

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended November 1, 2020

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-37570

Pure Storage, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

27-1069557

(I.R.S. Employer
Identification No.)

650 Castro Street, Suite 400
Mountain View, California
94041

(Address of principal executive offices, including zip code)

(800) 379-7873

(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class A Common Stock, \$0.0001 par value per share	PSTG	New York Stock Exchange LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of December 4, 2020, the registrant had 272,810,989 shares of its Class A common stock outstanding.

PURE STORAGE, INC.
FORM 10-Q for the Quarter Ended November 1, 2020
Table of Contents

	Page
Note About Forward-Looking Statements	ii
PART I. FINANCIAL INFORMATION	
Item 1. Financial Statements (unaudited)	1
Condensed Consolidated Balance Sheets	1
Condensed Consolidated Statements of Operations	2
Condensed Consolidated Statements of Comprehensive Loss	3
Condensed Consolidated Statements of Stockholders' Equity	4
Condensed Consolidated Statements of Cash Flows	6
Notes to Condensed Consolidated Financial Statements	7
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	29
Item 3. Quantitative and Qualitative Disclosures About Market Risk	39
Item 4. Controls and Procedures	40
PART II. OTHER INFORMATION	
Item 1. Legal Proceedings	41
Item 1A. Risk Factors	41
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	62
Item 3. Defaults Upon Senior Securities	62
Item 4. Mine Safety Disclosures	62
Item 5. Other Information	62
Item 6. Exhibits	63
Signatures	

NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this report, including statements regarding our future results of operations and financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, forward-looking statements may be identified by words such as “anticipate,” “believe,” “continue,” “could,” “design,” “estimate,” “expect,” “intend,” “may,” “plan,” “potentially,” “predict,” “project,” “should,” “will” or the negative of these terms or other similar expressions.

Forward-looking statements contained in this Quarterly Report on Form 10-Q include, but are not limited to, statements regarding our ability to sustain or manage our profitability and growth, our expectations regarding demand for our products and services and trends in the external storage market, our expectations that sales prices may decrease or fluctuate over time, our plans to expand and continue to invest internationally, our plans to continue investing in marketing, sales, support and research and development, as well as channel programs, our shift to subscription services, our expectations regarding fluctuations in our revenue and operating results, our expectations that we may continue to experience losses despite revenue growth, our ability to successfully attract, motivate, and retain qualified personnel and maintain our culture, our expectations regarding our technological leadership and market opportunity, our ability to realize benefits from our investments, including development efforts and acquisitions, our ability to innovate and introduce new or enhanced products, our expectations regarding product acceptance and our technologies, products and solutions, our competitive position and the effects of competition and industry dynamics, including alternative offerings from incumbent, emerging and public cloud vendors, our expectations concerning relationships with third parties, including our partners, customers and contract manufacturers, the impact of the Portworx acquisition and technology, the adequacy of our intellectual property rights, expectations concerning potential legal proceedings and related costs, the impact of adverse economic conditions and the duration and scope of the COVID-19 pandemic and related “shelter-in-place” orders and other measures and its impact on our business, operating results, cash flows and/or financial condition.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, and financial needs. These forward-looking statements are subject to a number of known and unknown risks, uncertainties and assumptions, including risks described in the section titled “Risk Factors.” These risks are not exhaustive. Other sections of this report include additional factors that could harm our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for our management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in, or implied by, any forward-looking statements.

Investors should not rely upon forward-looking statements as predictions of future events. We cannot assure investors that the events and circumstances reflected in the forward-looking statements will be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report or to conform these statements to actual results or to changes in our expectations. Investors should read this Quarterly Report on Form 10-Q and the documents that we reference in this Quarterly Report on Form 10-Q and have filed as exhibits to this report with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

PURE STORAGE, INC. **Condensed Consolidated Balance Sheets** (in thousands, except per share data, unaudited)

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 362,635	\$ 263,702
Marketable securities	936,518	937,718
Accounts receivable, net of allowance of \$542 and \$558	458,643	378,193
Inventory	38,518	43,152
Deferred commissions, current	37,148	42,728
Prepaid expenses and other current assets	56,930	77,813
Total current assets	1,890,392	1,743,306
Property and equipment, net	122,740	158,200
Operating lease right-of-use assets	112,854	137,856
Deferred commissions, non-current	102,056	109,361
Intangible assets, net	58,257	81,075
Goodwill	37,584	360,997
Restricted cash	15,287	11,349
Other assets, non-current	25,034	50,851
Total assets	\$ 2,364,204	\$ 2,652,995
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 77,651	\$ 89,369
Accrued compensation and benefits	106,592	83,163
Accrued expenses and other liabilities	47,223	47,939
Operating lease liabilities, current	27,264	30,902
Deferred revenue, current	356,011	408,086
Total current liabilities	614,741	659,459
Long-term debt	477,007	748,422
Operating lease liabilities, non-current	92,977	124,382
Deferred revenue, non-current	341,277	354,678
Other liabilities, non-current	8,084	30,973
Total liabilities	1,534,086	1,917,914
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, par value of \$0.0001 per share— 20,000 shares authorized; no shares issued and outstanding	—	—
Class A and Class B common stock, par value of \$0.0001 per share—2,250,000 (Class A 2,000,000, Class B 250,000) shares authorized; 264,008 and 272,040 Class A shares issued and outstanding	26	27
Additional paid-in capital	2,107,579	2,238,714
Accumulated other comprehensive income	5,449	9,059
Accumulated deficit	(1,282,936)	(1,512,719)
Total stockholders' equity	830,118	735,081
Total liabilities and stockholders' equity	\$ 2,364,204	\$ 2,652,995

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.
Condensed Consolidated Statements of Operations
(in thousands, except per share data, unaudited)

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Revenue:				
Product	\$ 323,268	\$ 274,470	\$ 862,137	\$ 793,718
Subscription services	105,141	136,149	289,299	387,743
Total revenue	428,409	410,619	1,151,436	1,181,461
Cost of revenue:				
Product	89,998	86,661	259,460	240,677
Subscription services	37,773	47,442	106,632	132,717
Total cost of revenue	127,771	134,103	366,092	373,394
Gross profit	300,638	276,516	785,344	808,067
Operating expenses:				
Research and development	106,663	122,981	318,758	350,079
Sales and marketing	184,819	172,282	537,633	517,149
General and administrative	37,416	46,467	119,542	132,063
Restructuring and other	—	—	—	22,990
Total operating expenses	328,898	341,730	975,933	1,022,281
Loss from operations	(28,260)	(65,214)	(190,589)	(214,214)
Other income (expense), net	9	(4,887)	(2,459)	(6,700)
Loss before provision for income taxes	(28,251)	(70,101)	(193,048)	(220,914)
Provision for income taxes	1,731	4,121	3,288	8,869
Net loss	\$ (29,982)	\$ (74,222)	\$ (196,336)	\$ (229,783)
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.12)	\$ (0.28)	\$ (0.78)	\$ (0.87)
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	255,047	269,144	250,618	265,626

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.
Condensed Consolidated Statements of Comprehensive Loss
(in thousands, unaudited)

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Net loss	\$ (29,982)	\$ (74,222)	\$ (196,336)	\$ (229,783)
Other comprehensive income (loss) net of tax:				
Unrealized net gains (losses) on available-for-sale securities	1,927	(2,869)	5,725	4,736
Less: reclassification adjustment for net gains on available-for-sale securities included in net loss	(220)	(257)	(271)	(1,126)
Change in unrealized net gains (losses) on available-for-sale securities	1,707	(3,126)	5,454	3,610
Comprehensive loss	<u>\$ (28,275)</u>	<u>\$ (77,348)</u>	<u>\$ (190,882)</u>	<u>\$ (226,173)</u>

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.

Condensed Consolidated Statements of Stockholders' Equity
(in thousands, unaudited)

Third Quarter of Fiscal 2020

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at the end of the second quarter of fiscal 2020	255,752	\$ 26	\$ 1,982,407	\$ 3,409	\$ (1,248,303)	\$ 737,539
Issuance of common stock upon exercise of stock options	934	—	6,715	—	—	6,715
Stock-based compensation expense	—	—	52,336	—	—	52,336
Vesting of restricted stock units	2,557	—	—	—	—	—
Net issuance of restricted stock	(93)	—	—	—	—	—
Tax withholding on vesting of restricted stock	—	—	(1,614)	—	—	(1,614)
Common stock issued under employee stock purchase plan	770	—	11,249	—	—	11,249
Other comprehensive income	—	—	—	1,707	—	1,707
Net loss	—	—	—	—	(29,982)	(29,982)
Balance at the end of the third quarter of fiscal 2020	259,920	\$ 26	\$ 2,051,093	\$ 5,116	\$ (1,278,285)	\$ 777,950

Third Quarter of Fiscal 2021

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at the end of the second quarter of fiscal 2021	267,776	\$ 27	\$ 2,172,391	\$ 12,185	\$ (1,438,497)	\$ 746,106
Issuance of common stock upon exercise of stock options	678	—	4,019	—	—	4,019
Stock-based compensation expense	—	—	59,734	—	—	59,734
Vesting of restricted stock units	2,990	—	—	—	—	—
Tax withholding on vesting of restricted stock	(86)	—	(1,239)	—	—	(1,239)
Forfeiture of restricted stock	(87)	—	—	—	—	—
Common stock issued under employee stock purchase plan	2,129	—	16,418	—	—	16,418
Repurchases of common stock	(1,360)	—	(21,411)	—	—	(21,411)
Equity awards assumed in an acquisition	—	—	8,802	—	—	8,802
Other comprehensive loss	—	—	—	(3,126)	—	(3,126)
Net loss	—	—	—	—	(74,222)	(74,222)
Balance at the end of the third quarter of fiscal 2021	272,040	\$ 27	\$ 2,238,714	\$ 9,059	\$ (1,512,719)	\$ 735,081

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.

