Buyer and any of its Affiliates of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority and none of Buyer nor any Affiliate of Buyer is required to provide any notice, declaration or filing or receive the consent or approval of any Governmental Authority with respect to any of the foregoing, other than (i) compliance with any applicable Competition Laws specified on Schedule 4.03 and (ii) any such action or filing as to which the failure to make or obtain would not prevent or materially delay the transactions contemplated by this Agreement or any other Transaction Document to which Buyer or any of its Affiliates is a party.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Buyer of each Transaction Document to which it is a party and the consummation of the transaction by Buyer and any of its Affiliates contemplated hereby and thereby do not and will not, (i) violate any provisions of the certificate of incorporation or bylaws of Buyer or its applicable Affiliates, (ii) assuming compliance with the matters referred to in Section 4.03 violate or breach any Applicable Law, (iii) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under any provision of any agreement or other instrument binding upon Buyer or (iv) result in the creation or imposition of any material Lien on any asset of Buyer, with such exceptions, in the case of each of clauses (ii) through (iv), as would not prevent or materially delay the transactions contemplated by this Agreement or any other Transaction Document to which Buyer or any of its Affiliates is a party.

Section 4.05. *Financing.*

(a) Buyer has, and will have at all times prior to the payment of the Final Purchase Price, sufficient cash, available committed lines of credit or other sources of immediately available funds to enable it to make payment of the Estimated Purchase Price, Final Purchase Price and any other amounts to be paid by it hereunder.

(b) Buyer acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, neither the availability of financing or the consummation of any financing transaction shall be a condition to the obligation of Buyer to consummate the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.06. *Litigation.* There are no Actions pending against or, to the knowledge of Buyer, threatened against, Buyer, except for such Actions as would not reasonably be expected to prevent or materially delay the transactions contemplated by this Agreement or any other Transaction Document to which Buyer or any of its Affiliates is a party.

Section 4.07. *Finders' Fees.* There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

Section 4.08. *Inspections; No Other Representations.* Buyer is an informed and sophisticated purchaser, and has engaged advisors experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Buyer acknowledges and agrees that the Purchased Assets are sold "as is" and Buyer agrees to accept the Purchased Assets and the Business in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or

imputed to Seller, except as expressly set forth in this Agreement (including Article 3 or Article 8 (as modified by the Disclosure Schedule) of this Agreement) or the other Transaction Documents. Without limiting the generality of the foregoing, Buyer acknowledges that Seller makes no representation or warranty with respect to, and Buyer is not relying on, (i) any projections, estimates or budgets delivered to or made available to Buyer or its Representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future business and operations of the Business, or (ii) any other information or documents made available to Buyer or its Representatives with respect to the Business, in each case except as expressly set forth in this Agreement (including Article 3 or Article 8 (as modified by the Disclosure Schedule) of the Agreement) or the other Transaction Documents.

ARTICLE 5 COVENANTS OF SELLER

Seller agrees that:

Section 5.01. *Conduct of the Business.* From the date hereof until the Closing Date, except (i) as set forth in Section 5.01 of the Disclosure Schedule, (ii) as expressly contemplated by the Transaction Documents, (iii) as required by Applicable Law, Permit, Contract or Governmental Authority (including any COVID-19 Measures) or (iv) with Buyer's consent (which shall not be unreasonably withheld, conditioned or delayed), Seller shall, and shall cause its Subsidiaries to, use their respective commercially reasonable efforts to conduct the Business in the ordinary course consistent with past practice in all material respects. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, except as set forth in Section 5.01 of the Disclosure Schedule, as expressly contemplated by the Transaction Documents, as required by Applicable Law, Permit, Contract or Governmental Authority (including any COVID-19 Measures), or with Buyer's consent (which shall not be unreasonably withheld, conditioned or delayed), with respect to the Business, the Purchased Assets or the Assumed Liabilities, Seller shall not and shall cause its Subsidiaries not to:

(a) sell, lease, license or otherwise dispose of any assets or properties that would be a Purchased Asset except (i) pursuant to existing Contracts or commitments or the renewals thereof, (ii) dividends or other distributions to Seller or its Affiliates, (iii) sales of inventory in the ordinary course of business consistent with past practice and (iv) licenses or other dispositions of Intellectual Property Rights in the ordinary course of business;

(b) create or otherwise incur any Lien on any material Purchased Asset other than Permitted Liens;

(c) incur any capital expenditures outside of the ordinary course of business;

(d) settle or offer to settle, any material Action involving the Business if such settlement or compromise imposes any material non-monetary obligations or equitable relief on Buyer or its Affiliates;

(e) materially increase the compensation or benefits of the Business Employees other than in the ordinary course of business consistent with past practice or as required by Applicable Law or the terms of any Business Benefit Plan or any applicable collective bargaining, works council or other labor agreement; or

(f) agree or commit to do any of the foregoing.

For the avoidance of doubt, nothing in this Section 5.01 shall restrict Seller or any of its Subsidiaries, in any respect, from taking any action to remove, or cause any Subsidiary to remove, and pay to Seller or any of its Affiliates any cash and cash equivalents held in any bank account of the Business, or otherwise comply with or give effect to the provisions of this Agreement. Nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the operations of the Business (except for Buyer's right to approve those matters enumerated in this Section 5.01) and prior to the Closing, Seller and its Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over their respective businesses and operations.

Section 5.02. Confidentiality. Seller shall not, and shall cause its controlled Affiliates and Representatives not to, for a period of five years after the Closing Date (or such longer period to the extent applicable to information provided by a vendor or customer of the Business under the applicable confidentiality requirements of any Business Contract or Business Portion of Shared Contracts), directly or indirectly, without Buyer's consent, disclose to any third party (other than each other and their respective Representatives) any confidential or proprietary information concerning the Business, including any confidential or proprietary information disclosed to Seller pursuant to the exercise of its rights under Section 7.05 hereof; *provided* that the foregoing restriction shall not (a) apply to any information (i) generally available to, or known by, the public (other than as a result of disclosure in violation of this Section 5.02) or (ii) independently developed by Seller or any Affiliate thereof without reference to any such confidential or proprietary information or (b) prohibit any disclosure (i) required by Applicable Law so long as, to the extent practicable and legally permissible, Seller provides Buyer with reasonable prior notice of such disclosure and a reasonable opportunity (at Buyer's sole expense) to contest such disclosure or (ii) reasonably made in connection with the enforcement of any right or remedy relating to any of the Transaction Documents or the transactions contemplated thereby.

Section 5.03. Intellectual Property License.

(a) Effective from and after the Closing, Seller (on behalf of itself and its Affiliates) hereby grants Buyer a non-exclusive, worldwide, fully paid-up, royalty-free, non-transferable, non-sublicensable (except to Buyer's Affiliates who provide services to customers in connection with the Business) license under the Licensed Software to use, reproduce, create derivative works of, modify, distribute, make, have made, sell, offer for sale, import or otherwise commercially exploit products and services solely in connection with the operation of the Business as conducted as of the Closing and any natural extensions or evolutions thereof. For the avoidance of doubt, Seller and its Affiliates shall have no obligation to (a) provide Buyer with

any enhancements, modifications or improvements to the Licensed Software made by or on behalf of Seller or any of its Affiliates following the Closing or (b) provide any maintenance and support services to Buyer or any of its Affiliates with respect to the Licensed Software. Buyer shall (and shall cause its Affiliates to) (i) keep the Licensed Software confidential and (ii) not use the Licensed Software in connection with, or incorporate the Licensed Software into, any Open Source Software (as defined in the Letter Agreement).

(b) THE LICENSED SOFTWARE IS FURNISHED ON AN “AS IS” AND “WHERE IS” BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, QUALITY, USEFULNESS, COMMERCIAL UTILITY, ADEQUACY OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

ARTICLE 6 COVENANTS OF BUYER

Buyer agrees that:

Section 6.01. *Confidentiality.*

(a) All information provided or made available to Buyer, its Affiliates or any of their respective Representatives pursuant to any of the Transaction Documents or in connection with any of the transactions contemplated thereby, whether provided prior to or after the date hereof, shall be subject to the Confidentiality Agreement. Subject to Section 6.01(b), the Confidentiality Agreement shall terminate at the Closing only with respect to that portion of the Confidential Information (as defined in the Confidentiality Agreement) that relates to the Business and otherwise shall continue in full force and effect following the Closing. If this Agreement is terminated for any reason prior to the Closing, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms.

(b) Notwithstanding anything to the contrary contained herein, with respect to any information furnished by Buyer, Seller or any of their respective Subsidiaries to the other party pursuant to Section 7.05(b), the Confidentiality Agreement shall continue in full force and effect in accordance with its terms for a period of two years following such party’s receipt of such information.

Section 6.02. *Use of Seller Retained Marks.* Promptly following (and in any event, within twelve (12) months after) the Closing (such twelve (12)-month period, the “**Phase Out Period**”), Buyer shall (and shall cause its Affiliates to) (a) cease any and all use of the Seller Retained Marks, (b) remove, conceal, cover, redact and/or replace such Seller Retained Marks from any and all Purchased Assets and any other materials and assets under the control or possession of Buyer or any of its Affiliates that contain the Seller Retained Marks and (c) request, and reasonably assist and cooperate with, clients of the Business to remove any and all references to the Seller Retained Marks from any materials under the control or possession of

such clients. Seller (on behalf of itself and its Affiliates) hereby grants Buyer, solely during the Phase Out Period, a limited, non-exclusive, worldwide, fully paid-up, royalty-free, non-transferable, non-sublicensable (except to Buyer's Affiliates who provide services to customers in connection with the Business) license to use the Seller Retained Marks in the operation of the Business as such Seller Retained Marks were used therein as of immediately prior to the Closing. Buyer and its Affiliates shall use and display any Seller Retained Marks licensed pursuant to this Section 6.02 only in a form and manner that is consistent in all material respects with the use or display of such Seller Retained Marks in connection with the Business as of immediately prior to the Closing and solely in association with goods or services of a quality equal to or greater than the quality of the goods and services of the Business as of immediately prior to the Closing. From and after the Closing, Buyer shall not (and shall cause its Affiliates not to) challenge or seek to deny or restrict, or assist any third party in challenging or seeking to deny or restrict, the ownership, validity or enforceability of any Seller Retained Marks.

Section 6.03. *Data Privacy and Protection.* Following the Closing, Buyer shall, and shall cause its Affiliates to, (a) comply with all Applicable Laws with respect to data privacy and protection in connection with the processing of any personally identifiable information included in the Purchased Assets (as each such term and any terms of similar import are defined under any such Applicable Laws) and (b) process all such personally identifiable information in a manner consistent with the relevant portions of the applicable privacy policies, notices, consents and Contracts in effect as of the Closing with respect to the Business, unless and until revised notices are provided, consents are obtained or Contracts are entered into, including in connection with any different or additional processing.

ARTICLE 7

COVENANTS OF BUYER AND SELLER

Section 7.01. *Reasonable Best Efforts; Further Assurance.* Subject to the terms and conditions of this Agreement, Buyer and Seller shall use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by this Agreement and the other Transaction Documents as soon as practicable and in any event prior to the End Date, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents, (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority and (iii) obtaining and maintaining all approvals and consents required to be obtained from any other third party, in each of the foregoing subclauses (i)–(iii), that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents as soon as practicable; *provided, however,* that the parties hereto acknowledge and agree that, except as specifically provided in this Agreement, the reasonable best efforts of any party hereto with respect to Section 7.01(iii) shall not be deemed to include expending money (other than de minimis costs and expenses), incurring any Liability, commencing any litigation or offering or granting any

accommodation (financial or otherwise) to any such third party to obtain such approvals or consents. Seller and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement, to vest in Buyer good title to the Purchased Assets and to assure and evidence the assumption by Buyer of the Assumed Liabilities.

Section 7.02. *Public Announcements.* Each party agrees to obtain the written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed) before issuing any press release or making any public statement with respect to the Transaction Documents or the transactions contemplated thereby; *provided, however*, that a party may, without the prior consent of the other party, but only following consultation with the other party to the extent legally permissible, issue such public disclosure as may be required by Applicable Law or any listing agreement with any national securities exchange to which the disclosing party is subject.

Section 7.03. *Notices of Certain Events.* Each of Seller and Buyer shall promptly notify the other party of:

(i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by any Transaction Documents if the failure to obtain such consent would be reasonably likely to have a Material Adverse Effect;

(ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by any Transaction Documents; and

(iii) the commencement of any Action that, if pending on the date of this Agreement, would have been required to be disclosed pursuant to, in the case of Seller, Section 3.09 or, in the case of Buyer, Section 4.06.

(b) Notwithstanding anything to the contrary contained herein, a party's failure to comply with this Section 7.03 shall not, in itself, provide the other party hereto or any of such other party's Affiliates with a right not to effect the transactions contemplated by this Agreement.

Section 7.04. *Waiver of Conflicts Regarding Representation; Nonassertion of Attorney-Client Privilege.* (a) Buyer waives and will not assert, and agrees to cause its Affiliates to waive and not to assert, any conflict of interest arising out of or relating to the representation, after the Closing, of the Seller or any of its Affiliates or any shareholder, officer, employee or director of the Seller or any of its Affiliates (any such Person, a "**Designated Person**") in any matter involving this Agreement or the transactions contemplated hereby, including any Action between or among Buyer or its Affiliates, Seller or any of its Affiliates, and any Designated Person, by Davis Polk & Wardwell LLP or any other legal counsel currently representing the Seller or any of its Affiliates in connection with this Agreement or the transactions contemplated hereby (the

“**Current Representation**”), even though the interests of such Designated Person may be directly adverse to Buyer or its Affiliates.

(b) It is the intention of the parties hereto that all rights to any attorney-client privilege applicable to communications between Davis Polk & Wardwell LLP or any other legal counsel currently representing the Seller or its Affiliates in connection with the Current Representation and any Designated Person shall be retained solely by such Designated Person; *provided* that the foregoing waiver and acknowledgement of retention shall not extend to any communication not involving this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby. Without limiting the generality of the foregoing, upon and after the Closing, (i) the Seller and its Affiliates shall be the sole holders of the attorney-client privilege with respect to the Current Representation, and Buyer and its Affiliates shall not be holders thereof and (ii) to the extent that files of Davis Polk & Wardwell LLP or any other legal counsel currently representing Seller or any of its Affiliates in connection with the Current Representation (whether or not such legal counsel also represented the Seller) constitute property of a client, only the Seller and its Affiliates shall hold such property rights.

(c) In the event that any third party shall seek to obtain from Buyer or its Affiliates attorney-client communications involving Davis Polk & Wardwell LLP or any other legal counsel currently representing the Seller or any of its Affiliates in connection with the Current Representation, then Buyer shall notify the Seller of such application sufficiently in advance of any hearing on the application to permit the Seller to participate in any such proceedings.

Section 7.05. *Access to Information; Cooperation.* (a) From the date hereof until the Closing Date (or, if earlier, the termination of this Agreement), and subject to Applicable Law and the Confidentiality Agreement, Seller will (i) give Buyer, its counsel and other authorized Representatives reasonable access to the books and records of the Business, (ii) furnish to Buyer, its counsel and other authorized Representatives such financial and operating data and other information relating to the Business as such Persons may reasonably request and (iii) instruct the employees, independent accountants, counsel and financial advisors of Seller to reasonably cooperate with Buyer in its investigation of the Business. Notwithstanding the foregoing, Buyer and its agents shall not have access (A) to any information to the extent relating to any Retained Business or (B) any Seller Tax Records, provided, that Seller shall be permitted to extract from Seller Tax Records and provide to Buyer information solely related to the Purchased Assets, the Assumed Liabilities or the Business as reasonably requested by Buyer.

(b) From and after the Closing Date, and subject to Applicable Law, upon request of the other party, Seller and Buyer will give the other party and its authorized Representatives reasonable access to its properties, books, records, employees and auditors to the extent necessary to permit such other party to comply with its financial reporting, accounting or auditing obligations with respect to any period ending before the Closing Date with respect to the Business.

(c) Any access granted to either party or its Representatives pursuant to this Section 7.05 shall be conducted in such manner as not to interfere unreasonably with the conduct of the

business of the party granting such access. The party to whom such access or other cooperation is granted pursuant to this Section 7.05 shall bear all of the out-of-pocket costs and expenses (including attorneys' fees, but excluding reimbursement for general overhead, salaries and employee benefits) reasonably incurred by the other party or its Representatives in connection therewith.