Condensed Consolidated Statements of Stockholders' Equity
(in thousands, unaudited)

First Three Quarters of Fiscal 2020						
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at the end of fiscal 2019	243,524	\$ 24	\$ 1,820,043	\$ (338)	\$ (1,081,949)	\$ 737,780
Issuance of common stock upon exercise of stock options	4,797	1	26,005	—	—	26,006
Stock-based compensation expense	—	—	170,542	—	—	170,542
Vesting of restricted stock units	6,884	1	(1)	—	—	—
Net issuance of restricted stock	972	—	—	—	—	—
Tax withholding on vesting of restricted stock	—	—	(8,787)	—	—	(8,787)
Common stock issued under employee stock purchase plan	3,743	—	43,291	—	—	43,291
Other comprehensive income	—	—	—	5,454	—	5,454
Net loss	—	—	—	—	(196,336)	(196,336)
Balance at the end of the third quarter of fiscal 2020	259,920	\$ 26	\$ 2,051,093	\$ 5,116	\$ (1,278,285)	\$ 777,950

First Three Quarters of Fiscal 2021						
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at the end of fiscal 2020	264,008	\$ 26	\$ 2,107,579	\$ 5,449	\$ (1,282,936)	\$ 830,118
Issuance of common stock upon exercise of stock options	4,991	1	25,644	—	—	25,645
Stock-based compensation expense	—	—	179,884	—	—	179,884
Vesting of restricted stock units	8,445	1	(1)	—	—	—
Tax withholding on vesting of restricted stock	(305)	—	(4,080)	—	—	(4,080)
Cancellation and forfeiture of restricted stock	(317)	—	—	—	—	—
Common stock issued under employee stock purchase plan	3,714	—	32,439	—	—	32,439
Repurchases of common stock	(8,496)	(1)	(111,553)	—	—	(111,554)
Equity awards assumed in an acquisition	—	—	8,802	—	—	8,802
Other comprehensive income	—	—	—	3,610	—	3,610
Net loss	—	—	—	—	(229,783)	(229,783)
Balance at the end of the third quarter of fiscal 2021	272,040	\$ 27	\$ 2,238,714	\$ 9,059	\$ (1,512,719)	\$ 735,081

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.
Condensed Consolidated Statements of Cash Flows
(in thousands, unaudited)

	First Three Quarters of Fiscal	
	2020	2021
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (196,336)	\$ (229,783)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	66,785	49,811
Amortization of debt discount and debt issuance costs	20,186	21,525
Stock-based compensation expense	174,790	179,755
Impairment of long-lived assets	—	7,505
Other	(483)	4,111
Changes in operating assets and liabilities, net of effects of acquisitions:		
Accounts receivable, net	17,079	83,220
Inventory	2,722	(4,724)
Deferred commissions	(8,158)	(12,885)
Prepaid expenses and other assets	1,464	(37,606)
Operating lease right-of-use assets	19,962	21,434
Accounts payable	(35,244)	8,566
Accrued compensation and other liabilities	(31,011)	(9,737)
Operating lease liabilities	(19,020)	(20,444)
Deferred revenue	106,980	57,860
Net cash provided by operating activities	119,716	118,608
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(74,206)	(73,643)
Acquisitions, net of cash acquired	(51,594)	(339,806)
Purchase of intangible assets	(9,000)	—
Purchases of marketable securities	(640,024)	(454,391)
Sales of marketable securities	116,518	132,207
Maturities of marketable securities	345,657	324,780
Other	—	(5,000)
Net cash used in investing activities	(312,649)	(415,853)
CASH FLOWS FROM FINANCING ACTIVITIES		
Net proceeds from exercise of stock options	25,804	25,677
Proceeds from issuance of common stock under employee stock purchase plan	43,291	32,439
Proceeds from borrowings, net of issuance costs	—	251,892
Repayment of debt assumed from acquisition	(11,555)	—
Tax withholding on vesting of restricted stock	(8,787)	(4,080)
Repurchases of common stock	—	(111,554)
Net cash provided by financing activities	48,753	194,374
Net decrease in cash, cash equivalents and restricted cash	(144,180)	(102,871)
Cash, cash equivalents and restricted cash, beginning of period	463,813	377,922
Cash, cash equivalents and restricted cash, end of period	\$ 319,633	\$ 275,051
CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT END OF PERIOD		
Cash and cash equivalents	\$ 304,346	\$ 263,702
Restricted cash	15,287	11,349
Cash, cash equivalents and restricted cash, end of period	\$ 319,633	\$ 275,051
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
Cash paid for interest	\$ 718	\$ 1,062
Cash paid for income taxes	\$ 3,398	\$ 8,911
Cash paid for amounts included in the measurement of lease liabilities	\$ 24,403	\$ 27,336
Property and equipment purchased but not yet paid	\$ 5,202	\$ 10,644
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	\$ 14,937	\$ 53,289
Fair value of equity awards assumed in an acquisition	\$ —	\$ 8,802

See the accompanying notes to condensed consolidated financial statements.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1. Business Overview

Organization and Description of Business

Pure Storage, Inc. (the Company, we, us, or other similar pronouns) was originally incorporated in the state of Delaware in October 2009 under the name OS76, Inc. In January 2010, we changed our name to Pure Storage, Inc. We are headquartered in Mountain View, California and have wholly owned subsidiaries throughout the world.

Data is foundational to our customers' digital transformation and we are focused on delivering innovative and disruptive technology and data storage solutions that enable customers to maximize the value of their data. We started with the vision of making flash storage available to enterprise organizations everywhere and established an entirely new customer experience including our innovative Evergreen Storage subscription that radically simplified storage ownership and reduced total cost of ownership for our customers.

Our solutions serve data workloads on-premise, in the cloud, or hybrid environments and include mission-critical production, test/development, analytics, disaster recovery, and backup/recovery.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

In September 2019, we adopted a 52/53 week fiscal year consisting of four 13-week quarters ending on the first Sunday after January 30, which for fiscal 2020 was February 2, 2020 and for fiscal 2021 will be January 31, 2021. The third quarter of fiscal 2020 and 2021 ended on October 31, 2019 and November 1, 2020. Unless otherwise stated, all dates refer to the our fiscal year and fiscal periods.

The condensed consolidated financial statements include the accounts of the Company and our wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Unaudited Interim Consolidated Financial Information

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (U.S. GAAP) and applicable rules and regulations of the Securities and Exchange Commission (the SEC) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in our Annual Report on Form 10-K for fiscal 2020.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, comprehensive loss and cash flows for the interim periods, but are not necessarily indicative of the results of operations to be anticipated for the full fiscal year 2021 or any future period.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)*****Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and accompanying notes. Actual results could differ from these estimates and assumptions due to risks and uncertainties, including uncertainty in the current economic environment from the ongoing COVID-19 pandemic. Such estimates include, but are not limited to, the determination of standalone selling price for revenue arrangements with multiple performance obligations, useful lives of intangible assets and property and equipment, the period of benefit for deferred contract costs for commissions, stock-based compensation, provision for income taxes including related reserves, and fair value of equity assumed, assets acquired and liabilities assumed for business combinations. Management bases its estimates on historical experience and on various other assumptions which management believes to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

In accordance with our accounting practices, we review the estimated useful lives of our property and equipment on an ongoing basis. In the first quarter of fiscal 2021, management determined that the estimated useful lives of its test equipment and certain computer equipment and software required revision. The estimated useful lives of test equipment and certain computer equipment and software were revised to 4 years. Previously, the estimated useful lives of these assets ranged from 2 to 3 years. The change in estimated useful lives was accounted for as a change in estimate and recognized on a prospective basis effective February 3, 2020. The effect of this change in estimate resulted in a reduction to depreciation expense of \$4.9 million and \$19.0 million in the third quarter and first three quarters of fiscal 2021.

Restricted Cash

Restricted cash is comprised of cash collateral for letters of credit related to our leases and for a vendor credit card program. At the end of fiscal 2020 and the third quarter of fiscal 2021, we had restricted cash of \$15.3 million and \$11.3 million.

Marketable Securities

We classify our marketable securities as available-for-sale at the time of purchase and reevaluate such classification at each balance sheet date. We may sell these securities at any time for use in current operations even if they have not yet reached maturity. As a result, we classify our securities, including those with maturities beyond twelve months, as current assets in the accompanying condensed consolidated balance sheets. We carry these securities at fair value and record unrealized gains and losses, in accumulated other comprehensive income (loss), which is reflected as a component of stockholders' equity. We evaluate our securities with unrealized loss positions as to whether the declines in fair value were due to credit losses, and record the portion of impairment relating to the credit losses through allowance for credit losses limited to the amount that fair value was less than the amortized cost basis. Realized gains and losses from the sale of marketable securities are determined based on the specific identification method. Realized gains and losses are reported in other income (expense), net in the condensed consolidated statements of operations.

Business Combinations

We allocate the purchase price to the assets acquired and liabilities assumed based on their estimated fair values. The excess of the purchase price over the fair values of the assets acquired and liabilities assumed is recorded as goodwill. During the measurement period, which may be up to one year from the acquisition date, we may record adjustments to the estimated fair value of the assets acquired and liabilities assumed, with the corresponding offset to goodwill. The results of operations of an acquired business is included in our condensed consolidated financial statements from the date of acquisition. Acquisition-related expenses are expensed as incurred.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Operating Leases

We determine if an arrangement contains a lease at inception. Lease liabilities are recognized at the present value of the future lease payments at commencement date. The interest rate implicit in our operating leases is not readily determinable, and therefore an incremental borrowing rate is estimated to determine the present value of future payments. The estimated incremental borrowing rate factors in a hypothetical interest rate on a collateralized basis with similar terms, payments, and economic environments. The operating lease right-of-use (ROU) asset is determined based on the lease liability initially established and reduced for any prepaid lease payments and any lease incentives. We have elected to account for the lease and non-lease components of operating lease contract consideration as a single lease component.

Certain of the operating lease agreements contain rent concession, rent escalation, and option to renew provisions. Rent concession and rent escalation provisions are considered in determining the lease cost. Lease cost is recognized on a straight-line basis over the lease term commencing on the date we have the right to use the leased property. We generally use the base, non-cancelable, lease term when recognizing the lease assets and liabilities, unless it is reasonably certain that an extension or termination option will be exercised.

In addition, certain of our operating lease agreements contain tenant improvement allowances from our landlords. These allowances are accounted for as lease incentives and reduce our ROU asset and lease cost over the lease term.

For short-term leases with lease term no longer than twelve months, and do not include an option to purchase the underlying asset that we are reasonably certain to exercise, we recognize rent expense in our condensed consolidated statements of operations on a straight-line basis over the lease term and record variable lease payments as incurred.

Revenue Recognition

We generate revenue primarily from two sources: (1) product revenue which includes hardware and embedded software and (2) subscription services revenue which includes *Evergreen Storage* subscriptions, and our unified subscription that includes *Pure as-a-Service* and *Cloud Block Store*.

Our product revenue is derived from the sale of integrated storage hardware and operating system software. We typically recognize product revenue upon transfer of control to our customers. Products are typically shipped directly by us to customers.

Our subscription services revenue is derived from the services we perform in connection with the sale of subscription services and is recognized ratably over the contractual term, which generally ranges from one to six years. The majority of our product solutions are sold with an *Evergreen Storage* subscription service agreement, which typically commences upon transfer of control of the corresponding products to our customers. Costs for subscription services are expensed when incurred. In addition, our *Evergreen Storage* subscription provides our customers with a new controller based upon certain terms. The controller refresh represents a separate performance obligation that is included within the *Evergreen Storage* subscription service agreement and the allocated revenue is recognized upon shipment of the controller.

Our subscription services also include the right to receive unspecified software updates and upgrades on a when-and-if-available basis, software bug fixes, replacement parts and other services related to the underlying infrastructure, as well as access to our cloud-based management and support platform. We also sell professional services such as installation and implementation consulting services, and the related revenue is recognized as services are performed.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)**

We recognize revenue upon the transfer of promised goods or services to customers in an amount that reflects the consideration we expect to be entitled in exchange for those goods or services. This is achieved through applying the following five-step approach:

- *Identification of the contract, or contracts, with a customer*
- *Identification of the performance obligations in the contract*
- *Determination of the transaction price*
- *Allocation of the transaction price to the performance obligations in the contract*
- *Recognition of revenue when, or as, we satisfy a performance obligation*

When applying this five-step approach, we apply judgment in determining the customer's ability and intention to pay, which is based on a variety of factors including the customer's historical payment experience and/or published credit and financial information pertaining to the customer. To the extent a customer contract includes multiple promised goods or services, we determine whether promised goods or services should be accounted for as a separate performance obligation. The transaction price is determined based on the consideration which we will be entitled to in exchange for transferring goods or services to the customer. We allocate the transaction price to each performance obligation for contracts that contain multiple performance obligations based on a relative standalone selling price which is determined based on the price at which the performance obligation is sold separately, or if not observable through past transactions, is estimated taking into account available information such as market conditions and internally approved pricing guidelines related to performance obligations.

Recent Accounting Pronouncement Not Yet Adopted

In August 2020, the Financial Accounting Standards Board issued Accounting Standards Update 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which simplifies the accounting for certain convertible instruments, amends guidance on derivative scope exceptions for contracts in an entity's own equity, and modifies the guidance on diluted earnings per share (EPS) calculations as a result of these changes. The standard will be effective for us beginning February 7, 2022 and can be applied on either a fully retrospective or modified retrospective basis. Early adoption is permitted for fiscal years beginning after December 15, 2020. We are currently evaluating the impact of this standard on our condensed consolidated financial statements.

Note 3. Financial Instruments***Fair Value Measurements***

We define fair value as the exchange price that would be received from sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. We measure our financial assets and liabilities at fair value at each reporting period using a fair value hierarchy which requires us to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument's classification within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Three levels of inputs may be used to measure fair value:

- *Level 1* - Observable inputs are unadjusted quoted prices in active markets for identical assets or liabilities;
- *Level 2* - Observable inputs are quoted prices for similar assets and liabilities in active markets or inputs other than quoted prices that are observable for the assets or liabilities, either directly or indirectly through market corroboration, for substantially the full term of the financial instruments; and
- *Level 3* - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. These inputs are based on our own assumptions used to measure assets and liabilities at fair value and require significant management judgment or estimation.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Cash Equivalents, Marketable Securities and Restricted Cash

We measure our cash equivalents, marketable securities, and restricted cash at fair value on a recurring basis. We classify our cash equivalents, marketable securities and restricted cash within Level 1 or Level 2 because they are valued using either quoted market prices or inputs other than quoted prices which are directly or indirectly observable in the market, including readily-available pricing sources for the identical underlying security which may not be actively traded. Our fixed income available-for-sale securities consist of high quality, investment grade securities from diverse issuers. The valuation techniques used to measure the fair value of our marketable securities were derived from non-binding market consensus prices that are corroborated by observable market data or quoted market prices for similar instruments. The following tables summarize our cash equivalents, marketable securities and restricted cash by significant investment categories and their assigned levels within the valuation hierarchy at the end of fiscal 2020 and the third quarter of fiscal 2021 (in thousands):

At the End of Fiscal 2020							
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash Equivalents	Marketable Securities	Restricted Cash
Level 1							
Money market accounts	\$ —	\$ —	\$ —	\$ 26,355	\$ 11,068	\$ —	\$ 15,287
Level 2							
U.S. government treasury notes	323,751	2,146	—	325,897	—	325,897	—
U.S. government agencies	53,930	317	(3)	54,244	—	54,244	—
Corporate debt securities	452,318	3,954	(1)	456,271	3,001	453,270	—
Foreign government bonds	14,994	147	—	15,141	—	15,141	—
Asset-backed securities	87,267	699	—	87,966	—	87,966	—
Total	\$ 932,260	\$ 7,263	\$ (4)	\$ 965,874	\$ 14,069	\$ 936,518	\$ 15,287

At the End of the Third Quarter of Fiscal 2021							
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash Equivalents	Marketable Securities	Restricted Cash
Level 1							
Money market accounts	\$ —	\$ —	\$ —	\$ 43,232	\$ 31,883	\$ —	\$ 11,349
Level 2							
U.S. government treasury notes	346,860	3,819	(5)	350,674	—	350,674	—
U.S. government agencies	56,723	543	(1)	57,265	—	57,265	—
Corporate debt securities	414,234	4,986	(37)	419,183	—	419,183	—
Foreign government bonds	20,497	348	(1)	20,844	—	20,844	—
Asset-backed securities	88,534	1,219	(1)	89,752	—	89,752	—
Total	\$ 926,848	\$ 10,915	\$ (45)	\$ 980,950	\$ 31,883	\$ 937,718	\$ 11,349

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

The amortized cost and estimated fair value of our marketable securities are shown below by contractual maturity (in thousands):

	At the End of the Third Quarter of Fiscal 2021	
	Amortized Cost	Fair Value
Due within one year	\$ 360,525	\$ 362,473
Due in one to five years	566,323	575,245
Total	<u>\$ 926,848</u>	<u>\$ 937,718</u>

We review the individual securities that have unrealized losses on a regular basis to evaluate whether or not any security has experienced and expect to experience credit losses which resulted in the decline in fair value. Based on our evaluation of available evidence, we concluded that the gross unrealized losses on our investments at the end of fiscal 2020 and the third quarter of fiscal 2021 were temporary in nature. We do not intend to sell these investments and it is not more likely than not that we will be required to sell these investments before recovery of their amortized cost basis, which may be at maturity.

The following table presents gross unrealized losses and fair values for those investments that were in a continuous unrealized loss position at the end of fiscal 2020 and the third quarter of fiscal 2021, aggregated by investment category (in thousands):

	At the End of Fiscal 2020					
	Less than 12 months		Greater than 12 months		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
U.S. government treasury notes	\$ —	\$ —	\$ 1,000	\$ —	\$ 1,000	\$ —
U.S. government agencies	4,998	(3)	—	—	4,998	(3)
Corporate debt securities	9,691	(1)	—	—	9,691	(1)
Total	<u>\$ 14,689</u>	<u>\$ (4)</u>	<u>\$ 1,000</u>	<u>\$ —</u>	<u>\$ 15,689</u>	<u>\$ (4)</u>

	At the End of the Third Quarter of Fiscal 2021					
	Less than 12 months		Greater than 12 months		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
U.S. government treasury notes	\$ 58,412	\$ (5)	\$ —	\$ —	\$ 58,412	\$ (5)
U.S. government agencies	2,999	(1)	—	—	2,999	(1)
Corporate debt securities	29,930	(37)	—	—	29,930	(37)
Foreign government bonds	3,234	(1)	—	—	3,234	(1)
Asset-backed securities	6,786	(1)	—	—	6,786	(1)
Total	<u>\$ 101,361</u>	<u>\$ (45)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 101,361</u>	<u>\$ (45)</u>

Realized gains or losses on sale of marketable securities were not significant for all periods presented.

Fair Value Measurements of Other Financial Instruments

We also measure the fair value of our convertible senior notes (the Notes) on a quarterly basis for disclosure purposes. We consider the fair value of the Notes at the end of the third quarter of fiscal 2021 to be a Level 2 measurement due to its limited trading activity. Refer to Note 7 for the carrying amount and estimated fair value of our Notes at the end of the third quarter of fiscal 2021.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)****Note 4. Business Combination**

In October 2020, we acquired all outstanding stock of Portworx Inc. (Portworx), a privately-held container storage company that provides a Kubernetes data services platform for cloud native applications based in Los Altos, California. The transaction costs associated with the acquisition were not material and expensed as incurred. The total purchase consideration for the acquisition of Portworx was \$353.0 million, which consisted of the following (in thousands):

Cash	\$	344,213
Fair value of stock options assumed		8,802
Total	\$	353,015

We assumed certain unvested and outstanding stock options for Portworx's common stock. These stock options were converted into stock options for shares of our common stock. The fair value of the exchanged options determined using the Black-Scholes option pricing model was \$26.8 million, of which \$8.8 million attributable to services performed prior to the acquisition date was allocated to purchase consideration. The remaining fair value of \$18.0 million was allocated to future services and will be expensed over the remaining service periods as stock-based compensation expense. In addition, we assumed restricted stock units (RSUs) outstanding under the 2020 Portworx Equity Incentive Plan with a fair value of \$31.8 million that is being recognized as stock-based compensation expense over a four year vesting period.