(d) Notwithstanding anything to the contrary contained herein, nothing in this Section 7.05 shall require (i) Seller or Buyer, as applicable, to provide the other party or its Representatives with access to (x) personnel records of employees relating to individual performance or evaluation records, medical histories or other information which, in the disclosing party's good faith opinion, the disclosure of which would violate Applicable Law or could subject such party or its Affiliates to risk of liability or (y) information the disclosure of which, in the disclosing party's good faith opinion would conflict with confidentiality obligations to which such party or any of its Affiliates is bound or would reasonably be expected to result in the forfeiture or waiver of any attorney-client or similar privilege; *provided*, that, in the case of this clause (y), the disclosing party shall use commercially reasonable efforts to provide the other party, to the extent possible, with access to the relevant information in a manner that would not reasonably be expected to result in the forfeiture or waiver of any such attorney-client or similar privilege, (ii) either party's independent accountants to make available to the other party or its Representatives any work papers unless and until such Person has signed a customary confidentiality and hold harmless agreement relating to such access to work papers in form and substance reasonably acceptable to such independent accountants or (iii) Seller or Buyer, as applicable, to provide the other party or its Representatives access or information in connection with any Action in which Seller or any of its Subsidiaries is an adverse party to Buyer.

Section 7.06. Replacement of Guaranties. Buyer shall use its reasonable best efforts to cause the replacement, effective as of the Closing, of the guaranties listed in Section 7.06 of the Disclosure Schedule (collectively, the "**Substituted Guaranties**"), and Seller shall reasonably cooperate in Buyer's efforts; *provided* that neither Seller nor any of Seller's Subsidiaries shall have any obligations to make payments or incur any costs or expenses, grant any concession or incur any other liability in connection with such cooperation pursuant to this Section 7.06 except to the extent Buyer agrees to promptly reimburse Seller or any of its respective Subsidiaries; *provided further*, that if any such guaranty is not replaced effective as of the Closing, Buyer shall continue to use its reasonable best efforts to cause the replacement of any unreplaced guaranties. Without limiting the foregoing, neither Buyer nor any of its Subsidiaries shall extend, renew or amend in any material respect any Contract containing or underlying a Substituted Guaranty unless, prior to or concurrently with such extension or renewal, Buyer or one of its respective Affiliates (as applicable) is substituted in all respects for Seller and any of its respective Affiliates (as applicable), and Seller and its respective Affiliates are released in respect of all obligations of Seller and such Affiliates under such Substituted Guaranty. In no event shall Seller or any of its Subsidiaries be obligated to pay any money to any person to effect the replacements described in this Section 7.06. Buyer shall indemnify Seller and its Affiliates against any and all Liabilities and other Damages incurred or suffered by any such Person arising

out of or resulting from the exercise by any third party of its rights against Seller or any of its Affiliates under any guaranty or other similar arrangement provided by Seller or any of its Affiliates in respect of any Assumed Liability (the “**Assumed Guaranty Liabilities**”).

ARTICLE 8 TAX MATTERS

Section 8.01. *Cooperation on Tax Matters.* Subject to Applicable Law, Buyer and Seller shall cooperate (and shall cause their respective Subsidiaries to cooperate), as and to the extent reasonably requested by the other party, in connection with the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority and the prosecution or defense of any Action relating to any Tax, in each case with respect to the Purchased Assets. Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall be construed to require Seller to provide to any Person any right to access or to review any Tax Return or Tax work papers of Seller or any Affiliate of Seller (including any consolidated, combined, affiliated or unitary Tax Return that includes Seller or any Affiliate of Seller, and any pro forma Tax Return used to create any such consolidated, combined, affiliated or unitary Tax Return) (such Tax Returns or Tax work papers, the “**Seller Tax Records**”).

Section 8.02. *Transfer Taxes.* Transfer Taxes shall be borne by the Buyer if and to the extent Buyer or an Affiliate of Buyer is eligible to receive a credit or refund in respect thereof (and regardless of whether such Transfer Tax are actually refunded or credited) (such eligible Transfer Taxes, the “**Refundable Transfer Taxes**”), and Buyer and Seller shall bear equally all Transfer Taxes that are not Refundable Transfer Taxes arising out of the transactions contemplated by this Agreement and any Transaction Document regardless of the Party upon whom such Transfer Taxes are imposed by Applicable Law, and no Transfer Taxes shall be deducted from the Purchase Price. The party required by Applicable Law to file a Tax Return with respect to Transfer Taxes shall timely prepare and file (with the other party’s cooperation) such Tax Return, and the non-filing party shall reimburse the filing party for the non-filing party’s share of such Transfer Taxes paid by the filing party within five (5) days of the payment thereof. Buyer and Seller shall use their commercially reasonable efforts to cooperate to establish any available exemption from or reduction in Transfer Taxes payable hereunder.

Section 8.03. *Apportioned Obligations.*

(a) All real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets for a Straddle Tax Period (collectively, the “**Apportioned Obligations**”) shall be apportioned between Seller and Buyer based on the number of days of such taxable period up to and including the Closing Date (any such portion of such taxable period, the “**Apportionment Pre-Closing Tax Period**”) and the number of days of such taxable period after the Closing Date (any such portion of such taxable period, the “**Apportionment Post-Closing Tax Period**”). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Apportionment Pre-Closing Tax Period, and

Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Apportionment Post-Closing Tax Period.

(b) Apportioned Obligations shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by Applicable Law. The paying party shall be entitled to reimbursement from the non-paying party in accordance with Section 8.03(a). Upon payment of any such Apportioned Obligation, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 8.03(a) together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than 14 days after the presentation of such statement, unless otherwise agreed by Buyer and Seller. For the avoidance of doubt, Seller shall be entitled to reimbursement from Buyer in accordance with this Section 8.03(b) of any Seller payment on or prior to the Closing Date of Taxes that are apportioned under Section 8.03(a) to the Apportionment Post-Closing Tax Period.

ARTICLE 9 EMPLOYEE MATTERS

Section 9.01. *Offer Business Employees.* Buyer shall (or shall cause its Subsidiaries to) within a reasonable period of time (but not fewer than 15 Business Days (or as such earlier time as may be required by Applicable Law)) prior to the Closing Date, make an offer of employment to (and, to the extent applicable, enter into a tripartite or similar agreement (in a form reasonably acceptable to Seller) with) each Offer Business Employee, which such offers of employment shall (A) be on terms and conditions of employment that comply with Applicable Law, (B) comply with the requirements of this Article 9 and (C) provide for employment with Buyer (or its applicable Affiliate) to commence effective as of the Effective Time (without an interruption of service), subject to the occurrence of the Effective Time (such offer of employment, a “**Qualifying Offer**”). Unless a written acceptance of an offer of employment is required by Applicable Law, an Offer Business Employee who continues employment or who has received an offer of employment pursuant to this Section 9.01 shall be deemed to have accepted such continuance or offer, unless such Offer Business Employee specifically declines such continuance or offer in writing. Seller shall terminate the employment of any Offer Business Employees who do not become Transferred Employees, and, notwithstanding anything to the contrary in this Agreement, including in Section 2.04 hereof, any severance or other termination-related payments or benefits (whether arising under Applicable Law, Contract, benefit plan, Collective Bargaining Agreement or otherwise) related thereto shall constitute an Assumed Employee Liability.

Section 9.02. *Automatic Transfer Business Employees.*

(a) Each of Seller and Buyer intend that the Automatic Transfer Regulations will apply to the employment of each of the Automatic Transfer Business Employees with effect from the Effective Time. Seller and Buyer further acknowledge and agree that the employment contract of

each Automatic Transfer Business Employee shall be transferred automatically to Buyer or its applicable Subsidiary with effect from the Effective Time.

(b) Seller and Buyer shall cooperate to facilitate the automatic transfer of any such Automatic Transfer Business Employees and shall each comply with their obligations in respect of information and consultation pursuant to the Automatic Transfer Regulations. Without limiting the generality of the foregoing, Seller and Buyer shall cooperate in good faith in order to satisfy, or cause to be satisfied, the information and consultation requirements of the Automatic Transfer Regulations to the extent that they apply to the transactions contemplated by this Agreement or the transactions effectuated in contemplation thereof. Without prejudice to the foregoing, Buyer shall provide all reasonable assistance and cooperation required by Seller or any of its Affiliates (including attendance at meetings, if requested by Seller) in relation to any such information and consultation process carried out by Seller, and Buyer shall promptly disclose to Seller and its Affiliates following the date of this Agreement accurate details of any proposed “measures” (pursuant to the Automatic Transfer Regulations) it may take in relation to the Automatic Transfer Business Employees to enable Seller and its Affiliates to comply in a timely manner with their information and consultation obligations. With respect to any Transferred Employee who is an Automatic Transfer Business Employee, Buyer shall in all cases provide (or cause to be provided) to such Transferred Employees terms and conditions of employment (including, but not limited to, compensation, remuneration, insured benefits, bonus and other incentive plans, and any other benefits and emoluments) equivalent to those which they are employed on by the Seller (and/or any of its Subsidiaries) immediately prior to the Effective Time and in compliance with the Automatic Transfer Regulations.

(c) If, following the Effective Time, the employment contract of any Automatic Transfer Business Employee is found not to have effect after the Effective Time as if originally made with Buyer or any of its Subsidiaries, as applicable (other than by reason of an Automatic Transfer Business Employee exercising any rights such Automatic Transfer Business Employee may have to object to the transfer under the Automatic Transfer Regulations):

(i) Buyer shall, in consultation with Seller, within five Business Days of being informed of such finding, make a Qualifying Offer to such Automatic Transfer Business Employee that is effective upon termination of the existing employment;

(ii) Seller and its Affiliates shall terminate or procure the termination of the employment of such Automatic Transfer Business Employee within seven (7) days of such offer being made; and

(iii) The provisions of this Article 9 shall apply as if the relevant Automatic Transfer Business Employee were an Offer Business Employee.

(d) If by virtue of the Automatic Transfer Regulations any contract of employment relating to any employee of Seller and/or its Subsidiaries who is not a Business Employee has the effect as if originally made by the Buyer or any of its Subsidiaries and such employee (“**Undisclosed Employee**”), then the following shall apply:

(i) on or before the Effective Time, Seller shall use commercially reasonable efforts to cause (A) the objection to the transfer of their employment to Buyer (or its applicable Subsidiary) and/or (B) that each such Undisclosed Employee enters into a tripartite settlement agreement with Seller and Buyer (and/or its or their Subsidiaries) in a form agreed by the Seller. Notwithstanding the foregoing and anything to the contrary in this Section 9.02(d) or otherwise, Seller and/or its Affiliates may offer to re-employ any Undisclosed Employee and if accepted, such employee shall no longer be regarded as an Undisclosed Employee for purposes of this Section 9.02(d); and

(ii) in the event any Undisclosed Employee does not object to the transfer of their employment to Buyer (or any of its Subsidiaries) and/or does not enter into a tripartite settlement agreement, by virtue of the Automatic Transfer Regulations their employment shall transfer to the Buyer (and/or its Subsidiaries) then the parties hereto agree as follows:

(A) Seller and/or its Affiliates shall notify Buyer and/or its Affiliates within five (5) calendar days of becoming aware of such transfer or alleged transfer of employment of any Undisclosed Employee;

(B) Buyer may within five (5) calendar days of such notification offer employment to the Undisclosed Employee and if accepted such employee shall be regarded as a Business Employee (as defined within this Agreement);

(C) where such offer of employment is not made or accepted, Seller or its applicable Affiliate shall, on behalf of Buyer and its Affiliates, be responsible for terminating each such Undisclosed Employee's employment, provided that Buyer shall cooperate with Seller and its Affiliates' requests for information to enable Seller and its Affiliates to reasonably comply with all of its obligations set forth in the applicable Undisclosed Employee's employment contract and material terms of any relevant UK ACAS Code of Practice (as in effect from time to time);

(D) if, after the Effective Time, Buyer or any of its Affiliates become aware of any matter, event or circumstances which gives rise to, or may give rise to a claim by any Undisclosed Employee:

(1) Buyer shall within seven (7) calendar days of becoming aware thereof, inform Seller in writing, specifying in such reasonable detail as is available to Buyer and its Affiliates the relevant matter, event or circumstances;

(2) None of Buyer or any of its Affiliates shall make any admission of liability in relation to such claim; and

(3) Seller (or its applicable Affiliate) shall have sole conduct of all matters relating to any claims presented by any Undisclosed Employee (in such a manner and to such an extent as the Seller may deem appropriate), including (x) the appointment of lawyers and other professional advisers, (y) the conduct of all proceedings and (z) the making of any settlement or compromise of any such claim(s), provided, in each case, that Seller (or its applicable Affiliate) shall provide Buyer with such information in relation to any such claim(s) as Buyer may reasonably request in writing.

(e) Buyer shall assume and be solely responsible for, and shall indemnify Seller and its Affiliates against, any Liabilities arising out of or relating to (i) any breach or alleged breach by Buyer or any of its Subsidiaries to provide the Seller and/or its Affiliates with any information regarding any measures (or the fact that no measures are to be taken), in connection with the transfer, which Buyer may take in relation to any of the Automatic Transfer Employees' employment with the Buyer and/or its Affiliates after the Effective Time (and Seller and its Affiliates acknowledge that this information is required by Seller to undertake any obligations to inform and consult with the Automatic Transfer Employees' employment pursuant to the Automatic Transfer Regulations, (ii) any breach or alleged breach by Seller of the Automatic Transfer Regulations that is due to Buyer's acts or omissions (including, for the avoidance of doubt, causing the Closing to occur prior to the completion of the consultation requirements of the Automatic Transfer Regulations to the extent that they apply to the transactions contemplated by this Agreement or the transactions effectuated in contemplation thereof), (iii) any claim by any Automatic Transfer Business Employee in respect of any actual or anticipatory breach of contract and/or actual or anticipatory breach of statutory employment rights because of any change in, or any plans by Buyer to change any terms and conditions of, employment or working conditions of Automatic Transfer Business Employees at or after the Effective Time and (iv) the application of the Automatic Transfer Regulations on any change in service provider after the Effective Time of any third-party vendor, subcontractor, supplier or agent who provide services to Buyer or its Affiliates through the Transition Services Agreement or otherwise, regardless of whether such Liabilities arise under Applicable Law (including the Automatic Transfer Regulations), Contract or otherwise.

Section 9.03. *Annual Bonuses.* After the end of the fiscal year in which the Closing Date occurs (but in no event later than March 15 of the year following the year in which the Closing Date occurs), Buyer shall (or shall cause its applicable Affiliate to) pay to each Transferred Employee an annual bonus in respect of the year in which the Closing Date occurs; *provided* that the aggregate amount of all such bonuses paid by Buyer hereunder shall in no event be less than the amount included in the Debt Items Adjustment Amount.

Section 9.04. *Service Credit.* Buyer shall provide (and cause its Subsidiaries to provide) each Transferred Employee credit for years of prior service, and recognize such employee's continuity of service, with Seller or any of its Affiliates or their respective predecessors for all purposes, including eligibility, vesting and benefit accrual, under each employee benefit plan

sponsored or maintained by Buyer or any of its Affiliates; *provided, however*, that such credit shall not result in a duplication of benefits. For the avoidance of doubt, Buyer shall (or shall cause its Subsidiaries to) credit each Transferred Employee with all paid time off accrued and unused by such Transferred Employee through the Effective Time; *provided* that, to the extent required by Applicable Law, all paid time off accrued and unused by such Transferred Employee through the Effective Time shall be paid by Buyer (or its Subsidiaries) to such Transferred Employee (or reimbursed by Buyer to Seller (or its applicable Affiliate) if Applicable Law requires Seller (or its applicable Affiliate) to pay such paid time off accrued and unused by such Transferred Employee through the Effective Time).

Section 9.05. *Welfare Plans.* As of the Effective Time, each Transferred Employee shall cease participation in the health and welfare benefit plans of Seller and its Affiliates (each, a “**Seller Welfare Plan**”) and commence participation in the health and welfare benefit plans maintained, administered or contributed to by Buyer and its Subsidiaries. Seller and its Affiliates shall be responsible for providing benefits in respect of claims incurred under a Seller Welfare Plan for Transferred Employees and their beneficiaries and dependents prior to the Effective Time. Benefits in respect of all welfare plan claims incurred by Transferred Employees at or after the Effective Time shall be provided by Buyer and its Affiliates. For purposes of this Section 9.05, the following claims shall be deemed to be incurred as follows: (a) life, accidental death and dismemberment and business travel accident insurance benefits, upon the death or accident giving rise to such benefits and (b) health or medical, dental, vision care and/or prescription drug benefits, upon provision of the applicable services, materials or supplies. Seller shall be responsible for providing short- and long-term disability benefits of Transferred Employees that, by their terms, are payable prior to the Effective Time and Buyer shall be responsible for providing such benefits that, by their terms, are payable at or after the Effective Time (regardless of when the event entitling the Transferred Employee to such benefits occurred).