The following table summarizes the preliminary fair values of assets acquired and liabilities assumed as of the date of the acquisition (in thousands):

	Amount	Estimated Useful Life
Goodwill	\$ 323,413	
Identified intangible assets:		
Developed technology	21,612	5 years
Customer relationships	6,116	7 years
Trade name	3,762	3 years
Cash	4,407	
Net liabilities assumed	(6,295)	
Total	\$ 353,015	

Goodwill generated from this acquisition is primarily attributable to the assembled workforce and expected post-acquisition synergies from combining Portworx container data services with our data services platform to expand our capabilities to support Kubernetes and containers. Goodwill is not deductible for tax purposes. The preliminary fair values of developed technology, customer relationships and trade name were estimated by applying the excess earnings method, with-and-without method, and the relief-from-royalty method, respectively, all of which are under the income approach whose underlying inputs are considered Level 3. The preliminary calculations and valuations of fair values assigned to assets acquired and liabilities assumed are based on management's estimates and assumptions which may be subject to change as we obtain additional information. The areas that remain preliminary relate to the fair values of the identified intangible assets acquired and deferred revenue assumed. We expect to finalize the valuation as soon as practicable, but not later than one year from the acquisition date.

In addition, cash payments to certain former shareholders of Portworx totaling \$32.2 million are being made over three years subject to continuous employment and are recognized as an operating expense. Of this amount, \$11.9 million was deposited in escrow at the acquisition date and recorded as a deferred compensation asset that is included within other assets, non-current in the condensed consolidated balance sheets.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

The results of Portworx have been included in our condensed consolidated statements of operations since the acquisition date and are not material. Pro forma results of operations have not been presented because the acquisition is not material to our results of operations.

Note 5. Balance Sheet Components

Inventory

Inventory consists of the following (in thousands):

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
Raw materials	\$ 2,974	\$ 4,400
Finished goods	35,544	38,752
Inventory	<u>\$ 38,518</u>	<u>\$ 43,152</u>

Property and Equipment, Net

Property and equipment, net consists of the following (in thousands):

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
Test equipment	\$ 205,555	\$ 231,406
Computer equipment and software	141,387	173,253
Furniture and fixtures	8,324	8,842
Leasehold improvements	40,356	44,976
Total property and equipment	395,622	458,477
Less: accumulated depreciation and amortization	(272,882)	(300,277)
Property and equipment, net	<u>\$ 122,740</u>	<u>\$ 158,200</u>

Depreciation and amortization expense related to property and equipment was \$20.6 million and \$14.9 million for the third quarter of fiscal 2020 and 2021, and \$60.3 million and \$41.1 million for the first three quarters of fiscal 2020 and 2021. The amount of internal-use software development costs capitalized during the third quarter and first three quarters was not material.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Intangible Assets, Net

Intangible assets, net consist of the following (in thousands):

	At the End of					
	Fiscal 2020			Third Quarter of Fiscal 2021		
	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Technology patents	\$ 19,125	\$ (8,933)	\$ 10,192	\$ 19,125	\$ (11,025)	\$ 8,100
Developed technology	56,100	(8,035)	48,065	77,712	(14,438)	63,274
Customer relationships	—	—	—	6,116	(73)	6,043
Trade name	—	—	—	3,762	(104)	3,658
Intangible assets, net	<u>\$ 75,225</u>	<u>\$ (16,968)</u>	<u>\$ 58,257</u>	<u>\$ 106,715</u>	<u>\$ (25,640)</u>	<u>\$ 81,075</u>

Intangible assets amortization expense was \$2.6 million and \$3.3 million for the third quarter of fiscal 2020 and 2021, and \$6.5 million and \$8.7 million for the first three quarters of fiscal 2020 and 2021. At the end of the third quarter of fiscal 2021, the weighted-average remaining amortization period was 3.0 years for technology patents, 5.1 years for developed technology, 6.9 years for customer relationships, and 2.9 years for trade name. We recorded amortization of (i) technology patents in general and administrative expenses due to their defensive nature, (ii) developed technology in cost of product revenue, and (iii) customer relationships and trade name in sales and marketing expenses in the condensed consolidated statements of operations.

At the end of the third quarter of fiscal 2021, future expected amortization expense for intangible assets is as follows (in thousands):

Fiscal Years Ending	Estimated Future Amortization Expense
Remainder of 2021	\$ 4,313
2022	16,296
2023	15,750
2024	15,332
2025	14,496
Thereafter	14,888
Total	<u>\$ 81,075</u>

Goodwill

The change in the carrying amount of goodwill is as follows (in thousands):

	Amount
Balance at the end of fiscal 2020	\$ 37,584
Goodwill acquired	323,413
Balance at the end of the third quarter of fiscal 2021	<u>\$ 360,997</u>

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Accrued Expenses and Other Liabilities

Accrued expenses and other liabilities consist of the following (in thousands):

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
Taxes payable	\$ 9,012	\$ 4,750
Accrued marketing	7,679	11,836
Accrued travel and entertainment expenses	3,829	1,054
Acquisition consideration	6,149	5,704
Other accrued liabilities	20,554	24,595
Total accrued expenses and other liabilities	<u>\$ 47,223</u>	<u>\$ 47,939</u>

Note 6. Deferred Revenue and Commissions

Deferred Commissions

Deferred commissions consist of incremental costs paid to our sales force to obtain customer contracts. Deferred commissions related to product revenue are recognized upon transfer of control to customers and deferred commissions related to subscription services revenue are amortized over an expected useful life of six years. We determine the expected useful life based on an estimated benefit period by evaluating our technology development life cycle, expected customer relationship period and other factors. We classify deferred commissions as current and non-current on our condensed consolidated balance sheets based on the timing of when we expect to recognize the expense. Amortization of deferred commissions is included in sales and marketing expense in the condensed consolidated statements of operations.

Changes in total deferred commissions during the periods presented are as follows (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Beginning balance	\$ 118,568	\$ 144,687	\$ 114,973	\$ 139,204
Additions	34,071	36,234	82,381	96,530
Recognition of deferred commissions	(29,508)	(28,832)	(74,223)	(83,645)
Ending balance	<u>\$ 123,131</u>	<u>\$ 152,089</u>	<u>\$ 123,131</u>	<u>\$ 152,089</u>

Of the \$152.1 million total deferred commissions balance at the end of the third quarter of fiscal 2021, we expect to recognize approximately 28% as commission expense over the next 12 months and the remainder thereafter.

There was no impairment related to capitalized commissions for the third quarter and first three quarters of fiscal 2020 and 2021.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)****Deferred Revenue**

Deferred revenue primarily consists of amounts that have been invoiced but have not yet been recognized as revenue including performance obligations pertaining to subscription services. The current portion of deferred revenue represents the amounts that are expected to be recognized as revenue within one year of the condensed consolidated balance sheet dates.

Changes in total deferred revenue during the periods presented are as follows (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Beginning balance	\$ 607,263	\$ 724,751	\$ 535,920	\$ 697,288
Additions	142,164	180,285	400,605	467,454
Recognition of deferred revenue	(106,229)	(142,272)	(293,327)	(401,978)
Ending balance	\$ 643,198	\$ 762,764	\$ 643,198	\$ 762,764

Revenue recognized during the third quarter of fiscal 2020 and 2021 from deferred revenue at the beginning of each respective period was \$101.4 million and \$121.9 million. Revenue recognized during the first three quarters of fiscal 2020 and 2021 from deferred revenue at the beginning of each respective period was \$213.2 million and \$285.0 million.

Remaining Performance Obligations

Total contracted but not recognized revenue was \$1,010.4 million at the end of the third quarter of fiscal 2021. Contracted but not recognized revenue consists of both deferred revenue and non-cancelable amounts that are expected to be invoiced and recognized as revenue in future periods. The value of orders that are contracted but have not been fulfilled and that can be canceled by customers, are excluded from remaining performance obligations. Of the \$1,010.4 million contracted but not recognized revenue at the end of the third quarter of fiscal 2021, we expect to recognize approximately 43% over the next 12 months, and the remainder thereafter.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)****Note 7. Debt*****Convertible Senior Notes***

In April 2018, we issued \$575.0 million in principal amount of 0.125% convertible senior notes due 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act and received proceeds of \$562.1 million, after deducting the underwriters' discounts and commissions. The Notes are governed by an indenture (the Indenture) between us, as the issuer, and U.S. Bank National Association, as trustee. The Notes are our senior unsecured obligations. The Indenture does not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by us or any of our subsidiaries. The Notes mature on April 15, 2023 unless repurchased or redeemed by us or converted in accordance with their terms prior to the maturity date. Interest is payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2018.

The Notes are convertible for up to 21,884,155 shares of our common stock at an initial conversion rate of approximately 38.0594 shares of common stock per \$1,000 principal amount, which is equal to an initial conversion price of approximately \$26.27 per share of common stock, subject to adjustment. Holders of the Notes may surrender their Notes for conversion at their option at any time prior to the close of business on the business day immediately preceding October 15, 2022, only under the following circumstances:

- during any fiscal quarter commencing after the fiscal quarter ended on July 31, 2018 (and only during such fiscal quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the Notes on each applicable trading day;
- during the five business day period after any five consecutive trading day period (the measurement period), in which the trading price per \$1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate for the Notes on each such trading day;
- if we call any or all of the Notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or
- upon the occurrence of specified corporate events.

On or after October 15, 2022 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes at any time regardless of the foregoing circumstances. Upon conversion, holders will receive cash, shares of our common stock, or a combination of cash and shares of our common stock, at our election. We intend to settle the principal of the Notes in cash.

The conversion price will be subject to adjustment in some events. Following certain corporate events that occur prior to the maturity date or following our issuance of a notice of redemption, we will increase the conversion rate for a holder who elects to convert its Notes in connection with such corporate event or during the related redemption period in certain circumstances. Additionally, upon the occurrence of a corporate event that constitutes a "fundamental change" per the Indenture, holders of the Notes may require us to repurchase for cash all or a portion of the Notes at a purchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid contingent interest.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

We may not redeem the Notes prior to April 20, 2021. We may redeem for cash all or any portion of the Notes, at our option, on or after April 20, 2021 if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending not more than two trading days immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. No sinking fund is provided for the Notes.

Upon the issuance of the Notes, we recorded total debt issuance costs of \$12.9 million, of which \$9.8 million was allocated to the Notes and \$3.1 million was allocated to additional paid-in capital.