Section 9.06. *Flexible Spending Accounts.* As of the Effective Time, Seller shall transfer from the medical and dependent care account plans of Seller and its Affiliates (each, a “**Seller FSA Plan**”) to one or more medical and dependent care account plans established or designated by Buyer (collectively, the “**Buyer FSA Plan**”) the account balances of the Transferred Employees who are employed in the U.S., and Buyer shall be responsible for the obligations of the Seller FSA Plans to provide benefits to such Transferred Employees with respect to such transferred account balances at or after the Effective Time. Each such Transferred Employee shall be permitted to continue to have payroll deductions made as most recently elected by him or her under the applicable Seller FSA Plan. Buyer shall promptly reimburse Seller for benefits paid by the Seller FSA Plans to any such Transferred Employee prior to the Effective Time to the extent in excess of the payroll deductions made in respect of such Transferred Employee at or prior to the Effective Time.

Section 9.07. *WARN Act.* Buyer shall assume all Liabilities for the provision of notice or payment in lieu of notice and any applicable penalties under the Worker Adjustment and Retraining Notification Act or any similar Applicable Law (“**WARN**”) arising in connection

with the transactions contemplated by this Agreement, including the transfer of the Business Employees to Buyer at the Effective Time or as a result of the termination of the Transferred Employees by Buyer at or following the Effective Time.

Section 9.08. *Workers Compensation.* Buyer shall be responsible for providing benefits in respect of all claims for benefits in respect of workers compensation and any comparable liabilities that are based upon Transferred Employees' injuries or illnesses that arise at or after the Effective Time. Seller shall be responsible for providing benefits in respect of all claims for benefits in respect of workers compensation and any comparable liabilities that are based upon Business Employees' injuries or illnesses that arise prior to the Effective Time.

Section 9.09. *Assumption of Employee Liabilities.* As of the Effective Time, Buyer shall, or shall cause its Subsidiary to, assume Assumed Employee Liabilities. Seller shall have no further Liabilities or responsibilities with respect to the Assumed Employee Liabilities.

Section 9.10. *No Third Party Beneficiaries.* Without limiting the generality of the last sentence of Section 13.07, nothing in this Article 9, express or implied, (a) is intended to or shall confer upon any Person other than the parties hereto, including any Business Employee, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (b) shall establish, or constitute an amendment, termination or modification of, or an undertaking to amend, establish, terminate or modify, any benefit plan, program, agreement or arrangement or (c) shall create any obligation on the part of Seller, Buyer or any of their respective Affiliates to employ any Business Employee for any period following the Effective Time.

ARTICLE 10 CONDITIONS TO CLOSING

Section 10.01. *Conditions to Obligations of Buyer and Seller.* The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction or, where legally permitted, waiver by each party, of the following condition:

(a) no Order of any court of competent jurisdiction shall have enjoined, restrained or prohibited the consummation of the Closing.

Section 10.02. *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is also subject to the satisfaction or, in the sole discretion of Buyer, waiver of, each of the following further conditions:

(a) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing;

(b) all representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing as though made on and as of such time, except (i) that those representations and warranties which address matters only as of a particular date shall be true and correct as of such particular date and (ii) where the failure of such representations and

warranties in the aggregate to be so true and correct has not had, and would not reasonably be expected to result in, a Material Adverse Effect (disregarding any qualification in the text of the relevant representation or warranty as to material, materiality, in all material respects, Material Adverse Effect or similar qualification);

(c) since the date hereof until the Closing Date, there shall not have been any Material Adverse Effect of the Business; and

(d) Buyer shall have received a certificate signed by an executive officer of Seller to the foregoing effect.

Section 10.03. *Conditions to Obligation of Seller.* The obligation of Seller to consummate the Closing is also subject to the satisfaction or, in the sole discretion of Seller, waiver of each of the following conditions:

(a) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing;

(b) all other representations and warranties of Buyer contained in this Agreement shall be true and correct as of the Closing as though made on and as of the such time, except (i) that those representations and warranties which address matters only as of a particular date shall be true and correct as of such particular date and (ii) where the failure of such representations and warranties in the aggregate to be so true and correct has not had, and would not reasonably be expected to result in, a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement (disregarding any qualification in the text of the relevant representation or warranty as to material, materiality, in all material respects, material adverse effect or similar qualification); and

(c) Seller shall have received a certificate signed by an executive officer of Buyer to the foregoing effect.

Section 10.04. *Frustration of Closing Conditions.* Neither Buyer nor Seller may rely on the failure of any condition set forth in this Article 10 to be satisfied if such failure was caused by such party's breach of, or failure to comply with, any provision of this Agreement.

ARTICLE 11

SURVIVAL; INDEMNIFICATION

Section 11.01. *Survival of Representations, Warranties and Agreements.* The representations and warranties of the parties hereto shall not survive the Closing. The covenants and agreements of the parties hereto to be performed prior to the Closing, contained in this Agreement shall survive the Closing until the date 12 months after the Closing Date. The covenants and agreements of the parties hereto contained in this Agreement to be performed on or after the Closing shall survive the Closing indefinitely or for the shorter period explicitly specified therein. Notwithstanding the preceding two sentences, any breach or inaccuracy of any

covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding two sentences, if notice of the breach or inaccuracy thereof giving rise to such right of indemnity shall have been given pursuant to Sections 11.03 or 11.04, as applicable, to the party against whom such indemnity may be sought prior to such time.

Section 11.02. *Indemnification.* (a) Effective at and after the Closing, Seller shall indemnify Buyer, its Affiliates, and their respective Representatives, successors, and assigns (each a “**Buyer Indemnitee**” and collectively the “**Buyer Indemnites**”) against and agrees to hold each of them harmless from any and all damage, loss and expense (including reasonable attorneys’ fees) (“**Damages**”) incurred, suffered or sustained by any Buyer Indemnitee to the extent arising out of or relating to, without duplication:

(i) any breach of any covenant or agreement made or to be performed by Seller pursuant to this Agreement; and

(ii) any Excluded Liability.

(b) Effective at and after the Closing, Buyer shall indemnify Seller, its Affiliates, and their respective Representatives, successors, and assigns (each a “**Seller Indemnitee**” and collectively the “**Seller Indemnites**”) against and agrees to hold each of them harmless from any and all Damages actually suffered by any Seller Indemnitee to the extent arising out of or relating to, without duplication:

(i) any breach of any covenant or agreement made or to be performed by Buyer pursuant to this Agreement;

(ii) any Assumed Liability; and

(iii) except with respect to matters for which Buyer is entitled to indemnification pursuant to Section 11.02(a), the ownership or operation of the Business after the Closing.

Section 11.03. *Procedures.* (a) Each Person seeking indemnification under this Article 11 (the “**Indemnified Party**”) shall give prompt written notice to the Person from whom indemnification is sought (the “**Indemnifying Party**”) of the assertion of any claim or the commencement of any Action by any third party (“**Third Party Claim**”); *provided*, that the failure of the Indemnified Party to give notice as provided in this Section 11.03(a) shall not relieve any Indemnifying Party of its obligations under Section 11.02, except to the extent that such failure actually prejudices the rights of any such Indemnifying Party. Such notice shall set forth in reasonable detail such claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, as promptly as reasonably practicable following the Indemnified Party’s receipt thereof, copies of all written notices and documents (including any court papers) received by the Indemnified Party relating to the Third Party Claim and the

Indemnified Party shall provide the Indemnifying Party with such other information with respect to any such Third Party Claim reasonably requested by the Indemnifying Party. The Indemnifying Party shall have the right to assume control of, and defend against, negotiate, settle (subject to clause (b)) or otherwise deal with such Third Party Claim, but the Indemnified Party may nonetheless participate in the defense of such Third Party Claim with its own counsel and at its own expense. If the Indemnifying Party elects not to defend against, negotiate, settle or otherwise deal with any Third Party Claim pursuant to this Article 11 or is otherwise prohibited from doing so, then the Indemnified Party may defend against, negotiate, settle (subject to clause (b)) or otherwise deal with such Third Party Claim and its expenses thereto shall be deemed to be "Damages". If the Indemnifying Party shall be permitted to and, in accordance with this Agreement, shall assume the defense of any Third Party Claim pursuant to this Article 11, then the Indemnified Party may participate, at its own expense, in the defense of such Third Party Claim; *provided*, that such Indemnified Party shall be entitled to participate in any such defense with separate counsel at the expense of the Indemnifying Party if (i) requested by the Indemnifying Party to participate or (ii) in the reasonable opinion of counsel to the Indemnifying Party, a material conflict exists between the Indemnified Party and the Indemnifying Party that would make such separate representation advisable; *provided further* that the Indemnifying Party shall not be required to pay for more than one such counsel for all Indemnified Parties in connection with any Third Party Claim.

(b) Notwithstanding anything in this Section 11.03 to the contrary, neither the Indemnifying Party nor the Indemnified Party shall, without the written consent of the other party, settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment (which consent shall not unreasonably be withheld or delayed). Notwithstanding the foregoing, consent of the Indemnified Party shall not be required for any such settlement if (i) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party, (ii) such settlement does not permit any Order or other equitable relief to be entered, directly or indirectly, against the Indemnified Party and (iii) such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Third Party Claim and does not include any statement as to or any admission of fault, culpability or failure to act by or on behalf of any Indemnified Party. If the Indemnifying Party makes any payment on any Third Party Claim, then the Indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Indemnified Party to any insurance benefits or other claims of the Indemnified Party with respect to such Third Party Claim.

(c) After any decision, judgment or award shall have been rendered by a Governmental Authority of competent jurisdiction, or a settlement shall have been consummated (in accordance with this Article 11), or the Indemnified Party and the Indemnifying Party shall have arrived at a mutually binding agreement with respect to a Third Party Claim hereunder, the Indemnified Party shall forward to the Indemnifying Party notice of any sums due and owing by the Indemnifying Party pursuant to this Agreement with respect to such matter.

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such

records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

Section 11.04. *Direct Claim Procedures.* In the event an Indemnified Party has a claim for indemnity under Section 11.02 against an Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party agrees to give prompt notice in writing, and as promptly as practicable, of such claim to the Indemnifying Party, which notice shall in no event be delivered to the Indemnifying Party later than 60 days after the Indemnified Party first learns of the facts on which such claim is based (such 60-day period, the “**Notice Period**”). Such notice shall set forth in reasonable detail such claim and the basis for indemnification and the amount of such Damages incurred or that such Indemnified Party reasonably estimates in good faith is likely to be incurred in connection with such claim (taking into account the information then available to the Indemnified Party). The failure to notify the Indemnifying Party as promptly as practicable within the Notice Period shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that such failure shall have actually prejudiced the Indemnifying Party, and in any event, the Indemnifying Party shall have no indemnification obligation in respect of any claim for which notice is delivered following expiration of the applicable Notice Period for such claim.

Section 11.05. *Calculation of Damages.* (a) The amount of any Damages payable under Section 11.02 by the Indemnifying Party shall be net of any (i) amounts actually recovered by the Indemnified Party or its Affiliates under applicable insurance policies or from any other Person alleged to be responsible therefor and (ii) Tax benefit realized by the Indemnified Party or its Affiliates (in cash or as a reduction in Taxes otherwise due) arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax benefit, the Indemnified Party shall be deemed to fully utilize, at the highest applicable marginal Tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages. If the Indemnified Party (A) receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or out-of-pocket expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party, net of any expenses incurred by such Indemnified Party in collecting such amount (B) realizes any net Tax benefit subsequent to an indemnification payment by the Indemnifying Party that was not previously taken into account in the indemnification payment, then such Indemnified Party shall promptly pay to the Indemnifying Party the amount of such net Tax benefit (as computed pursuant to this Section 11.05), net of any out-of-pocket expenses incurred by such Indemnified Party in collecting such amount.

(b) The Indemnifying Party shall not be liable under Section 11.02 for any (i) Damages relating to any matter to the extent that where (A) such matter has been (or will be) taken into account in the adjustment of the Purchase Price under Section 2.12 or (B) Seller is the Indemnifying Party, such Damages are caused by or result from any action that Seller is requested to take by Buyer or any of its Affiliates, or for which Buyer or its Affiliates provide

consent, (ii) consequential, incidental, special, exemplary, punitive or other similar Damages, except to the extent such Damages are awarded to a third party in respect of a Third Party Claim or (iii) Damages for lost profits or diminution in value, except to the extent such Damages are awarded to a third party in respect of a Third Party Claim.

(c) Each Indemnified Party must mitigate in accordance with Applicable Law any Damages for which such Indemnified Party seeks indemnification under this Agreement, including by taking any actions reasonably requested by the Indemnifying Party for such purpose, and no Indemnifying Party shall be liable to any Indemnified Party for any Damages to the extent arising from or aggravated by such Indemnified Party's failure to mitigate such Damages or any other action taken or not taken by such Indemnified Party. If such Indemnified Party mitigates its Damages after the Indemnifying Party has paid the Indemnified Party under any indemnification provision of this Agreement in respect of that Damage, the Indemnified Party must notify the Indemnifying Party and pay to the Indemnifying Party the extent of the value of the benefit to the Indemnified Party of that mitigation (less the Indemnified Party's reasonable costs of mitigation) within two Business Days after the benefit is received.

(d) Each Indemnified Party and its Affiliates shall use reasonable efforts to collect any amounts available under insurance coverage, or from any other Person alleged to be responsible, for any Damages payable under Section 11.02.

(e) Each party agrees that it shall not, and agrees to use its reasonable best efforts to ensure that its Affiliates do not, voluntarily or by discretionary action, accelerate the timing, or increase the cost of, any obligations of the other party under this Article 11.

(f) Any indemnification payment made pursuant to this Agreement (for the avoidance of doubt, including any payment made pursuant to Article 8) shall be treated by Buyer and Seller as an adjustment to the Purchase Price for Tax purposes.

Section 11.06. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages and the Indemnified Party or its Affiliates could have recovered all or a part of such Damages from a third party (a "**Potential Contributor**") based on the underlying claim asserted against the Indemnifying Party, the Indemnified Party shall, to the extent permitted by Applicable Law, assign or cause its Affiliates to assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment.

Section 11.07. *Exclusivity.* Except as specifically set forth in this Agreement, Buyer waives and releases, on behalf of itself and its Related Parties, any rights and claims (whether absolute or contingent, liquidated or unliquidated, known or unknown, determined, determinable or otherwise) that Buyer or any of its Related Parties may now or hereafter have against Seller and its Affiliates, whether at law or in equity, relating to the Business, the Purchased Assets, this Agreement or the transactions contemplated hereby. After the Closing, except in the case of actual and intentional common law fraud, Sections 2.12 and 13.08 and Article 8, Article 9 and

Article 11 shall provide the exclusive remedy for any claim arising out of this Agreement or the transactions contemplated hereby; *provided* that nothing herein shall be construed to limit any remedy set forth in any other Transaction Document.

ARTICLE 12
TERMINATION

Section 12.01. *Grounds for Termination.* (a) This Agreement may be terminated at any time prior to the Closing:

(i) by mutual written agreement of Seller and Buyer;

(ii) by either Seller or Buyer if the Closing shall not have been consummated on or before August 1, 2023 (as may be extended, the “**End Date**”); *provided*, that the right to terminate this Agreement pursuant to this Section 12.01(a)(ii) shall not be available to any party whose breach of any provision of this Agreement has caused or resulted in the failure of the Closing to be consummated by such time;

(iii) by either Seller or Buyer, if there shall be any Order (which shall be final and nonappealable) that (A) makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (B) permanently enjoins Buyer or Seller from consummating the transactions contemplated hereby;

(iv) by Buyer if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Seller set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 10.02(a) or Section 10.02(b) not to be satisfied, and such conditions are incapable of being satisfied by the End Date; *provided*, that Buyer is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 10.01 or Section 10.03 not to be satisfied; or

(v) by Seller if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Buyer set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 10.03(a) or Section 10.03(b) not to be satisfied, and such conditions are incapable of being satisfied by the End Date; *provided*, that Seller is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 10.01 or Section 10.02 not to be satisfied.

(b) Other than in the case of a termination pursuant to Section 12.01(a)(i), the party desiring to terminate this Agreement pursuant to any clause of this Section 12.01 shall give written notice of such termination to the other party.