The Notes consisted of the following (in thousands):

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
Liability:		
Principal	\$ 575,000	\$ 575,000
Less: debt discount, net of amortization	(91,378)	(71,408)
Less: debt issuance costs, net of amortization	(6,615)	(5,170)
Net carrying amount of the Notes	<u>\$ 477,007</u>	<u>\$ 498,422</u>
Stockholders' equity recorded at issuance:		
Allocated value of the conversion feature		\$ 136,333
Less: debt issuance costs		(3,068)
Additional paid-in capital		<u>\$ 133,265</u>

The total estimated fair value of the Notes at the end of the third quarter of fiscal 2021 was \$564.6 million. The fair value was determined based on the closing trading price per \$100 of the Notes as of the last day of trading for the period. The fair value of the Notes is primarily affected by the trading price of our common stock and market interest rates. Based on the closing price of our common stock of \$16.10 on the last day of the third quarter of fiscal 2021, the if-converted value of the Notes of \$352.3 million was less than its principal amount. At the end of the third quarter of fiscal 2021, the remaining term of the Notes is 29 months.

The following table sets forth total interest expense recognized related to the Notes for the third quarter and first three quarters of fiscal 2020 and 2021 (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Amortization of debt discount	\$ 6,431	\$ 6,799	\$ 18,824	\$ 19,970
Amortization of debt issuance costs	465	491	1,362	1,445
Total amortization of debt discount and debt issuance costs	6,896	7,290	20,186	21,415
Contractual interest expense	181	181	539	539
Total interest expense related to the Notes	<u>\$ 7,077</u>	<u>\$ 7,471</u>	<u>\$ 20,725</u>	<u>\$ 21,954</u>
Effective interest rate of the liability component	5.6 %	5.6 %	5.6 %	5.6 %

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)**

In connection with the offering of the Notes, we paid \$64.6 million to enter into capped call transactions with certain of the underwriters and their affiliates (the Capped Calls), whereby we have the option to purchase a total of 21,884,155 shares of our common stock upon any conversion of Notes and/or offset any cash payments we are required to make in excess of the principal amount of the Notes, as the case may be, with such reduction or offset subject to a cap initially equal to \$39.66 per share (which represents a premium of 100% over the last reported sales price of our common stock on April 4, 2018), subject to certain adjustments (the Cap Price). The cost of the Capped Calls was accounted for as a reduction to additional paid-in capital on the condensed consolidated balance sheet. The Capped Calls are intended to reduce or offset potential dilution of our common stock upon any conversion of the Notes, subject to a cap based on the Cap Price.

Impact on Earnings Per Share

The Notes will not impact our diluted earnings per share until the average market price of our common stock exceeds the conversion price of \$26.27 per share, as we intend to settle the principal amount of the Notes in cash upon conversion. We are required under the treasury stock method to compute the potentially dilutive shares of common stock related to the Notes for periods we report net income. However, upon conversion, there will be no economic dilution from the Notes until the average market price of our common stock exceeds the Cap Price of \$39.66 per share, as exercise of the Capped Calls offsets any dilution from the Notes from the conversion price up to the Cap Price. Capped Calls are excluded from the calculation of diluted earnings per share, as they would be anti-dilutive under the treasury stock method.

Revolving Credit Facility

On August 24, 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). Proceeds from the Credit Facility may be used for general corporate purposes and working capital. The Credit Facility expires, absent default or early termination by us, on the earlier of (i) August 24, 2025 or (ii) 91 days prior to the stated maturity of the Notes unless, on such date and each subsequent day until the Notes are paid in full, the sum of our cash, cash equivalents and marketable securities and the aggregate unused commitments then available to us exceed \$625.0 million.

The annual interest rates applicable to loans under the Credit Facility are, at our option, equal to either a base rate plus a margin ranging from 0.50% to 1.25% or LIBOR (based on one, three or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%. Interest on revolving loans is payable quarterly in arrears with respect to loans based on the base rate and at the end of an interest period in the case of loans based on LIBOR (or at each three-month interval if the interest period is longer than three months). We are also required to pay a commitment fee on the unused portion of the commitments ranging from 0.25% to 0.40% per annum, payable quarterly in arrears that commenced on September 30, 2020.

In September 2020, we drew down \$250.0 million under the Credit Facility which remained outstanding at the end of the third quarter of fiscal 2021. The outstanding loan bore interest at the one-month LIBOR of approximately 1.65% resulting in interest expense of \$0.3 million during the third quarter of fiscal 2021.

Loans under the Credit Facility are collateralized by substantially all of our assets and subject to certain restrictions and two financial ratios measured as of the last day of each fiscal quarter, commencing with the fiscal quarter ending January 31, 2021. We were in compliance with all covenants under the Credit Facility at the end of the third quarter of fiscal 2021.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)****Note 8. Commitments and Contingencies*****Letters of Credit***

At the end of fiscal 2020 and the third quarter of fiscal 2021, we had outstanding letters of credit in the aggregate amount of \$11.5 million and \$7.5 million, in connection with our facility leases. In September 2020, we executed an amendment that reduced our letter of credit related to our headquarters lease by \$3.6 million. The letters of credit are collateralized by restricted cash and mature on various dates through August 2029.

Legal Matters

From time to time, we have become involved in claims and other legal matters arising in the normal course of business. We investigate these claims as they arise. Although claims are inherently unpredictable, we currently are not aware of any matters that we expect to have a material adverse effect on our business, financial position, results of operations or cash flows. Accordingly, we have not recorded any loss contingency on our condensed consolidated balance sheet at the end of the third quarter of fiscal 2021.

Indemnification

Our arrangements generally include certain provisions for indemnifying customers against liabilities if our products or services infringe a third party's intellectual property rights. Other guarantees or indemnification arrangements include guarantees of product and service performance and standby letters of credit for lease facilities. It is not possible to determine the maximum potential amount under these indemnification obligations due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. To date, we have not incurred any material costs as a result of such obligations and have not accrued any liabilities related to such obligations in the condensed consolidated financial statements. In addition, we indemnify our officers, directors and certain key employees while they are serving in good faith in their respective capacities. To date, there have been no claims under any indemnification provisions.

Note 9. Leases

We lease office facilities under non-cancelable operating lease agreements expiring through July 2032. Our lease agreements do not contain any material residual value guarantees or restrictive covenants. During the third quarter of fiscal 2021, we executed an early renewal that modified an existing data center lease that resulted in total incremental undiscounted cash flows of \$27.3 million. The components of lease costs during the periods presented were as follows (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Fixed operating lease cost	\$ 8,509	\$ 9,494	\$ 25,220	\$ 27,775
Variable lease cost ⁽¹⁾	2,122	2,455	6,464	7,397
Short-term lease cost (12 months or less)	1,412	1,502	3,757	4,568
Total lease cost	<u>\$ 12,043</u>	<u>\$ 13,451</u>	<u>\$ 35,441</u>	<u>\$ 39,740</u>

⁽¹⁾ Variable lease cost for the third quarter and first three quarters of fiscal 2020 and 2021 predominantly included common area maintenance charges.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)**

At the end of the third quarter of fiscal 2021, the weighted-average remaining lease term is 5.4 years and the weighted-average discount rate is 5.91%. Future lease payments under our non-cancelable operating leases at the end of the third quarter of fiscal 2021 were as follows (in thousands):

Fiscal Years Ending	Operating Leases
The remainder of 2021	\$ 9,942
2022	38,880
2023	35,260
2024	29,983
2025	26,660
Thereafter	43,602
Total future lease payments	184,327
Less: imputed interest	(29,043)
Present value of lease liabilities	\$ 155,284

Note 10. Restructuring and Other

During the first three quarters of fiscal 2021, we ceased use of certain leased facilities. The unamortized costs of \$7.5 million relating to operating lease right-of-use assets and leasehold improvements for these leases were expensed.

During the first three quarters of fiscal 2021, we effected workforce realignment plans to streamline our operations and recognized \$6.6 million of restructuring costs related to one-time involuntary termination benefit costs. The restructuring charges are included in restructuring and other expenses in our condensed consolidated statement of operations.

During the first three quarters of fiscal 2021, we incurred incremental costs of \$9.8 million directly related to the COVID-19 pandemic. These costs primarily included the write-off of marketing commitments no longer deemed to have value for the remainder of fiscal 2021, estimated non-recoverable costs for internal events that could not be held, and hazard related premiums to support manufacturing operations. Of these costs, \$8.9 million is included in restructuring and other expenses and \$0.9 million is included in cost of revenue in our consolidated statements of operations for the first three quarters of fiscal 2021.

Note 11. Stockholders' Equity***Preferred Stock***

We have 20,000,000 authorized shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our board of directors. At the end of the third quarter of fiscal 2021, there were no shares of preferred stock issued or outstanding.

Class A and Class B Common Stock

We have two classes of authorized common stock, Class A common stock, which we refer to as our "common stock", and Class B common stock. At the end of the third quarter of fiscal 2021, we had 2,000,000,000 authorized shares of Class A common stock and 250,000,000 authorized shares of Class B common stock, with each class having a par value of \$0.0001 per share. At the end of the third quarter of fiscal 2021, 272,039,767 shares of Class A common stock were issued and outstanding.

PURE STORAGE, INC.**Notes to Condensed Consolidated Financial Statements (Unaudited)*****Share Repurchase Program***

In August 2019, our board of directors approved the repurchase of up to \$150.0 million of our common stock. During the third quarter of fiscal 2021, we repurchased and retired 1,360,000 shares of common stock at an average purchase price of \$15.72 per share for an aggregate repurchase price of \$21.4 million. During the first three quarters of fiscal 2021, we repurchased and retired 8,496,191 shares of common stock at an average purchase price of \$13.11 per share for an aggregate repurchase price of approximately \$111.4 million. At the end of the third quarter of fiscal 2021, \$23.6 million remained available for future share repurchases under our current repurchase authorization.

Note 12. Equity Incentive Plans***Equity Incentive Plans***

We maintain two equity incentive plans: the 2009 Equity Incentive Plan (the 2009 Plan) and the 2015 Equity Incentive Plan (the 2015 Plan). The 2015 Plan serves as the successor to our 2009 Plan and provides for grants of incentive stock options to our employees and non-statutory stock options, stock appreciation rights, restricted stock, RSUs, performance stock awards, performance cash awards, and other forms of stock awards to our employees, directors and consultants. Our equity awards generally vest over a two to four year period and expire no later than ten years from the date of grant.

We net-share settle equity awards held by certain employees by withholding shares upon vesting to satisfy tax withholding obligations. The shares withheld to satisfy employee tax withholding obligations are returned to our 2015 Plan and will be available for future issuance. Payments for employees' tax obligations to the tax authorities are recognized as a reduction to additional paid-in capital and reflected as a financing activity in our condensed consolidated statements of cash flows.

In conjunction with the Portworx acquisition, we assumed (i) certain options to purchase common stock outstanding under Portworx's 2014 Stock Incentive Plan and (ii) RSUs outstanding under the 2020 Portworx Equity Incentive Plan (collectively, the "Assumed Equity Awards"). The Assumed Equity Awards were converted into corresponding awards for shares of our common stock and retained substantially all of the terms and conditions under which they were granted. Approximately 3.9 million shares are reserved for issuance in connection with the Assumed Equity Awards. Refer to Note 4 for further information on the equity awards assumed resulting from the Portworx acquisition.

2015 Amended and Restated Employee Stock Purchase Plan

Under our Amended and Restated 2015 Employee Stock Purchase Plan (2015 ESPP), our board of directors (or a committee thereof) has the authority to establish the length and terms of the offering periods and purchase periods and the purchase price of the shares of common stock which may be purchased under the plan. The current offering terms allow eligible employees to purchase shares of our common stock at a discount through payroll deductions of up to 30% of their eligible compensation, subject to a cap of 3,000 shares on any purchase date, a dollar cap of \$7,500 per purchase period, or \$25,000 in any calendar year (as determined under applicable tax rules). The current terms also allow for a 24-month offering period beginning March 16th and September 16th of each year, with each offering period consisting of four 6 month purchase periods, subject to a reset provision. Further, currently, on each purchase date, eligible employees may purchase our common stock at a price per share equal to 85% of the lesser of the fair market value of our common stock (1) on the first trading day of the applicable offering period or (2) the purchase date.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Under the reset provision currently authorized, if the closing stock price on the offering date of a new offering falls below the closing stock price on the offering date of an ongoing offering, the ongoing offering would terminate immediately following the purchase of ESPP shares on the purchase date immediately preceding the new offering and participants in the terminated ongoing offering would automatically be enrolled in the new offering (ESPP reset), resulting in a modification charge to be recognized over the new offering period. During the first quarter of fiscal 2021, there was an ESPP reset that resulted in a modification charge of \$23.8 million, which is being recognized over the new offering period ending March 15, 2022.

Stock-based compensation expense related to our 2015 ESPP was \$4.3 million and \$6.8 million during the third quarter of fiscal 2020 and 2021, and \$20.0 million and \$18.8 million during the first three quarters of fiscal 2020 and 2021. At the end of the third quarter of fiscal 2021, total unrecognized stock-based compensation cost related to our 2015 ESPP was \$40.9 million, which is expected to be recognized over a weighted-average period of 1.4 years.

Stock Options

A summary of the stock option activity under our equity incentive plans and related information is as follows:

	Options Outstanding			
	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (In Years)	Aggregate Intrinsic Value (in thousands)
Balance at the end of fiscal 2020	26,822,243	\$ 8.97	3.9	\$ 237,803
Options assumed in an acquisition	1,891,349	1.75		
Options exercised	(4,990,458)	5.14		
Options forfeited	(344,685)	16.16		
Balance at the end of the third quarter of fiscal 2021	23,378,449	\$ 9.10	4.3	\$ 171,868
Vested and exercisable at the end of the third quarter of fiscal 2021	20,177,814	\$ 9.28	3.9	\$ 144,373

The aggregate intrinsic value of options vested and exercisable at the end of the third quarter of fiscal 2021 is calculated based on the difference between the exercise price and the closing price of \$16.10 of our common stock on the last day of the third quarter of fiscal 2021.

The weighted-average grant date fair value of options assumed was \$14.16 per share during the third quarter and first three quarters of fiscal 2021.

Stock-based compensation expense recognized related to stock options was \$2.6 million and \$1.6 million during the third quarter of fiscal 2020 and 2021, and \$12.6 million and \$5.7 million during the first three quarters of fiscal 2020 and 2021.

At the end of the third quarter of fiscal 2021, total unrecognized employee compensation cost related to outstanding options was \$21.6 million, which is expected to be recognized over a weighted-average period of 2.3 years.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

RSUs and PRSUs

A summary of the RSU and PRSU activity under our equity incentive plans and related information is as follows:

	Number of RSUs and PRSUs Outstanding	Weighted- Average Grant Date Fair Value	Aggregate Intrinsic Value (in thousands)
Unvested balance at the end of fiscal 2020	25,434,597	\$ 18.72	\$ 452,736
Granted	16,650,722	11.73	
Assumed in an acquisition	2,016,061	15.79	
Vested	(8,445,201)	16.95	
Forfeited	(2,308,191)	16.94	
Unvested balance at the end of the third quarter of fiscal 2021	33,347,988	\$ 15.62	\$ 536,903

During the third quarter and first three quarters of fiscal 2021, we issued 179,616 and 1,631,512 shares of performance RSUs (PRSUs), at a target percentage of 100%, with both performance and service vesting conditions payable in common stock, from 0% to 125% of the target number granted, contingent upon the degree to which the performance condition is met. Any portion of shares that are not earned will be canceled.

Stock-based compensation expense recognized related to RSUs and PRSUs was \$41.0 million and \$50.4 million during the third quarter of fiscal 2020 and 2021, and \$118.7 million and \$147.4 million during the first three quarters of fiscal 2020 and 2021. At the end of the third quarter of fiscal 2021, total unrecognized employee compensation cost related to unvested RSUs was \$476.6 million, which is expected to be recognized over a weighted-average period of 2.8 years.

Restricted Stock

A summary of the restricted stock activity under our 2015 Plan and related information is as follows:

	Number of Restricted Stock Outstanding	Weighted- Average Grant Date Fair Value	Aggregate Intrinsic Value (in thousands)
Unvested balance at the end of fiscal 2020	2,127,206	\$ 19.58	\$ 37,684
Vested	(1,031,540)	19.60	
Forfeited/canceled	(316,965)	20.38	
Unvested balance at the end of the third quarter of fiscal 2021	778,701	\$ 19.23	\$ 12,537

All unvested shares of restricted stock are subject to cancellation to the extent vesting conditions are not met. Stock-based compensation expense recognized related to restricted stock was \$4.4 million and \$0.8 million during the third quarter of fiscal 2020 and 2021, and \$19.2 million and \$7.9 million during the first three quarters of fiscal 2020 and 2021. At the end of the third quarter of fiscal 2021, total unrecognized employee compensation cost related to unvested restricted stock was \$4.4 million, which is expected to be recognized over a weighted-average period of 1.2 years.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Stock-Based Compensation Expense

The following table summarizes the components of stock-based compensation expense recognized in the condensed consolidated statements of operations (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Cost of revenue—product	\$ 912	\$ 1,027	\$ 2,843	\$ 3,013
Cost of revenue—subscription services	3,517	3,883	11,101	10,961
Research and development	27,827	29,220	85,180	87,770
Sales and marketing	16,802	14,898	51,171	48,018
General and administrative	5,171	10,581	24,495	29,993
Total stock-based compensation expense	<u>\$ 54,229</u>	<u>\$ 59,609</u>	<u>\$ 174,790</u>	<u>\$ 179,755</u>

The tax benefit related to stock-based compensation expense for all periods presented was not material.

Note 13. Net Loss per Share Attributable to Common Stockholders

Basic and diluted net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. Basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period, less shares subject to repurchase. Diluted net loss per share attributable to common stockholders is computed by giving effect to all potentially dilutive common stock equivalents, including our outstanding stock options, common stock related to unvested RSUs and PRSUs, cancelable shares from restricted stock, our Notes to the extent dilutive, and common stock issuable pursuant to the ESPP. These potentially dilutive common stock equivalents have been excluded from the calculation of diluted net loss per share attributable to common stockholders as their effect is anti-dilutive.

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders (in thousands, except per share data):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Net loss	<u>\$ (29,982)</u>	<u>\$ (74,222)</u>	<u>\$ (196,336)</u>	<u>\$ (229,783)</u>
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	<u>255,047</u>	<u>269,144</u>	<u>250,618</u>	<u>265,626</u>
Net loss per share attributable to common stockholders, basic and diluted	<u>\$ (0.12)</u>	<u>\$ (0.28)</u>	<u>\$ (0.78)</u>	<u>\$ (0.87)</u>

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

The following weighted-average outstanding shares of common stock equivalents were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been anti-dilutive (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Stock options to purchase common stock	30,769	22,687	32,150	23,884
Unvested RSUs and PRSUs	24,251	32,802	24,544	31,743
Restricted stock subject to cancellation	2,732	964	2,762	1,301
Shares related to convertible senior notes	21,884	21,884	21,884	21,884
Shares issuable pursuant to the ESPP	571	1,080	571	1,080
Total	80,207	79,417	81,911	79,892

Note 14. Other Income (Expense), Net

Other income (expense), net consists of the following (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Interest income ⁽¹⁾	\$ 6,770	\$ 3,728	\$ 20,376	\$ 14,383
Interest expense ⁽²⁾	(7,077)	(7,989)	(20,725)	(22,573)
Foreign currency transactions gains (losses)	97	(699)	(2,329)	(277)
Other income	219	73	219	1,767
Total other income (expense), net	\$ 9	\$ (4,887)	\$ (2,459)	\$ (6,700)

⁽¹⁾ Interest income includes interest income related to our cash, cash equivalents and marketable securities and non-cash interest income (expense) related to accretion (amortization) of the discount (premium) on marketable securities.

⁽²⁾ Interest expense includes non-cash interest expense related to amortization of the debt discount and debt issuance costs of our debt and the contractual interest expense related to our debt.

Note 15. Income Taxes

Our provision for income tax primarily reflects taxes on international operations and state income taxes. The difference between the income tax provision that would be derived by applying the statutory rate to our loss before income taxes and the income tax provision recorded was primarily attributable to changes in our valuation allowance, stock-based compensation expense and research and development credits.

At the end of the third quarter of fiscal 2021, there were no material changes to either the nature or the amounts of the uncertain tax positions previously determined for fiscal 2020.

Note 16. Segment Information

Our chief operating decision maker is our Chief Executive Officer. Our chief operating decision maker reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. We have one business activity and there are no segment managers who are held accountable for operations or operating results. Accordingly, we have a single reportable segment.