Section 12.02. *Effect of Termination.* If this Agreement is terminated as permitted by Section 12.01, such termination shall be without liability of either party (or any stockholder or Representative of such party) to the other party to this Agreement; *provided* that the Confidentiality Agreement, the provisions of this Section 12.02 and the provisions of Section

6.01, Section 7.02 and Article 13 shall survive any such termination; and *provided further* that the termination of this Agreement shall not relieve any party hereto from any liability for any intentional and material breach of, or intentional and material failure to perform any obligation under, any covenant or agreement contained in this Agreement. A failure of Buyer to consummate the transactions contemplated hereby in breach of this Agreement shall be deemed to be an intentional and material breach for all purposes hereunder whether or not Buyer had sufficient funds available to consummate such transactions.

ARTICLE 13
MISCELLANEOUS

Section 13.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including electronic mail (“**e-mail**”) transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

if to Buyer, to:

c/o Capillary Technologies
No. #36/5, 2nd Floor, Somasandra Palya
Haralukunte Village, Adjacent 27th Main Road
Sector 2, HSR Layout, Bangalore – 560102, India
Attention: Aruna Subramanian
E-mail: aruna.subramanian@capillarytech.com

with a copy (which shall not constitute notice) to:

Dentons US LLP
2000 McKinney Avenue, Suite 1900
Dallas, TX 75201
Attention: John Nelson Chrisman
E-mail: john.chrisman@dentons.com

if to Seller, to:

Tenerity, LLC
6 High Ridge Park
Stamford, CT 06905
Attention: Brian Fisher
E-mail: brian.fisher@tenerity.com

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Attention: Darren Schweiger
E-mail: darren.schweiger@davispolk.com

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

Section 13.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

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

(c) The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 13.03. *Expenses.* Except as otherwise provided herein (including in Section 2.11), all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 13.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto; provided, further, that Buyer may assign its rights and delegate its obligations hereunder to one or more of its Affiliates upon notice to Seller; *provided* that notwithstanding any such assignment, Buyer shall not be relieved of any such assigned obligation.

Section 13.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 13.06. *Jurisdiction; Service of Process.*

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the courts of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the

Delaware Court of Chancery declines to accept jurisdiction over a particular matter, then any state or federal court within the State of Delaware), so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(c) BUYER HEREBY IRREVOCABLY DESIGNATES CAPITOL SERVICES, INC. (IN SUCH CAPACITY, THE “**PROCESS AGENT**”), WITH AN OFFICE AT 108 LAKELAND AVE, DOVER, DE 19901 AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO BUYER IN THE MANNER PROVIDED IN SECTION 13.01 OF THIS AGREEMENT. BUYER SHALL TAKE ALL SUCH ACTION AS MAY BE NECESSARY TO CONTINUE SAID APPOINTMENT IN FULL FORCE AND EFFECT OR TO APPOINT ANOTHER AGENT SO THAT BUYER WILL AT ALL TIMES HAVE AN AGENT FOR SERVICE OF PROCESS FOR THE ABOVE PURPOSES IN WILMINGTON, DELAWARE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INTENDED TO BE IRREVOCABLE UNDER THE LAWS OF THE STATE OF DELAWARE AND OF THE UNITED STATES OF AMERICA.

Section 13.07. *Counterparts; Effectiveness; No Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement

or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 13.08. *Specific Performance.* The parties hereto agree that irreparable damage would occur if any provision of this Agreement (including failing to take such actions as are required of it hereunder to consummate the transactions contemplated hereby) were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, or to enforce specifically the performance of the terms and provisions hereof or thereof in the courts of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over such matter, then any state or federal court within the State of Delaware), in addition to any other remedy to which they are entitled at law or in equity. In furtherance of the foregoing, the parties hereby waive, to the fullest extent permitted by Applicable Law, (a) any and all defenses to any action for specific performance hereunder, including any defense based on the claim that a remedy at law would be adequate and (b) any requirement to post a bond or other security as a prerequisite to obtaining equitable relief.

Section 13.09. *Entire Agreement.* The Transaction Documents and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

Section 13.10. *Bulk Sales Laws.* Buyer acknowledges that Seller has not taken, and does not intend to take, any action that may be required to comply with the provisions of all Applicable Laws relating to bulk transfers or similar provisions in connection with the transfer of the Purchased Assets. Buyer shall not withhold any portion of the Purchase Price based on such non-compliance.

Section 13.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 13.12. *Disclosure Schedule.* The parties acknowledge and agree that (i) matters reflected on the Disclosure Schedule are not necessarily limited to matters required to be reflected therein, (ii) the inclusion of any items or information in the Disclosure Schedule that are not required by this Agreement to be so included is solely for the convenience of Buyer, (iii) the disclosure by Seller of any matter in the Disclosure Schedule shall not be deemed to

constitute an acknowledgement by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material, (iv) if any section of the Disclosure Schedule lists an item or information in such a way as to make its relevance to the disclosure required by or provided in another section of the Disclosure Schedule or the statements contained in any Section of Article 3 reasonably apparent, the matter shall be deemed to have been disclosed in or with respect to such other section, notwithstanding the omission of an appropriate cross-reference to such other section or the omission of a reference in the particular representation and warranty to such section of the Disclosure Schedule, (v) except as provided in clause (iv) above, headings have been inserted in the Disclosure Schedule for convenience of reference only, (vi) the Disclosure Schedule is qualified in its entirety by reference to specific provisions of this Agreement and (vii) the Disclosure Schedule and the information and statements contained therein are not intended to constitute, and shall not be construed as constituting, representations or warranties of Seller except as and to the extent provided in this Agreement. Without limiting the generality of the foregoing, all references in the Disclosure Schedule to the enforceability of agreements with third parties, the existence or non-existence of third-party rights, the absence or existence of breaches or defaults by Seller, any of its Subsidiaries or third parties, or similar matters or statements, are intended only to allocate rights and risks among the parties to this Agreement and are not intended to be admissions against interests, give rise to any inference or proof of accuracy or be admissible against any party by or in favor of any Person who is not a party to this Agreement.

Section 13.13. *No Recourse.* Without limiting any other provision of this Agreement, it is hereby agreed and acknowledged that this Agreement may only be enforced against, and any claims of action that may be based upon, arise out of, or relate to, this Agreement, or the negotiation, execution or performance of this Agreement, may only be made against the parties hereto, and no former, current or future Affiliates, officers, directors, managers, employees, equityholders, managers, members, partners, agents, representatives or assigns of Seller or Buyer, in each case who is not a party to this Agreement shall have any liability for any obligations of the parties hereto or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

[Signature Page Follows]

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

TENERITY, LLC

By:  _____
Name: Greg Miller
Title: Chief Executive Officer

CAPILLARY PTE LTD

By: _____
Name:
Title:

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

TENERITY, LLC

By: _____
Name:
Title:

CAPILLARY PTE LTD

By: Anant Choubey
Name: Anant Choubey
Title: chief operating officer

Schedule I

Illustrative Adjustment Schedule

Illustrative Adjustment

Balance Sheet Account	Estimated Balance as of May 31, 2023*	Description
Prepaid licenses	52	Unamortized licenses for Magento subscriptions
Deferred revenue	(327)	Billings collected for work not yet performed
NatWest cinema	(93)	Deposit to be returned to client in August 2023
Bonus accrual	(372)	Accrued bonuses at target
Gratuity accrual	(42)	Accrued gratuity
Total	(781)	Increase (decrease) to purchase price

*Subject to final adjustment based on amounts as of the Effective Date.

Exhibit A

Form of Assignment and Assumption Agreement

(See attached.)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Agreement**”), dated as of [●], 2023 is entered into by and between Capillary Pte Ltd, a private company organized under the laws of Singapore (“**Buyer**”), and Tenerity, LLC, a Delaware limited liability company (“**Seller**”). Capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to them in the Asset Purchase Agreement, dated as of May 4, 2023, between Buyer and Seller (as may be amended, modified or supplemented from time to time, the “**Asset Purchase Agreement**”).

WHEREAS, pursuant to and on the terms and conditions set forth in the Asset Purchase Agreement, among other things, Seller has agreed to sell, convey, transfer, assign and deliver to Buyer the Purchased Assets, and Buyer has agreed to assume the Assumed Liabilities.

NOW, THEREFORE, in consideration of the mutual promises set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Assignment and Assumption.

Subject to the provisions of the Asset Purchase Agreement, including Section 2.05 thereto, Seller, on behalf of itself and its Subsidiaries, does hereby sell, convey, transfer, assign and deliver to Buyer, effective as of the Effective Time, all of Seller’s and its applicable Subsidiary’s right, title and interest, legal and equitable, in and to all of the Purchased Assets held thereby free and clear of all Liens (other than Permitted Liens) and all of the Assumed Liabilities.

Subject to the provisions of the Asset Purchase Agreement, including Section 2.05 thereto, from and after the date hereof, Buyer does hereby accept all right, title and interest, legal and equitable, in and to all of the Purchased Assets and Buyer hereby assumes and agrees to perform, pay, satisfy and discharge promptly and fully when due all of the Assumed Liabilities and to perform all of the obligations of Seller and its Subsidiaries to be performed under the Business Contracts and the Business Portion of Shared Contracts.

Buyer does not hereby assume or in any way undertake to perform, pay, satisfy or discharge any of the Excluded Liabilities, and Seller and its applicable Subsidiaries shall retain all of the Excluded Liabilities.

2. Terms of the Asset Purchase Agreement. None of the terms of the Asset Purchase Agreement, including any representations, warranties, covenants, agreements or indemnities set forth therein, nor the rights, remedies or obligations of the parties under the Asset Purchase Agreement, shall be deemed to be enlarged, modified or altered in any way by this Agreement and shall remain in full force and effect to the full extent provided therein. This Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement, and in the event of any conflict between this Agreement and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern and control.

3. Governing Law; Jurisdiction. Sections 13.05 and 13.06 of the Asset Purchase Agreement are hereby incorporated by reference and shall apply to this Agreement, *mutatis mutandis*.

4. Successors and Assigns; Amendments and Waivers. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided*, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. 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.

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

6. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Buyer and Seller have caused this instrument to be duly executed as of and on the date first above written.

CAPILLARY PTE LTD

By: _____
Name:
Title:

TENERITY, LLC

By: _____
Name:
Title:

Exhibit B

Form of Transition Services Agreement

(See attached.)

TRANSITION SERVICES AGREEMENT

dated as of

[●], 2023

between

TENERITY, LLC

and

[CAPILLARY PTE LTD]

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TRANSITION SERVICES AGREEMENT

TRANSITION SERVICES AGREEMENT (this “**Agreement**”), dated as of [●], 2023 (the “**Effective Date**”), between Tenerity, LLC, a Delaware corporation (“**Service Provider**”), and [Capillary Pte Ltd, a private company organized under the laws of Singapore] (“**Service Recipient**”).

WITNESSETH:

WHEREAS, Service Provider and [Service Recipient] entered into an Asset Purchase Agreement dated as of [●], 2023 (the “**Asset Purchase Agreement**”) pursuant to which Service Provider agreed to sell the Purchased Assets and transfer the Assumed Liabilities, in each case, to [Service Recipient], and [Service Recipient] agreed to purchase the Purchased Assets and assume the Assumed Liabilities from Service Provider; and

WHEREAS, for a transition period following the Effective Date, Service Provider, on behalf of itself and its Affiliates, has agreed to provide certain services to Service Recipient and its Affiliates upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01 *Definitions.*

(a) The following term, as used herein, has the following meaning:

“**Confidential Information**” means any information that relates to and is disclosed by one party or any of its Representatives (the “**Disclosing Party**”) to the other party or any of its Representatives (the “**Receiving Party**”) under or in connection with this Agreement, whether in oral, written, graphic, magnetic, electronic, or other form, which: (i) contains a marking (such as “confidential”, “proprietary”, or “For Internal Use Only”) indicating its confidential nature, or is otherwise expressly designated as confidential or proprietary, (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure, or (iii) is Personal Data.

“**Dependent Services**” means, with respect to any specified Service (or portion thereof), any and all Services (or portions thereof) that, in Service Provider’s good faith reasonable determination, are dependent on the continuation of such specified Service (or portion thereof) or would be adversely affected by the termination or suspension of such specified Service (or portion thereof).

“**Disengagement Costs**” means any and all costs, charges and expenses of any kind incurred in connection with the termination of this Agreement or relating to the cessation of any Services hereunder.

“**Personal Data**” means (i) any information that relates to, can be used to identify, describes, is reasonably capable of being associated with, or could reasonably be linked with, directly or indirectly, an identified or identifiable natural person or (ii) with respect to any given Applicable Law, such other meaning given to such term or any defined term of similar purpose (e.g., “Personal Information”) under such Applicable Law.

“**Services**” means, subject to the limitations set forth herein and solely to the extent related to the Business, the services described in Schedule A.

“**Termination Fees**” means any fees, costs and expenses incurred between the time of any early termination of any Service hereunder and the time the provision of such Service(s) would have terminated under this Agreement absent such early termination.

(b) All capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

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

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Asset Purchase Agreement	Recitals
Business	Section 2.01(a)
Change Request	Section 2.01(c)
Damages	Section 5.01(a)
Data	Section 2.09(a)
Default Interest	Section 3.02(b)
Effective Date	Preamble
Fee	Section 3.01
Payment Date	Section 3.02(b)
Process Agent	Section 7.09
Security Breach	Section 4.04
Service Provider	Preamble
Service Provider Indemnitees	Section 5.01(a)
Service Provider Party	Section 2.02
Service Recipient	Preamble
Service Recipient Indemnitees	Section 5.01(b)
Services Standard	Section 2.03
Service Term	Section 2.01(b)
Systems	Section 2.09(a)
Third-Party Provider	Section 2.02
Transaction Tax	Section 3.03

Term
TSA Books and Records

Section
Section 2.12

Section 1.02 *Other Definitional and Interpretive Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law,” “laws” or to any Applicable Law shall be deemed to refer to such law or Applicable Law as amended from time to time, except as otherwise specified herein, and to any rules or regulations promulgated thereunder. All references to any time herein shall refer to Eastern Time. Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in U.S. dollars. The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
SERVICES

Section 2.01 *Services.*

(a) Upon the terms and subject to the conditions set forth herein and in consideration of the fees payable by Service Recipient pursuant to Article 3, Service Provider shall use commercially reasonable efforts to provide, or cause its Affiliates to provide, to Service Recipient, and Service Recipient shall receive, on behalf of itself and its Affiliates that reasonably require such Service, the Services for the term indicated in

Section 2.01(b). A detailed description of each Service to be provided by Service Provider to Service Recipient hereunder is set forth in Schedule A.

(b) Service Provider shall provide, and Service Recipient shall receive, the applicable Services for the period specified under the heading “Service Term” under each Service in Schedule A (each such period, a “**Service Term**”). The Service Term for each Service may be extended or shortened by written agreement of the parties, in each case to be reflected in an amendment to Schedule A (it being understood that any agreed upon extension to the Service Term for any Service shall be subject to a minimum 10% increase to the applicable Fee for such Service during such extension period).

(c) Service Recipient may request in writing to Service Provider changes or additions to the scope of Services to be provided hereunder in connection with the operation of the Business (each, a “**Change Request**”). Any Change Request shall be subject to Service Provider’s prior written agreement, resulting in an amendment to Schedule A. The parties shall discuss in good faith any Change Request, including the applicable Fees and Service Term, which shall be agreed prior to Service Provider’s acceptance of any Change Request (it being understood that should any Change Request cause Service Provider to incur any additional costs or expenses, such additional costs or expenses shall be solely borne by Service Recipient).

(d) Without limiting Section 2.01(b), Service Recipient shall use commercially reasonable efforts to function autonomously with respect to the Services as soon as practicable after the Effective Date.

Section 2.02 *Service Provider’s Affiliates and Third-Party Providers*. In providing, or otherwise making available, the Services to Service Recipient, Service Provider may, in its sole discretion, use its own personnel or the personnel of any of its Affiliates and/or employ the services of contractors, subcontractors, vendors or other third-party providers used by Service Provider or its Affiliates for such Services (each, a “**Third-Party Provider**”); *provided* that Service Provider shall remain responsible for ensuring that its obligations with respect to such Services, including the Services Standard, are satisfied with respect to all Services provided by any Third-Party Provider and that each Third-Party Provider complies with the terms and conditions of this Agreement. Each of Service Provider, its Affiliates and any Third-Party Provider used by Service Provider to provide Services, including each of their respective officers, employees, partners who are natural persons (in the case of a partnership), consultants, contractors, workers and agents, shall be referred to as a “**Service Provider Party**”.

Section 2.03 *General Standard of Service*. Subject to Applicable Law, except as otherwise agreed in writing by the parties hereto, Service Provider shall (and shall cause each Service Provider Party to) provide Services in a manner that is substantially consistent in all material respects in terms of quality, timeliness, care, priority, volume, amount, scope and detail with how such services have been provided by Service Provider with respect to the Business prior to the date hereof (“**Services Standard**”). Upon Service Provider’s reasonable request, Service Recipient shall make any and all relevant assets, information, facilities, information technology systems and applications or other

materials of Service Recipient available to Service Provider or the applicable Service Provider Party for the provision of the Services. Service Provider shall not be responsible for any inability to provide a Service or any delay in doing so to the extent that such inability or delay is the result of the failure of Service Recipient to provide, or any delay in providing, the information or assistance necessary for Service Provider to provide such Service. Service Provider's obligation to provide the Services in accordance with the Services Standard shall be subject to Service Provider's right to supplement, modify, substitute or otherwise alter any of the Services from time to time in a manner that is generally consistent with supplements, modifications, substitutions or alterations made for similar services provided or otherwise made available by Service Provider or as required by Applicable Law. The management of and control over the provision of the Services, as between the parties, shall reside solely with Service Provider, and notwithstanding anything to the contrary herein, Service Provider shall be permitted to choose the methodology, systems and applications it utilizes in the provision of such Services.

Section 2.04 *Compliance with Applicable Law.* The parties shall comply, and shall cause their Affiliates and their respective employees to comply, and Service Provider shall use commercially reasonable efforts to cause all Service Provider Parties to comply, with all Applicable Laws in the performance of this Agreement.

Section 2.05 *Labor Matters.* All labor matters relating to employees of Service Provider and its Affiliates (including, without limitation, employees of Service Provider and its Affiliates involved in the provision of Services to Service Recipient or any of its Affiliates) shall be within the exclusive control of Service Provider, and Service Recipient shall not take any action affecting such matters. Nothing in this Agreement is intended to transfer the employment of employees engaged in the provision of any Service from one party to the other. All employees and representatives of a party and any of its Affiliates will be deemed for all compensation, employee benefits, tax and social security contribution purposes to be employees or representatives of such party or its Affiliates (or their subcontractors) and not employees or representatives of the other party or any of its Affiliates (or their subcontractors). In providing the Services, such employees and representatives of Service Provider and its Affiliates (or its subcontractors) will be under the sole direction, control and supervision of Service Provider or its Affiliates (or its subcontractors) and not of Service Recipient or its Affiliates, and Service Provider and its Affiliates (or their subcontractors) have the sole right to exercise all authority with respect to the employment, substitution, termination, assignment and compensation of such employee.

Section 2.06 *Force Majeure.* Neither party shall be liable to the other party for any interruption of service, any delays or failure to perform under this Agreement caused by matters or events occurring that are beyond the reasonable control of such party, including, strikes, lockouts or other labor difficulties; governmental laws, rules or regulations; fires, floods, acts of God, extremes of weather, earthquakes, tornadoes, pandemics or disease outbreaks (including the COVID-19 virus), or similar occurrences; wrecks or transportation delays; riot, insurrection or other hostilities; embargo; fuel or energy shortage; or inability to obtain necessary labor, materials or utilities. Any delays,

interruptions or failures to perform caused by such occurrences shall not be deemed to be a breach or failure to perform under this Agreement; provided that, the party affected by such event of force majeure promptly notifies the other upon learning of the occurrence of such event of a force majeure and uses its commercially reasonable efforts to mitigate and eliminate the effects of such force majeure in order to resume performance. The unaffected party shall have no obligation hereunder with respect to the obligations the affected party is unable to perform due to the force majeure event. Upon the cessation of the force majeure event, the parties shall use their commercially reasonable efforts to promptly resume performance of their obligations under this Agreement.

Section 2.07 *Limitations.* The Services shall be used by Service Recipient and its Affiliates that reasonably require such Services solely in connection with the operation of the Business and to facilitate an orderly transition of the operation of the Business following the Closing. Neither Service Recipient, nor any of its Affiliates, may resell, license the use of or otherwise permit the use by any Person other than Service Recipient and its Affiliates of any Services, except with the written permission of Service Provider. In providing the Services, no Service Provider Party shall be obligated to, unless expressly agreed in writing by the parties: (i) hire any additional employees; (ii) maintain the employment of any specific employee or (iii) purchase, lease or license any additional equipment, hardware, Intellectual Property Right or software.

Section 2.08 *Cooperation; Further Actions.*

(a) Each party hereto shall use commercially reasonable efforts to obtain, and to keep and maintain in effect (or to cause their respective Affiliates to obtain, and to keep and maintain in effect) and cooperate with and assist the other party in obtaining, keeping and maintaining in effect, all governmental or third-party consents, licenses or approvals necessary for the provision of the Services by a Service Provider Party in accordance with the terms of this Agreement, including with respect to the access and use of any third-party software; *provided* that, in no event shall Service Provider be required to pay any money or other consideration (unless Service Recipient agrees to reimburse Service Provider therefor) or grant any accommodation to any Person (including any amendment to any contract) or to initiate any claim or proceeding against any Person in order to obtain any such consents, licenses or approvals; *provided, further* that, to the extent that any such consent, license or approval is not obtained, the parties shall cooperate in good faith to agree to and implement alternative arrangements, reasonably acceptable to both parties, to provide such Services in a manner as close as reasonably practicable to the Services Standard (it being understood that any incremental costs incurred as a result of such alternative arrangements shall be solely borne by Service Recipient). The costs and expenses of obtaining any such consents, licenses or approvals shall be solely borne by Service Recipient. If any such consent, license, approval or alternative arrangement is not available despite the commercially reasonable efforts of Service Provider or as a result of Service Recipient failing to bear the incurrence of costs relating to obtaining any such consent, license or approval, Service Provider shall not be obligated to provide the affected Services.

Section 2.09 *Intellectual Property.*

(a) Nothing in this Agreement shall affect the ownership by either party or its Affiliates or licensors of Intellectual Property Rights owned by or licensed to such party or its Affiliates (including rights in proprietary software and third-party software) as of the date hereof.

(b) Any Intellectual Property Rights in any works created, supplied or developed by or on behalf of Service Provider in connection with the Services during the Service Term shall be the sole and exclusive property of Service Provider unless otherwise mutually agreed upon in writing by the Parties. Service Recipient hereby irrevocably assigns to Service Provider any and all right, title and interest in and to any Intellectual Property Rights necessary to effect the intent of the foregoing provision.

(c) Subject to the terms and conditions of this Agreement, including Section 2.07, with respect to each Service, Service Provider (on behalf of itself and its Affiliates) hereby grants to Service Recipient and its Affiliates a limited, non-exclusive, non-sublicenseable, non-assignable (except as expressly provided for in Section 7.05) license on an “as is”, warranty-free basis, during the Service Term of the applicable Service, to use any Intellectual Property Right (other than Trademarks) that is (i) owned by Service Provider or its Affiliates and (ii) provided or otherwise made available by Service Provider to Service Recipient as part of such Service, but in each case solely to the extent necessary for Service Recipient and its Affiliates to receive and use such Service as provided for and in accordance with this Agreement, subject to any applicable third-party restrictions or limitations.

(d) Subject to the terms and conditions of this Agreement, with respect to each Service, Service Recipient (on behalf of itself and its Affiliates) hereby grants to Service Provider and its Affiliates a limited, non-exclusive, non-sublicensable (except to Third-Party Providers as expressly set forth herein), non-assignable (except as expressly provided for in Section 7.05) license on an “as is,” warranty-free basis, during the Service Term of the applicable Service, to use any Intellectual Property Right (other than Trademarks) owned or licensable by Service Recipient or any of its Affiliates, but in each case solely to the extent necessary for Service Provider, its Affiliates and any Third-Party Provider to perform such Service as provided for and in accordance with this Agreement, subject to any applicable third-party restrictions or limitations (it being understood that Service Provider shall have the right to grant a sublicense under the foregoing license to any Third-Party Provider).

(e) OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO OTHER LICENSES TO INTELLECTUAL PROPERTY RIGHTS ARE GRANTED BY EITHER PARTY TO THE OTHER PARTY UNDER THIS AGREEMENT BY IMPLICATION, ESTOPPEL, EXHAUSTION OR ANY OTHER THEORY, AND EACH PARTY RESERVES ALL RIGHTS NOT EXPRESSLY GRANTED IN THIS AGREEMENT.

Section 2.10 *Systems Access.*

(a) Each party shall (and shall cause its respective Affiliates and Representatives to), in connection with their respective activities hereunder: (i) not access or attempt to obtain access to, use or interfere with any information technology systems or applications (“**Systems**”) of the other party or any data owned, used or processed by the other party (“**Data**”), except to the extent required to do so to provide or receive the Services, and then only in a manner consistent with this Agreement, including under Section 2.11, (ii) limit access to the other party’s Data and Systems to its Representatives with a need to have such access in connection with the provision or receipt of the Services, (iii) not permit access to or use of the other party’s Data or Systems by a third party other than as authorized under this Agreement or otherwise in writing by the other party, (iv) maintain reasonable security measures to protect the Systems of the other party to which it has access pursuant to this Agreement from access by unauthorized third parties, and from any “back door”, “time bomb”, “Trojan Horse”, “worm”, “drop dead device”, “virus” or other computer software routine intended or designed to disrupt, disable, harm or otherwise impede in any manner the operation of such Systems; (v) not modify, disable, damage, erase, disrupt or impair the normal operation of the Systems of the other party; and (vi) comply with the security policies and procedures of the other party provided by such other party in advance in writing (as may be updated from time to time in the ordinary course of business). Each party shall promptly notify the other party in the event it or any of its Affiliates or Representatives becomes aware of or suspects that there has been a breach of security or a loss, theft or unauthorized access, use or disclosure of any Systems, Data or Confidential Information (collectively, “**IT Breach**”) of either party to the extent such (i) IT Breach could adversely affect the provision or receipt of the Services or (ii) notice is required by Applicable Law.

(b) Service Recipient hereby acknowledges that (i) Service Provider and any Service Provider Party may, in the ordinary course of business, update its Systems, including those that may relate to the Business or provision of the Services and (ii) Service Provider and any Service Provider Party shall have the right to shut down temporarily for maintenance or upgrade purposes the operation of any facilities or Systems providing any Service. In the case of the foregoing clause (ii), with respect to the Services dependent on the operation of such facilities or Systems, Service Provider shall be relieved of its obligations hereunder to provide such Services during the period that such facilities or Systems are so shut down or suspended in compliance with this Agreement, but shall use commercially reasonable efforts to minimize each period of shutdown or suspension and the impact that such shutdown has on such Services and the Business. In the event that Service Provider reasonably anticipates that a shutdown period will exceed 48 hours, Service Provider shall provide written notice to Service Recipient of the same. In such event, the relevant Service Fee pertaining to any impacted service may be reduced pro rata by the percentage of time of the shutdown period compared to the term of the relevant Services.

Section 2.11 *Policies and Procedures*. Except to the extent inconsistent with this Agreement, each party shall (and shall cause its Affiliates and Representatives to) comply with the internal policies, procedures, rules and regulations of the other party applicable to (a) the use of the other party’s computers, networks, telephone systems,

equipment or other facilities in connection with the Services or (b) such party's (or any of its Affiliates' or Representatives') conduct while on the other party's or its Affiliates' premises or utilizing the other party's or its Affiliates' facilities in connection with the Services, in each case to the extent such policies, procedures, rules or regulations (i) are generally applicable to the other party's own organization and would not interfere (other than in a *de minimis* manner) with the provision or receipt of any Services and (ii) are provided by the other party reasonably in advance in writing. Service Recipient acknowledges and agrees that, in the event Service Recipient's internal policies, procedures, rules and regulations do not permit a Service Provider Party to provide any Service in accordance with the Services Standard, such Service Provider Party shall not be obligated to provide such Service to Service Recipient.

Section 2.12 *Data Processing.*

(a) The parties hereto shall, and Service Provider shall use commercially reasonable efforts to cause the Service Provider Parties to, comply with (a) any and all Applicable Laws associated with the processing, confidentiality, collection, use, handling, security, protection, transfer or movement of Personal Data, including those relating to electronic data privacy and transborder data flow, in connection with the Services and (b) their respective obligations under the Data Processing Addendum attached hereto as Schedule B. Without limitation of the foregoing, each party and all Service Provider Parties shall (i) keep all Personal Data that is processed in connection with the Services strictly confidential and not disclose, transfer, process or use such Personal Data except only to the extent necessary to exercise its rights or perform its obligations hereunder or as explicitly instructed by the other party and (ii) maintain appropriate safeguards and measures, including a written information security program and any safeguards required by Applicable Law, designed to ensure the security and confidentiality of such Personal Data and to protect against accidental, unauthorized or unlawful access to, or disclosure, destruction, use or processing of, any such Personal Data.

ARTICLE 3 SERVICE FEES

Section 3.01 *Fees for Services.* In consideration for the Services provided hereunder, Service Recipient agrees to pay to Service Provider (or the Service Provider Party designated by Service Provider) the fees and costs for each Service provided to Service Recipient (the "Fee") as set forth in Exhibit A to Schedule A.

Section 3.02 *Invoicing and Payment of Fees for Services.*

(a) Service Provider agrees to submit invoices to Service Recipient for Fees payable in respect of all Services to be provided by or on behalf of such Service Provider during each calendar month during the Service Term on the first Business Day of such calendar month. Each such invoice shall be in a format and contain a level of detail reasonably sufficient under the circumstances to identify the Services provided during the applicable period.

(b) Service Recipient agrees to pay each invoice delivered pursuant to Section 3.02(a) on or before the date (each, a “**Payment Date**”) that is 30 days after receipt of such invoice, by wire transfer of immediately available funds payable to the order of Service Provider pursuant to payment instructions specified on the applicable invoice. If Service Recipient fails to pay any invoiced amount on or before the applicable Payment Date, Service Recipient shall be obligated to pay, in addition to the past due amount, interest on such amount at a rate equal to the lesser of (i) the 90-day AA non-financial commercial paper interest as published by the Federal Reserve on its website on the Payment Date (floor zero) *plus* 500 basis points per annum (based on a 365-day count) with such interest rate reset every three months using the reference rate from two business days prior to such reset day and (ii) the maximum rate permitted by Applicable Law (the “**Default Interest**”). The Default Interest shall be calculated from the Payment Date onwards, up to (and including) the date said payment is fully and effectively made.

Section 3.03 *Taxes.*

(a) If any Transaction Tax is assessed on the provision of any Services under this Agreement, Service Recipient agrees to pay directly, reimburse or indemnify Service Provider for such Transaction Tax. The parties agree to cooperate with each other in determining the extent to which any Transaction Tax is due and owing under the circumstances, and shall provide and make available to each other any resale certificate, information regarding out of state use of materials, services or sale, and other exemption certificates or information reasonably requested by either party hereto. For the purposes of this Agreement, “**Transaction Tax**” means any value added tax, excise tax, any state or local sales or use tax, or any tax analogous to any of the foregoing, which is imposed on one party and is required by law to be collected and remitted by the other party to the transaction.

(b) Payments for Services shall be made free and clear of all deductions or withholdings of taxes unless the deduction or withholding is required by Applicable Law. If a payment for Services is subject to deduction or withholding under Applicable Law, the amount of such payment shall be increased to an amount which, after any withholding or deduction is made, leaves an amount equal to the payment which would have been received had no such deduction or withholding been made. The parties shall use commercially reasonable efforts to ensure that any taxes deducted or withheld are minimized to the extent possible under Applicable Law.

(c) In no event shall either party be entitled to set off or reduce any payments due and owing to the other party under this Agreement by any amount that the first party asserts is owed to it by the other Party pursuant to this Agreement or any other agreement between the parties or otherwise.

ARTICLE 4 CONFIDENTIALITY

Section 4.01 *Confidentiality.*

(a) The Receiving Party shall, and shall cause its Affiliates and its and their respective Representatives to, (i) keep all Confidential Information of the Disclosing Party and its Affiliates provided pursuant to this Agreement strictly confidential and maintain and protect all such information in no less careful a manner than it maintains and protects its own Confidential Information of like nature but with no less than reasonable care and (ii) not disclose the Disclosing Party's Confidential Information to any Person other than the Receiving Party's Representatives who need to know such Confidential Information to further the purposes of this Agreement and who have agreed to confidentiality obligations no less restrictive than those set forth herein. The Receiving Party shall use Confidential Information received from the Disclosing Party solely during the term of this Agreement and solely in connection with the performance of the Receiving Party's obligations under this Agreement. To the extent either party shares any Confidential Information with any of its respective Representatives, such party shall be responsible for any breach of this Article 4 by such Representative.