PURE STORAGE, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

Disaggregation of Revenue

The following table depicts the disaggregation of revenue by geographic area based on the billing address of our customers and is consistent with how we evaluate our financial performance (in thousands):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
United States	\$ 312,010	\$ 302,091	\$ 835,545	\$ 847,916
Rest of the world	116,399	108,528	315,891	333,545
Total revenue	<u>\$ 428,409</u>	<u>\$ 410,619</u>	<u>\$ 1,151,436</u>	<u>\$ 1,181,461</u>

Long-Lived Assets by Geographic Area

Long-lived assets, which are comprised of property and equipment, net, by geographic area are summarized as follows (in thousands):

	At the End of	
	Fiscal 2020	Third Quarter of Fiscal 2021
United States	\$ 113,942	\$ 146,945
Rest of the world	8,798	11,255
Total long-lived assets	<u>\$ 122,740</u>	<u>\$ 158,200</u>

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition, results of operations and cash flows should be read in conjunction with the (1) unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q, and (2) audited consolidated financial statements and notes thereto and management's discussion and analysis of financial condition and results of operations included in our Annual Report on Form 10-K for the fiscal year ended February 2, 2020. This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These statements are often identified by the use of words such as "may," "will," "expect," "believe," "anticipate," "intend," "could," "estimate," or "continue," and similar expressions or variations. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, impacts on our business and general economic conditions due to the COVID-19 pandemic, those identified herein, and those discussed in the section titled "Risk Factors", set forth in Part II, Item 1A of this Form 10-Q and in our other SEC filings. We disclaim any obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements. Our fiscal year end is the first Sunday after January 30.

Overview

Data is foundational to our customers' digital transformation and we are focused on delivering innovative and disruptive technology and data storage solutions that enable customers to maximize the value of their data. We started with the vision of making flash storage available to enterprise organizations everywhere and established an entirely new customer experience including our innovative *Evergreen Storage* subscription that radically simplified storage ownership and reduced total cost of ownership for our customers.

Our solutions serve data workloads on-premise, in the cloud, or hybrid environments and include mission-critical production, test/development, analytics, disaster recovery, and backup/recovery.

Our *Modern Data Experience* vision begins with our portfolio of products and subscription services that is transforming and modernizing storage operations for our customers. Our *Modern Data Experience* vision extends to an innovative and highly-integrated data platform of products and subscription services, consisting of *Cloud Data Infrastructure* (integrated hardware and software appliances which run in on-premise data centers), *Cloud Data Services* (software services which run natively in major public cloud infrastructures), and *Cloud Data Management* (software hosted data management services to manage our entire platform). The *Modern Data Experience* is based on four key pillars: Fast Matters, Cloud Everywhere, Simple is Smart, and Subscription to Innovation.

Fast Matters - Speed is critical to customer experience and engagement, and therefore, we design our high-performance solutions to allow applications, analytics, and development to move and execute quickly in order for our customers to make impactful decisions. We redefine fast by delivering low-latency, high bandwidth, and maximum density technologies. For example, accelerating core applications enables rapid response and deployment which reduces costs while increasing enterprise resilience.

Cloud Everywhere - Providing our customers the opportunity to transform their data management to a full or hybrid cloud model. This model reduces costs and adds agility through an API-defined platform, a consistent on-premise and public cloud experience, seamless data mobility and comprehensive data protection. This multi-cloud environment delivers increased flexibility, fast global recovery, and minimized application downtime through automated response.

Simple is Smart - From day one, our storage solutions are designed to be simple, allowing our customers to reduce time spent managing the storage platform including issue resolution. Our storage dashboards present real-time and intuitive platform analytics; meanwhile, AI-based optimization proactively analyzes future workloads and global network issues to limit unforeseen infrastructure problems.

Subscription to Innovation - Delivering a subscription with low total cost of ownership, eliminating the need for forklift hardware replacements, and providing customizable capacity and mobility, whether on-premise, in the cloud or hybrid cloud. We expect our subscription services sales to continue to grow faster than sales of our integrated appliances as a result of our customers choosing to consume our technologies as a service including *Evergreen Storage*, and our unified subscription including *Pure as-a-Service* and *Cloud Block Store*.

Portworx Acquisition

In October 2020, we completed our acquisition of Portworx Inc. (Portworx), a privately-held container storage company that provides a Kubernetes data services platform that customers use to deploy cloud native applications in any hybrid or multi-cloud architecture. By combining Portworx container data services, which includes storage, data protection, data security and disaster recovery/backup, with our data services platforms and *Pure Service Orchestrator* software, this acquisition further expands our *Modern Data Experience* and ability to deliver comprehensive, multi-cloud data services to support Kubernetes and containers.

Executive Officers

Paul Mountford will step down as our Chief Operating Officer at the end of our fiscal year on January 31, 2021. Thereafter, Mr. Mountford will continue to provide transitional consulting services through March 20, 2021.

Coronavirus (COVID-19)

We continue to actively monitor, evaluate and respond to developments relating to the Coronavirus (COVID-19) pandemic. The global pandemic has resulted in significant global social and business disruption and economic contraction.

The global economic contraction due to COVID-19 and its recent resurgence continues to create significant uncertainty and is having an adverse impact on our sales growth during fiscal 2021; however, we are not able to currently estimate the ultimate impact.

Components of Results of Operations

Revenue

We derive revenue primarily from the sale of our *Cloud Data Infrastructure*, including *FlashArray* and *FlashBlade* products and subscription services which includes our *Evergreen Storage* subscription, and our unified subscription that includes *Pure as-a-Service* and *Cloud Block Store*. Subscription services also include our professional services offerings such as installation and implementation consulting services.

Provided that all other revenue recognition criteria have been met, we typically recognize product revenue upon transfer of control to our customers and the satisfaction of our performance obligations. Products are typically shipped directly by us to customers, and our channel partners do not stock our inventory. We expect our product revenue may vary from period to period based on, among other things, the timing and size of orders and delivery of products and the impact of significant transactions.

We generally recognize revenue from subscription services over the contractual service period and professional services as delivered. We expect our subscription services revenue to increase as we add new customers and our existing customers renew and expand their consumption and service levels.

Cost of Revenue

Cost of product revenue primarily consists of costs paid to our third-party contract manufacturers, which includes the costs of our raw material components, and personnel costs associated with our manufacturing operations. Personnel costs consist of salaries, bonuses and stock-based compensation expense. Our cost of product revenue also includes allocated overhead costs, inventory write-offs, amortization of intangible assets pertaining to developed technology, and freight. Allocated overhead costs consist of certain employee benefits and facilities-related costs. We expect our cost of product revenue to increase in absolute dollars as our product revenue increases.

Cost of subscription services revenue primarily consists of personnel costs associated with delivering our subscription and professional services, part replacements, allocated overhead costs and depreciation of infrastructure used to deliver our subscription services. We expect our cost of subscription services revenue to increase in absolute dollars, as our subscription services revenue increases.

Operating Expenses

Our operating expenses consist of research and development, sales and marketing, and general and administrative expenses. Salaries and personnel-related costs, including stock-based compensation expense, are the most significant component of each category of operating expenses. Operating expenses also include allocated overhead costs for employee benefits and facilities-related costs.

Research and Development. Research and development expenses consist primarily of employee compensation and related expenses, prototype expenses, depreciation associated with assets acquired for research and development, third-party engineering and contractor support costs, as well as allocated overhead. We expect our research and development expense to increase in absolute dollars.

Sales and Marketing. Sales and marketing expenses consist primarily of employee compensation and related expenses, sales commissions, marketing programs, travel and entertainment expenses as well as allocated overhead. Marketing programs consist of advertising, events, corporate communications and brand-building activities. We expect our sales and marketing expense to increase in absolute dollars.

General and Administrative. General and administrative expenses consist primarily of compensation and related expenses for administrative functions including finance, legal, human resources, IT and fees for third-party professional services as well as amortization of intangible assets pertaining to defensive technology patents and allocated overhead. We expect our general and administrative expense to increase in absolute dollars.

Other Income (Expense), Net

Other income (expense), net consists primarily of interest income related to cash, cash equivalents and marketable securities, interest expense related to our debt and gains (losses) from foreign currency transactions.

Provision for Income Taxes

Provision for income taxes consists primarily of income taxes in certain foreign jurisdictions in which we conduct business and state income taxes in the United States. We have recorded no U.S. federal current income tax and provided a full valuation allowance for U.S. deferred tax assets, which includes net operating loss carryforwards and tax credits related primarily to research and development. We expect to maintain this full valuation allowance for the foreseeable future as it is more likely than not that the assets will not be realized based on our history of losses.

Results of Operations

The following tables set forth our results of operations for the periods presented in dollars and as a percentage of total revenue (dollars in thousands, unaudited):

Revenue

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
Product revenue	\$ 323,268	\$ 274,470	\$ (48,798)	(15)%	\$ 862,137	\$ 793,718	\$ (68,419)	(8)%
Subscription services revenue	105,141	136,149	31,008	29 %	289,299	387,743	98,444	34 %
Total revenue	<u>\$ 428,409</u>	<u>\$ 410,619</u>	<u>\$ (17,790)</u>	<u>(4)%</u>	<u>\$ 1,151,436</u>	<u>\$ 1,181,461</u>	<u>\$ 30,025</u>	<u>3 %</u>

Total revenue decreased by \$17.8 million, or 4%, during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020 and increased by \$30.0 million, or 3%, during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020.

The decrease in total revenue during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020 was driven by a decline in product revenue as we continued to experience headwinds caused by the COVID-19 pandemic despite sales growth from our *FlashBlade* and *FlashArray//C* offerings during the quarter. The decline in product revenue was partially offset by an increase in subscription services revenue from both our *Evergreen Storage* subscription services, and our unified subscription that includes *Pure as-a-Service* and *Cloud Block Store*.

The increase in total revenue during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020 was largely driven by increases in sales of both our *Evergreen Storage* subscription services, and our unified subscription that includes *Pure as-a-Service* and *Cloud Block Store*. The increase in revenue of our subscription services was partially offset by a decline in product revenue impacted by the headwinds caused by the COVID-19 pandemic.

During the third quarter of fiscal year 2021 compared to the third quarter of fiscal 2020, total revenue in the United States declined by 3% from \$312.0 million to \$302.1 million and total rest of the world revenue declined by 7% from \$116.4 million to \$108.5 million. During the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020, total revenue in the United States grew by 1% from \$835.5 million to \$847.9 million and total rest of the world revenue grew 6% from \$315.9 million to \$333.5 million. For further details on revenues by geography, see Note 16 of Part I, Item 1 of this Quarterly Report on Form 10-Q.