(b) Notwithstanding clause (a), if disclosure of the Disclosing Party's Confidential Information is required by Applicable Law or requested by a Governmental Authority, to the extent permitted by Applicable Law, the Receiving Party shall give the Disclosing Party advance written notice of such requirement (in an amount of time in advance of such disclosure that is reasonable under the circumstances) to enable the Disclosing Party to seek a protective order, confidential treatment or other remedy, if possible. If, in the absence of a protective order or receipt of a waiver hereunder, the Receiving Party is, on the advice of counsel, required to disclose such Confidential Information, the Receiving Party may disclose only that portion of the Disclosing Party's Confidential Information which counsel advises is required to be disclosed; *provided* that, the Receiving Party shall use commercially reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded to such information. Any information disclosed pursuant to this clause (b) shall remain Confidential Information for all other purposes.

(c) Notwithstanding anything to the contrary herein, the provisions of this Section 4.01 shall not apply to information (except to the extent such information is subject to the confidentiality obligations set forth in the Asset Purchase Agreement) which (i) becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives (excluding Personal Data), (ii) was available to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party pursuant to this Agreement or (iii) becomes available to the Receiving Party on a non-confidential basis from a source other than the other party hereto that, to the Receiving Party's knowledge after due inquiry, is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation; or (iv) the Receiving Party can establish, by written documentation, is or has been independently developed by the Receiving Party without use of or reference to any of the Disclosing Party's Confidential Information.

Section 4.02 *No Rights to Confidential Information.* Each party hereto acknowledges that it shall not acquire any right, title or interest in or to any Confidential

Information of the other party hereto by reason of this Agreement or the provision or receipt of Services hereunder.

Section 4.03 *Safeguards.* Each party hereto agrees to establish and maintain administrative, physical and technical safeguards, data security procedures and other protections against the destruction, loss, unauthorized access or alteration of the other party's Confidential Information which are no less rigorous than those otherwise maintained for its own Confidential Information of like nature, but in any case, using no less than a reasonable degree of care consistent with industry standards.

ARTICLE 5

INDEMNIFICATION; LIMITATION OF LIABILITY

Section 5.01 *Indemnification.*

(a) Service Recipient agrees to indemnify and hold harmless Service Provider and any other Service Provider Parties and their respective directors, officers, employees, controlling persons, agents, representatives, successors and assigns (collectively, the "**Service Provider Indemnitees**") from and against any and all damage, loss and expense (including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) ("**Damages**") asserted against or incurred by any Service Provider Indemnitee as a result of, or arising out of (i) the Services supplied by any Service Provider Party under this Agreement or the use of the Services by Service Recipient or any of its Affiliates, or (ii) any Service Recipient Indemnitee's breach of this Agreement (including breach of Article 4) or any Service Recipient Indemnitee's gross negligence, willful misconduct or fraud.

(b) Service Provider agrees to indemnify and hold harmless Service Recipient and its Affiliates and their respective directors, officers, employees, controlling persons, agents, representatives, successors and assigns (collectively, the "**Service Recipient Indemnitees**") from and against any and all Damages asserted against, or incurred by, any Service Recipient Indemnitee as a result of, or arising out of any Service Provider Party's gross negligence, willful misconduct or fraud.

Section 5.02 *No Warranties.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE ASSET PURCHASE AGREEMENT, NO PARTY HERETO MAKES, AND NO PARTY IS RELYING ON, ANY GUARANTEE, REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED (ORAL OR WRITTEN), OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE SERVICES AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, REASONABLE CARE OR WORKMANLIKE EFFORT.

Section 5.03 *Third Party Claim Procedures.* All claims for indemnification pursuant to Section 5.01 as a result of, or arising out of, a Third Party Claim shall be made in accordance with the procedures set forth in Section 11.03 of the Asset Purchase Agreement, *mutatis mutandis*.

Section 5.04 *Limitation of Liability: Exclusion of Damages; Damages Cap.*

(a) OTHER THAN WITH RESPECT TO CLAIMS ARISING FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OF THE OTHER PARTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY WILL BE LIABLE FOR ANY (I) INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR TREBLED DAMAGES (IN EACH CASE, EXCEPT TO THE EXTENT PAYABLE TO A THIRD PARTY IN RESPECT OF A THIRD PARTY CLAIM BASED ON A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION) OR (II) LOST PROFITS, DIMINUTION IN VALUE, MULTIPLE-BASED OR OTHER DAMAGES CALCULATED BASED ON A MULTIPLE OF ANOTHER FINANCIAL MEASURE, IN EACH CASE, ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, OTHER THAN WITH RESPECT TO CLAIMS ARISING FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OF THE OTHER PARTY, OR CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 5.01(a) or 5.01(b), IN NO EVENT SHALL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, ITS TERMINATION, OR EXPIRATION, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT, FAILURE OF ESSENTIAL PURPOSE, TRADE USAGE, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF FEES FOR SERVICES ACTUALLY PAID UNDER THIS AGREEMENT.

Section 5.05 *Exclusivity.* Under no circumstances shall a Service Provider Party be liable to a Service Recipient Indemnitee for any Damages in connection with the provisions of the Services, except for any Damages to the extent attributable to a Service Provider Party's gross negligence, willful misconduct or fraud. Section 5.01 shall provide the exclusive remedy for any breach of covenant or other agreement or other claim arising out of this Agreement or the transactions contemplated hereby.

ARTICLE 6 TERMINATION OF SERVICES

Section 6.01 *Term.* The term of this Agreement shall commence on the Effective Date and continue with respect to each Service as set forth in Section 2.01(b).

Section 6.02 *Termination.*

(a) Notwithstanding the provisions of Section 2.01 and Schedule A, Service Recipient may, at any time during the term of this Agreement and for any reason, terminate Service Provider's obligations to provide any or all of the Services by giving at least 30 days' prior written notice of such termination to Service Provider; *provided* that such termination shall take effect on the last calendar day of the calendar month in which the notice period expires; *provided* further, that, in the event Service Recipient elects to terminate any (but not all) of the Services, (i) Service Provider may, within 10 Business Days following its receipt of such termination notice, provide Service Recipient with written notice of all applicable Dependent Services, (ii) upon receiving Service Provider's notice pursuant to the foregoing clause (i), Service Recipient may provide notice within 5 Business Days of such receipt of its withdrawal of its termination notice and (iii) if Service Recipient does not withdraw its termination notice within such five Business Day period, the Dependent Services shall automatically terminate upon the effective date of the termination of such terminated Service.

(b) Service Provider may terminate its obligations to provide any Service at any time if Service Recipient shall have failed to perform any of its material obligations under this Agreement relating to such Service (including the failure to provide any information or data required to effectuate such Service), but only if Service Provider shall have notified Service Recipient in writing, specifying such failure in reasonable detail, and Service Recipient fails to cure such failure within 30 days after receipt by Service Recipient of such written notice; *provided* that in the event of any termination pursuant to this Section 6.02(b) of any Service that has a Fee set forth in Schedule A directly connected to the Fee of another Service that is not terminated, then Service Recipient shall remain obligated for the entire Fee notwithstanding such termination (*i.e.*, there shall be no reduction in the Fee on account of such termination).

(c) If the performance of any Service subjects Service Provider or any of its Affiliates to a reasonable risk of violating an Applicable Law or would materially and adversely affect the business of Service Provider or any of its Affiliates, then Service Provider (i) in the case of a violation of Applicable Law, may immediately upon providing written notice of such fact to Service Recipient suspend performance of such Service and (ii) in the case of a material and adverse effect to the business of Service Provider, may, upon providing written notice of such fact to Service Recipient sufficiently in advance to permit Service Recipient to arrange for replacement services, suspend performance of such Service without liability. Following delivery of such notice, the parties shall cooperate in good faith to promptly amend this Agreement to the extent necessary to eliminate such violation of Applicable Law or such effect while as nearly as possible accomplishing the purpose of the intended Service in a mutually satisfactory manner. If the parties are unable to agree upon such an amendment to this Agreement within 30 days of such notification, then either party may terminate such Service upon written notice to the other party; *provided that*, the applicable Dependent Services shall also automatically terminate upon the effective date of such suspended Services.

(d) Subject to Section 6.03, this Agreement shall terminate in its entirety when no additional Services are to be provided as set forth on Schedule A.

Section 6.03 *Effect of Termination.*

(a) Upon expiration or termination of any Services or this Agreement pursuant to Section 6.02, Service Provider shall have no further obligation to provide the terminated Services (or any Services, in the case of termination of this Agreement in its entirety) and Service Recipient shall have no obligation to pay any Fees relating to such Services; *provided* that notwithstanding such termination, Service Recipient shall remain liable to Service Provider for (i) all Fees payable in respect of Services provided prior to the effective date of such termination, (ii) the Disengagement Costs relating to the termination of such Service(s) and (iii) without duplication of any Disengagement Costs, any Termination Fees to the extent Service Provider cannot avoid the incurrence of such Termination Fees using commercially reasonable efforts. For clarity, no Disengagement Costs are payable upon the expiration of the Service Term of any Service. Notwithstanding any expiration or termination pursuant to Section 6.02, the provisions of Section 3.03, Article 4, Article 5, Section 6.03 and Article 7 shall survive any such termination indefinitely.

(b) After each Service is terminated, each party shall return or destroy all materials and property owned by the other party and all Confidential Information of the other party, in each case, relevant solely to the provision or receipt of such terminated Service and no longer needed regarding the performance of other Services under this Agreement, and shall do so (and shall cause its Affiliates and its and their respective Representatives to do so) within 30 days after the applicable termination or expiration date; *provided however*, that (i) notwithstanding the foregoing, any data required to be returned or destroyed by Service Provider hereunder shall be purged by Service Provider solely in accordance with Service Provider's ordinary course data retention practices (it being understood that, in the event of any conflict between such practices and this Section 6.03(b), such practices shall control) and (ii) nothing in this Section 6.03(b) shall require either party to return or destroy any of its business records unrelated to the other party.

(c) Following termination of this Agreement with respect to any Service, each party hereto agrees to reasonably cooperate (at Service Recipient's sole cost and expense) in providing for an orderly transition of such Service to Service Recipient or to its designated successor service provider.

ARTICLE 7
MISCELLANEOUS

Section 7.01 *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail transmission) and shall be given,

if to Service Recipient, to:

c/o Capillary Technologies
No. #36/5, 2nd Floor, Somasandra Palya
Haralukunte Village, Adjacent 27th Main Road
Sector 2, HSR Layout, Bangalore – 560102, India
Attention: Aruna Subramanian
E-mail: aruna.subramanian@capillarytech.com

with a copy (which shall not constitute notice) to:

Dentons US LLP
2000 McKinney Avenue, Suite 1900
Dallas, TX 75201
Attention: John Nelson Chrisman
E-mail: john.chrisman@dentons.com

if to Service Provider, to:

Tenerity, LLC
6 High Ridge Park
Stamford, CT 06905
Attention: Brian Fisher
E-mail: brian.fisher@tenerity.com

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Darren Schweiger
Facsimile No.: (212) 701-5575
E-mail: darren.schweiger@davispolk.com

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

Section 7.02 *Amendments; Waivers.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by

each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03 *Expenses*. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 7.04 *Independent Contractor Status*. Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties. Neither party hereto is now, nor shall it be made by this Agreement, an agent, employee or legal representative of the other party hereto or any of its Affiliates for any purpose. Each party hereto acknowledges and agrees that neither party hereto shall have authority or power to bind the other party hereto or any of its Affiliates or to contract in the name of, or create a liability against, the other party hereto or any of its Affiliates in any way or for any purpose, to accept any service of process upon the other party hereto or any of its Affiliates or to receive any notices of any kind on behalf of the other party hereto or any of its Affiliates. Each party is and shall be an independent contractor in the performance of Services hereunder and nothing herein shall be construed to be inconsistent with this status.

Section 7.05 *Successors and Assigns*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided*, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto.

Section 7.06 *Governing Law*. This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state that would result in the application of the laws of another jurisdiction.

Section 7.07 *Jurisdiction*. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection

that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 7.01 shall be deemed effective service of process on such party. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 7.08 *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except as set forth in Section 5.01, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto; *provided, however,* that each party shall cause its Affiliates, in their respective capacities as Service Provider and/or Service Recipient, to comply with the obligations of Service Provider and Service Recipient as set forth in this Agreement.

Section 7.09 *Entire Agreement.* This Agreement, the Asset Purchase Agreement and the Confidentiality Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

Section 7.10 *Interpretations.* The parties hereto acknowledge that this Agreement (including Schedule A attached hereto), has been drafted jointly by the parties hereto and agree that this Agreement shall not be construed against any party hereto as a result of any role such party hereto may have had in the drafting process.

Section 7.11 *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other governmental authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an

acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 7.12 *Specific Performance*. The parties hereto agree that irreparable damage would occur if any provision of this Agreement (including failing to take such actions as are required of it hereunder to consummate the transactions contemplated hereby) were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, or to enforce specifically the performance of the terms and provisions hereof or thereof in any federal court located in the State of New York or, to the extent that no such federal court has jurisdiction over such proceeding, in any New York state court, in addition to any other remedy to which they are entitled at law or in equity. In furtherance of the foregoing, the parties hereby waive, to the fullest extent permitted by Applicable Law, (a) any and all defenses to any action for specific performance hereunder, including any defense based on the claim that a remedy at law would be adequate and (b) any requirement to post a bond or other security as a prerequisite to obtaining equitable relief.

[Signature page follows]

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

TENERITY, LLC

By: _____
Name:
Title:

[SERVICE RECIPIENT]

By: _____
Name:
Title:

Schedule A

Services

[Attached]

SCHEDULE A
SERVICES

1. Data and Analytics (DNA) Service

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Loic Blondel	+41798702998	loic.blondel@webloyalty.ch
Service Recipient	Jenna Visconti		

Service Description:

Service Provider will provide system access and administrative support for the following data and analytics systems and databases:

- NA Marketplace db (Postgres), NA redemption db (Postgres)
- EU Marketplace db (Postgres), IN db (MySQL)
- Other Digital Connect databases

Service Term: The duration included in Application List attached hereto as Exhibit B.

2. Finance Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Stephen Reid		
Service Recipient			

Service Description:

Service Provider will provide the following Finance components and system administrative support for Business Employees:

- a. Accounts Receivables: Service Provider to provide services regarding accounts receivable to Service Recipient and support transition to Service Recipient vendors, clients, Business Employees, and systems.
- b. Accounts Payables: Service Provider to provide services regarding accounts payable to Service Recipient and support transition to Service Recipient vendors, clients, Business Employees, and systems.
- c. Cashback Reconciliation: Service Provider to provide services for Digital Connect cashback reconciliation.
- d. General Ledger (G/L) Services: Service Provider to provide services for Digital Connect in recording journal entries, monthly close, account reconciliations and headcount allocations.
- e. ERP Administration: Service Provider to provide ERP systems administration services for Oracle/EBS and Documation.

This Service shall not include Concur travel/ expense access and support.

Service Term: Three (3) months.

3. Human Resources Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Gina Tufano	203-996-0427	Gina.tufano@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Human Resources managed service components:

- a. HRIS: Service Provider to provide system administrative support services for Talent Central.

This Service shall not include administrative rights.

Service Term: Eight (8) months.

4. Information Protection Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Christopher Dunning	203-956-1120	Chris.dunning@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Information Protection managed service components:

- a. Vulnerability and Threat Management
 - Provide vulnerability scans to identify vulnerabilities and threats within the Business environment and evaluate their risks and assist with remediation/mitigation.
 - Perform regularly scheduled Tenable scans of all Business servers, workstations, and devices to identify vulnerabilities.
 - Patch management, including the coordination and oversight with technical teams to ensure timely patching of all Business devices.
- b. Security Monitoring and Logging
 - Provide Log Review and Analysis, including the monitoring of central logging systems to detect suspicious activity.
 - Security Information and Event Management (SIEM) system: Correlation and analysis of logs and events from multiple sources to generate reports and alerts for potential security issues.
 - Data Loss Prevention (DLP): Constant monitoring of endpoints and egress channels to prevent the leaking and loss of critical data.
- c. Access & Identity Management
 - Provide system administrative support for Business Employees including access to Active Directory.

This Service shall not include administrative rights.

Service Term: Eight (8) months.

5. Information Technology Infrastructure Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	David Treybig	469-929-3719	David.Treybig@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Information Technology managed service components:

- a. Cellular Phone Services: Service Provider will provide Cellular Phone services to Service Recipient for pre-existing accounts under Service Provider's accounts. This Service shall be subject to the following terms:
 - No new hardware or services will be established to support Service Recipient.
 - All incidents relating to hardware or service will be raised with local Service Recipient desktop support.

Service Term: Three (3) months.

- b. Release and Change Management: Service Provider to provide system administrative support for Business Employees including:
 - IT Service and Application Requests (ServiceNow and Jira)
 - Change Management
 - Release Management
 - Configuration Management Database
 - Monitoring
- c. End User Services: Service Provider to handle and manage the resolution of Incidents, Problems and Technology Services for Business Employees including:
 - Global Service Desk
 - i. Level 1 email and telephony - user support
 - ii. Remote control of desktops for troubleshooting and incident resolution purposes
 - iii. Password resets for all in-scope systems and applications to be identified and mutually agreed upon by the Parties.
 - Service Desk and Incident Management
 - i. Provide initial incident determination and first level support incident resolution
 - ii. Escalation and status

- d. Contact Center Infrastructure Services
 - Telephony/Telecom Operations
 - i. Service Provider to provide service and support for the existing telecommunications system NICE/Incontact and/or IEX, including long distance and international calling. All telephony costs will be a passthrough at cost to Service Recipient.
 - KANA/ Email
 - ii. Service Provider to provide service and support of the existing email system (KANA).

- e. Systems and Applications: Service Provider to provide Service Recipient with access and support for the following applications:
 - Service Now
 - Jira
 - Confluence
 - Active Directory
 - VPN
 - Microsoft O365
 - Documentum
 - NICE/InContact
 - KANA
 - IEX

Service Term: Eight (8) months.

6. Technology Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Loic Blondel	+41798702998	loic.blondel@webloyalty.ch
Service Recipient			

Service Description:

Service Provider will provide the following Technology managed service components:

- a. Application Support (2LS team): Service Provider will provide level 2 and level 3 support on each of the shared applications on the Application List attached hereto as Exhibit B. This Service shall be subject to the following terms:

- No new feature development or enhancements will be established to support Service Recipient.
- b. Application Server management: Service Provider to provide system administrative support for:
- Patch management and infrastructure monitoring
 - Data synchronization troubleshooting
 - Assistance in troubleshooting application issues
- c. Configuration management: Service Provider to provide system administrative support for:
- Engage
 - Incentive Networks
 - Jenkins
 - QA infrastructure
 - QA toolsets
- d. Application Disposition: Service Provider to provide Service Recipient access to and support of the applications and tools listed in the Application List attached hereto as Exhibit B.

Service Term: The duration included in Application List attached hereto as Exhibit B.

7. Legal Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Brian Fisher	203-956-1237	Brian.Fisher@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Legal managed service components:

- a. Administration support: Service Provider to provide legal administration support/services for Service Recipient.
- b. Systems and Applications: Service Provider to provide client and supplier/vendor contract database access to facilitate data transfer to Service Recipient.

Service Term: Three (3) months.

8. Facilities/Real Estate Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Richard Pitrolo	469-644-4306	Richard.Pitrolo@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Facilities/Real Estate managed service components:

- a. Facility access and support: Service Provider to provide facility access and support/services for Business Employees in the following locations:
 - Stamford, CT, USA
 - Columbus, OH, USA
 - Portsmouth, UK
 - Slough, UK
 - London, UK
 - Pune, India

This Service shall include providing Security, Janitorial, Mail Room, badge access, cafeteria services and a separate work area for Service Recipient within the facility, if possible, to segment from Service Provider operations.

This Service shall be subject to the following terms:

- Service Recipient Business Employees must adhere to all of Service Provider's HR, facility, and security policies
 - If any landlord asserts that the access granted pursuant to this Service is a breach of the lease, Service Recipient will be responsible for finding alternative arrangements.
- b. Mail/courier Account Services: Service Provider to provide system administrative support for:
 - Pitney Bowes
 - FedEx
 - UPS
 - Other mail/courier Account Services

All mail services will be a passthrough at cost to Service Recipient.

Service Term: Two (2) months.

9. Service Delivery Services

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Richard Pitrolo	469-644-4306	Richard.Pitrolo@tenerity.com
Service Recipient			

Service Description:

Service Provider will provide the following Service Delivery managed service components:

- a. Workforce Management support: Service Provider to provide scheduling and real time support/services for Site Operations Business Employees in the following locations:
 - Columbus, OH, USA
 - Portsmouth, UK

Service Term: Eight (8) months.

- b. Training documentation: Service Provider to provide training documentation to Service Recipient.

Service Term: One (1) month.

10. Business Contractors Omnibus Service Description

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Loic Blondel	+41798702998	loic.blondel@webloyalty.ch
Service Recipient			

Service Description:

Service Provider will provide the following Business Contractors Omnibus managed service components:

a. India Contractors: Service Provider will make available to Service Recipient the services of the contractors subject to Master Services Agreements with the following vendors in connection with the day-to-day operations and conduct of the Business:

- Xoriant
- Coditas
- Mobikode
- Intelliswift Software Inc
- Intec Select
- Yash Technologies Private Limited

b. UK Contractors: Service Provider will make available to Service Recipient the services of the contractors subject to Master Services Agreements with the following vendors in connection with the day-to-day operations and conduct of the Business:

- IT TALENT SOLUTIONS LTD

Service Term: On a contract-by-contract basis, the earlier of (i) when Service Recipient enters into its own contract with each such vendor or (ii) three (3) months.

11. Vendor/Supplier Service Description

Service Coordinators:

All service matters and general inquiries regarding this Service should be directed to:

Party	Name	Phone	Email
Service Provider	Loic Blondel	+41798702998	loic.blondel@webloyalty.ch
Service Recipient			

Service Description:

Service Provider will provide the following Vendor/ Supplier managed service components:

a. Dedicated Digital Connect US Vendors/Suppliers: Service Provider will make available to Service Recipient the services of the vendors/suppliers subject to Master Services Agreements with the following vendors/suppliers in connection with the day-to-day operations and conduct of the Business:

- Blackhawk US – specific to GM
- Access Development – shared supplier

b. Dedicated Digital Connect UK Vendors/Suppliers: Service Provider will make available to Service Recipient the services of the vendors/suppliers subject to Master Services

Agreements with the following vendors/suppliers in connection with the day-to-day operations and conduct of the Business:

NWG Suppliers/Vendors:

- See Tickets
- Ticketmaster UK
- Ticketmaster Ireland
- Ambassador Theatre Group
- Mongoose

Service Term: On a contract-by-contract basis, the earlier of (i) when Service Recipient enters into its own contract with each such vendor or (ii) three (3) months.

Exhibit A

Services Costing Schedule

Services Cost Summary
04.28.23

Function	ID	Service Category	Duration (in Months)	FTE Cost				Non-FTE Cost		Total Cost		Countries Receiving Services	Comments
				FTE	Per Month	Monthly	Services Total	Per Month	Total	Per Month	Total		
Data and Analytics (DNA)	1a	Systems and Admin Access	3	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	US, UK, India	
	2a	Accounts Receivable	3	1.0	\$ 5,000	\$ 5,000	\$ 15,000	\$ -	\$ -	\$ 5,000	\$ 15,000	US, UK, India	
	2b	Accounts Payable	3	1.0	\$ 5,000	\$ 5,000	\$ 15,000	\$ -	\$ -	\$ 5,000	\$ 15,000	US, UK, India	
Finance	2c	Cashback Reconciliation	3	0.5	\$ 8,700	\$ 4,350	\$ 13,050	\$ -	\$ -	\$ 8,700	\$ 13,050	US, UK, India	
	2d	General Ledger Support	3	1.0	\$ 8,500	\$ 8,500	\$ 25,500	\$ -	\$ -	\$ 8,500	\$ 25,500	US, UK, India	
	2e	ERP Administration and Access	3	0.25	\$ 16,250	\$ 4,063	\$ 12,188	\$ -	\$ -	\$ 16,250	\$ 12,188	US, UK, India	
HR	3a	HRIS	8	0.5	\$ 3,600	\$ 1,800	\$ 14,400	\$ -	\$ -	\$ 3,600	\$ 14,400	US, UK, India	
	4a	Vulnerability and Threat Management	8	0.5	\$ 4,200	\$ 2,100	\$ 16,800	\$ -	\$ -	\$ 4,200	\$ 16,800	US, UK, India	
Information Protection	4b	Security Monitoring and Logging	8	0.5	\$ 2,000	\$ 1,000	\$ 8,000	\$ -	\$ -	\$ 2,000	\$ 8,000	US, UK, India	
	4c	Access & Identity Management	8	0.5	\$ 2,000	\$ 1,000	\$ 8,000	\$ -	\$ -	\$ 2,000	\$ 8,000	US, UK, India	
	5a	Cellular Phone Services	3	-	\$ -	\$ -	\$ -	Pass Through	Pass Through	Pass Through	Pass Through	US, UK, India	
	5b	Change Management	8	0.5	\$ 2,000	\$ 1,000	\$ 8,000	\$ -	\$ -	\$ 2,000	\$ 8,000	US, UK, India	
IT Infrastructure	5c	End User Services	8	1.0	\$ 2,000	\$ 2,000	\$ 16,000	\$ -	\$ -	\$ 2,000	\$ 16,000	US, UK, India	
	5d	Contact Center Infrastructure	8	1.0	\$ 5,000	\$ 5,000	\$ 40,000	\$ -	\$ -	\$ 5,000	\$ 40,000	US, UK, India	
	5e	Systems and Applications	8	0.5	\$ 2,000	\$ 1,000	\$ 8,000	\$ -	\$ -	\$ 2,000	\$ 8,000	US, UK, India	
	6a	Application Support ^[1]	1	3.0	\$ 9,362	\$ 28,086	\$ 28,086	\$ -	\$ -	\$ 9,362	\$ 28,086	US, UK, India	Intelliswift resources (Hungary based); Capillary to establish new contract and transition contractors
	6b	Application Server Management	3	0.5	\$ 9,533	\$ 4,767	\$ 14,300	\$ -	\$ -	\$ 9,533	\$ 14,300	US, UK, India	India based
Technology	6c	Configuration Management	3	0.5	\$ 15,167	\$ 7,584	\$ 22,751	\$ -	\$ -	\$ 15,167	\$ 22,751	US, UK, India	US based (Engage & IN support)
	6d	Application Disposition ^[4]	see Application & Tools List	-	\$ -	\$ -	\$ -	\$ 592,511	\$ -	\$ -	\$ 592,511	US, UK, India	See Application & Tools List
Legal	7a	Administrative Support	3	0.5	\$ 11,000	\$ 5,500	\$ 16,500	\$ -	\$ -	\$ 11,000	\$ 16,500	US, UK, India	
	7b	Systems and Applications	3	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	US, UK, India	
Real Estate / Facilities	8a	Facility access and support	2	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	US, UK, India	
	8b	Mail/courier Account Services	2	-	\$ -	\$ -	\$ -	Pass Through	Pass Through	Pass Through	Pass Through	US, UK, India	
Service Delivery	9a	Workforce Management Support	8	0.5	\$ 1,200	\$ 600	\$ 4,800	\$ -	\$ -	\$ 1,200	\$ 4,800	US, UK, India	
	9b	Training Documentation	1	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	US, UK, India	
Tenerity Business Contractors Omnibus Services	10a	India ^[1]	Contract Basis	-		Pass Through		Pass Through		Pass Through		India	
	10b	U.K. ^[1]	Contract Basis	-		Pass Through		Pass Through		Pass Through		UK	
Tenerity Vendor/ Supplier Services	11a	US ^[1]	Contract Basis	-		Pass Through		Pass Through		Pass Through		US	
	11b	U.K. ^[1]	Contract Basis	-		Pass Through		Pass Through		Pass Through		UK	
Total			1-8	13.8	\$ 112,512	\$ 88,349	\$ 286,374	\$ -	\$ 592,511	\$ 112,512	\$ 878,885		

Notes:

- [1] On a contract-by-contract basis, until the termination or expiration of the applicable contract.
- [2] FTE cost based on expected utilization of services; current salaries and burdens apply (salary & wage, bonus, taxes, health and welfare)
- [3] Contractor rates exclude AIP/Burden estimated at 151 billable hours/month
- [4] Based on actual or estimated cost by application/contract

Exhibit B

Application List

Ref. #	Use Case	Tool	Version/Client	License Terms	Disposition	Total Cost	Connect %	Duration (in Months)	Billable Capillary Cost (Monthly)	Billable Capillary Cost (Total)	Comments
1	Deployment	Kubernetes	AWS EKS (Elastic Kubernetes Services)	Usage Based	Shared Services	580,140	100%	3	48,345	145,035	Connect clients (RBS, VF, MCC) Cyber & NA separate costs - used for content errors;
		Docker		NA	Shared Services	NA			3		-
2	ETL	Boomi		Usage Based	Shared Services	154,000	78%	3	10,010	30,030	121k connect specific, total cost \$154k - confirmed with Narayanan
		AWS Glue	AWS	Usage Based	Shared Services	66,180	100%	3	5,515	16,545	Connect only
		Matillion	AWS	Usage Based	Shared Services	221,508	70%	3	12,921	38,764	
3	Data Lake	Snowflake		Annual	Shared Services	200,000	100%	2	16,667	33,333	Connect portion (prepaid); will cancel/refund if not required for Connect
4	Logging	Elasticsearch	AWS	Usage Based	Shared Services	85,028	33%	3	2,338	7,015	
		Kibana	AWS	Usage Based	Shared Services	85,028	33%	3	2,338	7,015	
		Logstash	AWS	Usage Based	Shared Services	85,028	33%	3	2,338	7,015	
		NewRelic		Usage Based	Shared Services	201,305	40%	3	6,710	20,131	
5	Telephony/Scheduling	Nice/Incontact & IEX		p/user	Shared Services			8	10,148	81,184	Annual license p/user of \$2,064, 59 employees
6	Marketing Automation	Exponea/ Bloomsreach	MCC/RBS	Usage Based	Shared Services	120,000		3	5,000	15,000	
7	Privacy/ Preference	OneTrust		p/domain	Shared Services	98,000	33%	3	2,695	8,085	45/domain/mo plus mobile apps - 112 total domains (enterprise)
8	AI/Machine Learning	AWS Sagemaker		Usage Based	Shared Services	80,100	100%	3	6,675	20,025	Sagemaker only used by Connect
9	Code Quality	Sonar Qube		Usage Based	Shared Services	20,000	30%	3	500	1,500	
		Checkmarx		Annual	Shared Services	176,000	33%	3	4,840	14,520	enterprisewide
		Burpsuite		Annual	Shared Services	10,000	33%	3	275	825	enterprisewide
		BrowserStack		Annual	Shared Services	44,000	33%	3	1,210	3,630	enterprisewide
10	BI Dashboard	SAS		Annual	Shared Services	250,000	30%	3	6,250	18,750	
11	Messaging	Kafka	AWS		Shared Services	98,400	70%	3	5,740	17,220	
		Kenisis	AWS MSK	Usage Based	Shared Services	5,076	50%	3	212	635	
12	Cloud Security	InsightCloudSec (Divvycloud)		Annual	Shared Services	115,000	40%	3	3,833	11,500	
13	API Gateway	Kong	2.7.1.2-enterprise-edition	Annual	Shared Services	132,000	33%	3	3,630	10,890	use for NA, Connect & Cyber
14	ZenDesk	Chat		Annual	Shared Services	55,793	50%	3	2,325	6,974	VF 9 of 18 users
15	Content Management (CMS)	Contentstack		Usage Based	Shared Services	30,000	100%	3	2,500	7,500	Connect Amount, stack specific
16	Customer Communication	KANA (Email)		p/user	Shared Services			8	1,967	15,733	Annual license p/user of 400, 59 employees
17	Customer Communication	AWS Pinpoint	AWS Pinpoint	Usage Based	Shared Services	27,600	70%	3	1,610	4,830	Shared TSA, usage based on email volume
18	Cloud Storage	AWS	S3, Firehose; AWS	Usage Based	Shared Services	22,257	40%	3	742	2,226	Shared TSA, usage based
19	Batch Processing	Spark	2.4, 3.0; AWS	Usage Based	Shared Services	15,087	50%	3	629	1,886	Shared TSA, usage based
20	Web Analytics	Matomo		Annual	Shared Services	796	40%	3	27	80	
21	RuAI		Vodafone	Annual	Shared Services	108,000	33%	3	2,970	8,910	
22	Authentication & Authorization	Keycloak	7	Usage Based	Shared Services	98,316	50%	3	4,097	12,290	allocated based on API calls and/or communication volume
23	Repository	Bitbucket		Annual	Shared Services	3,600		3	300	900	user based, assumes 50 licenses
		Nessus		Annual	Shared Services	160,000	30%	3	4,000	12,000	
24	Data Model	Kafka Schema Registry	AWS	Usage Based	Shared Services	8,200	50%	3	342	1,025	
25	Reporting	Cognos			Shared Services	250,000	10%	3	2,083	6,250	
25	Salesforce			p/user	Shared Services	170,982	22%	1	3,190	3,190	
26	Big Query		MCC		Shared Services	NA		3	24	72	Need to establish own account/ assign new owner and update credit card for payment
27	Content	Fidel		Usage Based	Shared Services			3	-	-	Not active for Connect -need to reestablish separate contract
28		Magento Open Source Edition		Annual	Shared Services	NA		3			Open Source, separate; Connect & NA
29	Java Library	Lombok	1.18.x	NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
		jUnit	5.x	NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
		Mockito		NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
30	Development Language	Java	11	NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
		Python	3.0 and above	NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
31	Micro Service Framework	Spring Boot,	2.4 and above	NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version
		Spring Webflux,		NA	Shared Services	NA		3			Open Source, Capillary will need to establish own account/version

32	Build Automation	Gradle	6.x	NA	Shared Services	NA		3		-	Open Source, Capillary will need to establish own account/version
33	JavaScript Library	React	16 and above	NA	Shared Services	NA		3		-	Open Source, Capillary will need to establish own account/version
34	JavaScript Runtime Environment	Node	12.0 and above	NA	Shared Services	NA		3		-	Open Source, Capillary will need to establish own account/version
35	Engage			NA	Shared Services	NA		8		-	Internal tool, no cost
36	Incentive Networks			NA	Shared Services	NA		8		-	Internal tool, no cost
37	Data Vault			NA	Shared Services	NA		6		-	Internal tool, no cost
38	Tenerity Payment Gateway (TPG)			NA	Shared Services	NA		3		-	Internal Tool (no costs) integrated with payment processors (Capillary will need to plug their own payment processors at the end of the applicable TSA term for the TPG service)
39	Layer 7	API Gateway		NA	Shared Services	NA		8		-	Internal tool, no cost

Date: 04.28.23

Shared Application Cost: \$ 184,995 \$ 592,511

Schedule B

Data Processing Addendum

[Attached]

Schedule B

Data Processing Agreement

This Data Processing Agreement (this “**DPA**”) forms part of, and is subject to the terms of, the Transition Services Agreement, effective [●], 2023, by and between Tenerity, LLC and [Capillary Pte Ltd] (the “**Agreement**”), and any references in this DPA to the Agreement are to the Agreement as amended by, and including, this DPA. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Agreement.

1. With respect to any Service Recipient Personal Data Processed by Service Provider pursuant to or in connection with the Agreement, Service Provider shall comply with all applicable Data Protection Laws and the terms and conditions of this DPA. Service Recipient shall comply with all applicable Data Protection Laws in connection with (a) the provision of Service Recipient Personal Data, respectively, to Service Provider and (b) Service Recipient’s obligations under the Agreement. “**Data Protection Laws**” means the EU General Data Protection Regulation (“**GDPR**”) (including as transposed into domestic legislation of each member state of the European Union) and the United Kingdom General Data Protection Regulation (“**UK GDPR**”), and, to the extent applicable, the data protection privacy laws of any other country or subdivision thereof (including, as applicable, (i) the United States and any relevant states thereof and (ii) India). “**Personal Data**,” “**Process**” and “**Processor**” have the meanings given to such terms in the GDPR or, with respect to any other given applicable Data Protection Law, such other meaning given to such term or any defined term of similar purpose (e.g., "Personal Information") under such applicable Data Protection Law. “**Service Recipient Personal Data**” means any Personal Data provided or otherwise made available or accessible by or on behalf of Service Recipient to Service Provider and Processed by Service Provider on behalf of Service Recipient pursuant to the Agreement.

2. Service Provider shall Process Service Recipient Personal Data in accordance with Service Recipient’s documented instructions (as set forth in the Agreement), on behalf of Service Recipient and for the purpose of providing the Services, unless otherwise required by Applicable Law, in which case Service Provider shall inform Service Recipient of such legal requirement before commencing such Processing (unless such Applicable Law prohibits providing such information). Certain details regarding the Processing of Service Recipient Personal Data are set forth on Exhibit 1 hereto. Service Provider shall inform Service Recipient if Service Provider is of the opinion that an instruction given by Service Recipient is contrary to applicable Data Protection Laws.

3. To the extent any Service Recipient Personal Data is transferred from the European Economic Area or the United Kingdom, either directly or via onward transfer, to any country outside of the European Economic Area or the United Kingdom under the Agreement, such transfer shall comply with applicable Data Protection Laws. Where appropriate safeguards are required under the GDPR or the UK GDPR with respect to any such transfer, the Parties hereby agree that the “Standard Contractual Clauses” promulgated by Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 and set forth on Exhibit 2 hereto (“**SCCs**”) shall automatically apply, in each case to the extent applicable. To the extent the SCCs are used for applicable data transfers of Service Recipient Personal Data subject to the UK GDPR, such SCCs shall be deemed modified as necessary, *mutatis mutandis*, for compliance with the UK GDPR and shall be read in accordance with, and deemed amended by, the provision of Part 2 (Mandatory Clauses) of the UK International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (“**UK IDTA**”) (as set forth at <https://ico.org.uk/media/for-organisations/documents/4019483/international-data-transfer-addendum.pdf>) (as modified, the “**UK Equivalent**”), and the Parties confirm that the information required for the purposes of Part 1 (Tables) of the UK IDTA is set out in the Agreement. In the event of any conflict between the SCCs or the UK

Equivalent and this DPA, the terms of the SCCs or the UK Equivalent, as applicable, shall prevail.

4. Service Provider shall implement reasonably appropriate technical and organizational measures designed to ensure a level of security appropriate to protect Service Recipient Personal Data against the risks presented by any Processing of Service Recipient Personal Data hereunder, including the risk of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Service Recipient Personal Data (a “**Personal Data Breach**”).

5. Service Provider shall ensure that all Service Provider personnel who have access to Service Recipient Personal Data are subject to confidentiality or non-disclosure agreements or other suitable confidentiality obligations.

6. Service Provider shall (a) notify Service Recipient of a Personal Data Breach, without undue delay, and in any case within the period required for notification under Data Protection Laws after becoming aware thereof, reasonably cooperating with Service Recipient to provide, upon Service Recipient’s reasonable written request, sufficient information available to Service Provider to allow Service Recipient to meet any obligations to report to regulatory authorities or inform impacted individuals of such Personal Data Breach under applicable Data Protection Laws, and (b) provide reasonable cooperation to Service Recipient with the investigation, mitigation and remediation of any such Personal Data Breach.

7. Service Provider shall notify Service Recipient as soon as reasonably practicable of receiving any request in relation to Service Recipient Personal Data (a) for information or complaint from a data protection authority or regulator or (b) by an individual to exercise rights under applicable Data Protection Laws. Service Provider shall, at Service Recipient’s sole cost and expense, cooperate with Service Recipient in the fulfillment of its obligations to comply with any such requests by individuals and to comply with its obligations under Articles 32 through 36 of the GDPR and the equivalent under the UK GDPR, as applicable.

8. Subject to the terms of Section 2.02 of the Agreement, Service Provider shall be generally permitted to use sub-processors to fulfill its contractual obligations under the Agreement (collectively, “**Sub-processors**”) and shall inform Service Recipient of any intended changes concerning the addition or replacement of a Sub-processor. Service Provider shall ensure that Sub-processors are bound to privacy and data protection obligations that are no less onerous than those set forth in this DPA. If Service Recipient objects to Service Provider’s change of Sub-processor, Service Recipient shall inform Service Provider of its objections in writing within ten (10) days of receipt of information about the change from Service Provider (it being understood that if Service Recipient fails to respond with sufficient detail within such ten (10) day period, it shall be deemed to have consented to the change of Sub-processor). Subject to the terms and conditions of the Agreement, Service Provider shall be responsible for all acts or omissions of such Sub-processors in connection with this DPA in the same manner as for its own acts or omissions.

9. Upon Service Recipient’s reasonable written request and only in relation to such Processing as Service Provider carries out as Processor for Service Recipient, once during the term of the Agreement and only during reasonable business hours, Service Provider shall allow Service Recipient or any auditor mandated by Service Recipient to audit Service Provider’s compliance with the obligations set out in this DPA and applicable Data Protection Laws. Prior to any such audit, Service

Recipient and Service Provider shall agree upon the manner in which such audit shall be conducted, which shall include Service Recipient or any such auditor (as the case may be) agreeing to such security and confidentiality undertakings as Service Provider considers reasonably necessary to protect its business in relation to such audit. Service Recipient shall reimburse Service Provider for any and all costs it incurs in connection with any such audit.

10. Service Provider shall delete or return to Service Recipient the Service Recipient Personal Data once it is no longer required for the purposes contemplated under the Agreement or in any event upon the termination or expiration of the Agreement, unless required under Applicable Law or Service Provider's archival or data retention policies and practices.

11. If any modifications are necessary to this DPA as a result of a change in any applicable Data Protection Laws (or in the interpretation thereof by courts of competent jurisdiction, data protection authorities, or other relevant Governmental Authorities), then (a) either Service Provider or Service Recipient may provide written notice to the other Party of such change in law (or interpretation), and (b) the Parties shall discuss the change in applicable Data Protection Law (or interpretation) and negotiate in good faith with a view to agreeing to any necessary modifications to this DPA to address such changes.

12. In the event of any conflict between the body of the Agreement and this DPA, solely with respect to Processing of Personal Data the terms of this DPA shall control.

Exhibit 1

Details of Processing of Service Recipient Personal Data

Subject matter of Processing	The provision of Services under the Agreement.
Duration of Processing	In respect of each Service under the Agreement, until the expiration or termination of the applicable Service Term of such Service.
Nature of Processing	See description of Services set forth on TSA Schedule A.
Purpose of Processing	See description of Services set forth on TSA Schedule A.
Type of Personal Data	Names, ages, dates of birth, gender, compensation and performance information (including income, base and variable compensation, benefits, performance and disciplinary actions), contact information (including phone, address and email address), hire and termination information, disability status and updates, leave requests (including leave status and type), education and skills (including training, academic record, CV/resume and qualifications), general employee record updates, and similar day-to-day employee management items, pension information, social security information and benefits utilization information, and financial institution information, bank account number and routing number.
Categories of Data Subjects	Employees, contractors, vendors, customers.

Exhibit 2

Standard Contractual Clauses Module Two – Controller to Processor Module Three – Processor to Processor

STANDARD CONTRACTUAL CLAUSES

SECTION I

Clause 1

Purpose and scope

(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.

(b) The Parties:

(i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter “entity/ies”) transferring the personal data, as listed in Annex I.A. (hereinafter each “data exporter”), and

(ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each “data importer”)

have agreed to these standard contractual clauses (hereinafter: “Clauses”).

(c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.

(d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2

Effect and invariability of the Clauses

(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3

Third-party beneficiaries

(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

- (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
- (ii) Clause 8 - Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g);
- (iii) Clause 9 - Clause 9(a), (c), (d) and (e);
- (iv) Clause 12 - Clause 12(a), (d) and (f);
- (v) Clause 13;
- (vi) Clause 15.1(c), (d) and (e);
- (vii) Clause 16(e);
- (viii) Clause 18 - Clause 18(a) and (b).

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4

Interpretation

(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5

Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6

Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7 – Optional

Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

SECTION II – OBLIGATIONS OF THE PARTIES

Clause 8

Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

MODULE TWO: Transfer controller to processor

8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets

or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter “personal data breach”). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including

measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter "sensitive data"), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter "onward transfer") if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

(a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.

(b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.

(c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

(d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

(e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

MODULE THREE: Transfer processor to processor

8.1 Instructions

(a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.

(b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.

(c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.

(d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter.

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall

provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of

data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter "sensitive data"), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (in the same country as the data importer or in another third country, hereinafter "onward transfer") if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.

- (c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
- (d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
- (e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
- (f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

Clause 9

Use of sub-processors

MODULE TWO: Transfer controller to processor

- (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least ten (10) days in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.
- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the

data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

MODULE THREE: Transfer processor to processor

(a) The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least ten (10) days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

(b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects.¹ The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.

(c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

(d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

(e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby - in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent - the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

Clause 10

Data subject rights

MODULE TWO: Transfer controller to processor

(a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

(b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the

¹ This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

MODULE THREE: Transfer processor to processor

(a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.

(b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

Clause 11

Redress

(a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;

(ii) refer the dispute to the competent courts within the meaning of Clause 18.

(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.

(e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.

(f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12

Liability

(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

(b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.

(c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

(d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.

(e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

(f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its / their responsibility for the damage.

(g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13

Supervision

(a) Where the data exporter is established in an EU Member State: The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

(b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III– LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

Clause 14

Local laws and practices affecting compliance with the Clauses

(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

(b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:

(i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;

(ii) the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;

(iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.

(c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.

(d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.

(e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). For Module Three: The data exporter shall forward the notification to the controller.

(f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15

Obligations of the data importer in case of access by public authorities

15.1 Notification

(a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:

(i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

(ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

For Module Three: The data exporter shall forward the notification to the controller.

(b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

(c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).

For Module Three: The data exporter shall forward the information to the controller.

(d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.

(e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

(a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

(b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. For Module Three: The data exporter shall make the assessment available to the controller.

(c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV– FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

(a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

(b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).

(c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

(i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

(ii) the data importer is in substantial or persistent breach of these Clauses;
or

(iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority [for Module Three: and the controller] of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

(d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

(e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.

Clause 18

Choice of forum and jurisdiction

(a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

(b) The Parties agree that those shall be the courts of Ireland.

(c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

(d) The Parties agree to submit themselves to the jurisdiction of such courts.

APPENDIX

ANNEX I

A. LIST OF PARTIES

Data exporter(s):

1. Name: [Capillary Pte Ltd]

Address: c/o Capillary Technologies
No. #36/5, 2nd Floor, Somasandra Palya
Haralukunte Village, Adjacent 27th Main Road
Sector 2, HSR Layout, Bangalore – 560102, India

Contact person's name, position and contact details:

Aruna Subramanian
aruna.subramanian@capillarytech.com

Activities relevant to the data transferred under these Clauses: Service Provider or Service Recipient of the Services, as applicable

Signature and date: ...

Role (controller/processor): Controller as data exporter (Service Recipient) and Processor as data importer (Service Provider)

Data importer(s):

1. Name: Tenerity, LLC

Address:

6 High Ridge Park
Stamford, CT 06905

Contact person's name, position and contact details:

Brian Fisher
brian.fisher@tenerity.com

Activities relevant to the data transferred under these Clauses: Service Provider or Service Recipient of the Services, as applicable

Signature and date: ...

Role (controller/processor): Processor as data importer (Service Provider) and Controller as data exporter (Service Recipient)

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

Employees, contractors, vendors, customers.

Categories of personal data transferred

Names, ages, dates of birth, gender, compensation and performance information (including income, base and variable compensation, benefits, performance and disciplinary actions), contact information (including phone, address and email address), hire and termination information, disability status and updates, leave requests (including leave status and type), education and skills (including training, academic record, CV/resume and qualifications), general employee record updates, and similar day-to-day employee management items, pension information, social security information and benefits utilization information, and financial institution information, bank account number and routing number.

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Disability status and updates.

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

On a continuous basis solely as needed to provide or receive the Services.

Nature of the processing

Solely as needed for Service Provider to provide the Services.

Purpose(s) of the data transfer and further processing

Solely as needed for Service Provider to provide the Services.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Solely as needed for Service Provider to provide the Services.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

See above.

C. COMPETENT SUPERVISORY AUTHORITY

The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

See the terms of the Agreement, including this DPA.

ANNEX III – LIST OF SUB-PROCESSORS

The controller has authorised the use of the following sub-processors:

Subject to the terms and conditions of the Agreement, any sub-processors engaged as of the date of the Agreement.