Deferred Revenue

Deferred revenue primarily consists of amounts that have been invoiced but have not yet been recognized as revenue including performance obligations pertaining to subscription services. The current portion of deferred revenue represents the amounts that are expected to be recognized as revenue within one year of the condensed consolidated balance sheet dates.

Changes in total deferred revenue during the periods presented are as follows (in thousands, unaudited):

	Third Quarter of Fiscal		First Three Quarters of Fiscal	
	2020	2021	2020	2021
Beginning balance	\$ 607,263	\$ 724,751	\$ 535,920	\$ 697,288
Additions	142,164	180,285	400,605	467,454
Recognition of deferred revenue	(106,229)	(142,272)	(293,327)	(401,978)
Ending balance	\$ 643,198	\$ 762,764	\$ 643,198	\$ 762,764

Revenue recognized during the third quarter of fiscal 2020 and 2021, from deferred revenue at the beginning of each respective period was \$101.4 million and \$121.9 million. Revenue recognized during the first three quarters of fiscal 2020 and 2021, from deferred revenue at the beginning of each respective period was \$213.2 million and \$285.0 million.

Remaining Performance Obligations

Total contracted but not recognized revenue was \$1,010.4 million at the end of the third quarter of fiscal 2021. Contracted but not recognized revenue consists of both deferred revenue and non-cancelable amounts that are expected to be invoiced and recognized as revenue in future periods. Orders that are contracted but have not been fulfilled and that can be canceled by customers are excluded from remaining performance obligations. Of the \$1,010.4 million contracted but not recognized revenue at the end of the third quarter of fiscal 2021, we expect to recognize approximately 43% over the next 12 months, and the remainder thereafter.

Cost of Revenue and Gross Margin

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
Product cost of revenue	\$ 89,086	\$ 85,634	\$ (3,452)	(4)%	\$ 256,617	\$ 237,664	\$ (18,953)	(7)%
Stock-based compensation	912	1,027	115	13 %	2,843	3,013	170	6 %
Total product cost of revenue	\$ 89,998	\$ 86,661	\$ (3,337)	(4)%	\$ 259,460	\$ 240,677	\$ (18,783)	(7)%
% Product revenue	28 %	32 %			30 %	30 %		
Subscription services cost of revenue	\$ 34,256	\$ 43,559	\$ 9,303	27 %	\$ 95,531	\$ 121,756	\$ 26,225	27 %
Stock-based compensation	3,517	3,883	366	10 %	11,101	10,961	(140)	(1)%
Total subscription services cost of revenue	\$ 37,773	\$ 47,442	\$ 9,669	26 %	\$ 106,632	\$ 132,717	\$ 26,085	24 %
% of Subscription services revenue	36 %	35 %			37 %	34 %		
Total cost of revenue	\$ 127,771	\$ 134,103	\$ 6,332	5 %	\$ 366,092	\$ 373,394	\$ 7,302	2 %
% of Total revenue	30 %	33 %			32 %	32 %		
Product gross margin	72 %	68 %			70 %	70 %		
Subscription services gross margin	64 %	65 %			63 %	66 %		
Total gross margin	70 %	67 %			68 %	68 %		

The decline in product gross margin during the third quarter of fiscal 2021 was primarily attributable to lower component costs and increased sales of larger *FlashArray* systems during the third quarter of fiscal 2020 and, to a lesser extent, by an increase in the amortization of intangible assets during the current quarter resulting from the Portworx acquisition.

The decline in product cost of revenue during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020 was primarily attributable to the corresponding decline in product revenue as we continued to experience headwinds caused by the COVID-19 pandemic.

The increase in subscription services cost of revenue for both periods was primarily attributable to higher costs in our customer support organization. The increase in subscription services gross margin for both periods was driven by increased renewals in *Evergreen Storage* subscriptions.

Operating Expenses

Research and Development

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
Research and development	\$ 78,836	\$ 93,761	\$ 14,925	19 %	\$ 233,578	\$ 262,309	\$ 28,731	12 %
Stock-based compensation	27,827	29,220	1,393	5 %	85,180	87,770	2,590	3 %
Total expenses	\$ 106,663	\$ 122,981	\$ 16,318	15 %	\$ 318,758	\$ 350,079	\$ 31,321	10 %
% of Total revenue	25 %	30 %			28 %	30 %		

Research and development expense increased by \$16.3 million, or 15%, during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020, as we continue to innovate and develop technologies to both enhance and expand our solution portfolio. The increase was primarily driven by a \$16.0 million increase in employee compensation and related costs and a \$4.6 million increase in outside services expense, partially offset by a \$5.6 million decrease in depreciation expense due to revising our estimated useful lives of test equipment and certain computer equipment and software during the first quarter of fiscal 2021.

Research and development expense increased by \$31.3 million, or 10%, during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020. The increase was primarily driven by a \$39.2 million increase in employee compensation and related costs and a \$6.8 million increase in outside services expense, partially offset by a \$17.6 million decrease in depreciation expense due to revising our estimated useful lives of test equipment and certain computer equipment and software during the first quarter of fiscal 2021.

Sales and Marketing

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
Sales and marketing	\$ 168,017	\$ 157,384	\$ (10,633)	(6)%	\$ 486,462	\$ 469,131	\$ (17,331)	(4)%
Stock-based compensation	16,802	14,898	(1,904)	(11)%	51,171	48,018	(3,153)	(6)%
Total expenses	\$ 184,819	\$ 172,282	\$ (12,537)	(7)%	\$ 537,633	\$ 517,149	\$ (20,484)	(4)%
% of Total revenue	43 %	42 %			47 %	44 %		

Sales and marketing expense decreased by \$12.5 million, or 7%, during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020, primarily due to a decrease of \$19.7 million in marketing and travel spend due to the COVID-19 pandemic, partially offset by a \$3.6 million increase in employee compensation and related costs as we continue to invest in certain areas within sales and marketing and a \$2.7 million increase in outside services expense.

Sales and marketing expense decreased by \$20.5 million, or 4%, during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020. The decrease was primarily due to a decrease of \$49.5 million in marketing and travel spend due to the COVID-19 pandemic, partially offset by a \$18.5 million increase in employee compensation and related costs, a \$5.9 million increase in outside services expense as we continue to grow our sales force and expand our international presence, and a \$4.5 million increase in office and facilities-related expenses.

General and Administrative

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
General and administrative	\$ 32,245	\$ 35,886	\$ 3,641	11 %	\$ 95,047	\$ 102,070	\$ 7,023	7 %
Stock-based compensation	5,171	10,581	5,410	105 %	24,495	29,993	5,498	22 %
Total expenses	<u>\$ 37,416</u>	<u>\$ 46,467</u>	<u>\$ 9,051</u>	<u>24 %</u>	<u>\$ 119,542</u>	<u>\$ 132,063</u>	<u>\$ 12,521</u>	<u>10 %</u>
% of Total revenue	9 %	11 %			10 %	11 %		

General and administrative expense increased by \$9.1 million, or 24%, during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020 and increased by \$12.5 million, or 10%, during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020, primarily due to employee compensation and related costs driven by increased headcount, partially offset by office and facilities-related expenses.

Restructuring and Other

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$		2020	2021	\$	
(dollars in thousands, unaudited)								
Restructuring and other	\$ —	\$ —	\$ —		\$ —	\$ 22,990	\$ 22,990	
% of Total revenue	— %	— %			— %	2 %		

During the first three quarters of fiscal 2021, we incurred incremental costs of \$8.9 million directly related to the COVID-19 pandemic. These costs primarily included the write-off of marketing commitments no longer deemed to have value for the remainder of fiscal 2021 and estimated non-recoverable costs for internal events that could not be held. In addition, we expensed unamortized costs of \$7.5 million relating to the cease use of certain lease facilities and recognized \$6.6 million in one-time involuntary termination benefit costs related to workforce realignment plans.

Other Income (Expense), Net

	Third Quarter of Fiscal		Change	First Three Quarters of Fiscal		Change
	2020	2021	\$	2020	2021	\$
(dollars in thousands, unaudited)						
Other income (expense), net	\$ 9	\$ (4,887)	\$ (4,896)	\$ (2,459)	\$ (6,700)	\$ (4,241)
% of Total revenue	— %	(1)%		— %	(1)%	

Other income (expense), net decreased by \$4.9 million during the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020 and decreased by \$4.2 million during the first three quarters of fiscal 2021 compared to the first three quarters of fiscal 2020, primarily due to a decrease in interest income resulting from lower interest rate environment and, to a lesser extent, higher interest expense due to borrowings under our revolving line of credit.

Provision for Income Taxes

	Third Quarter of Fiscal		Change		First Three Quarters of Fiscal		Change	
	2020	2021	\$	%	2020	2021	\$	%
(dollars in thousands, unaudited)								
Provision for income taxes	\$ 1,731	\$ 4,121	\$ 2,390	138 %	\$ 3,288	\$ 8,869	\$ 5,581	170%
% of Total revenue	— %	1 %			— %	1 %		

The provision for income taxes increased during the third quarter and first three quarters of fiscal 2021 compared to the third quarter and first three quarters of fiscal 2020 primarily attributable to an increase in foreign income taxes and the release of valuation allowance related to unrealized gains on available for sale securities in the third quarter and first three quarters of fiscal 2020.

Liquidity and Capital Resources

At the end of the third quarter of fiscal 2021, we had cash, cash equivalents and marketable securities of \$1,201.4 million. Our cash and cash equivalents primarily consist of bank deposits and money market accounts. Our marketable securities generally consist of highly rated debt instruments of the U.S. government and its agencies, debt instruments of highly rated corporations, debt instruments issued by foreign governments, and asset-backed securities.

We believe our existing cash, cash equivalents and marketable securities will be sufficient to fund our operating and capital needs for at least the next 12 months. Our liquidity and working capital needs could be negatively impacted by the COVID-19 pandemic and global economic recession which has resulted in reduced sales, and certain of our customers or partners being unable to timely fulfill their payment obligations to us. We may continue to enter into arrangements to acquire or invest in complementary businesses, services and technologies, including intellectual property rights and may seek additional equity or debt financing in the future. For example, we acquired Portworx for \$353.0 million in October 2020.

Revolving Credit Facility

In August 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). Proceeds from the Credit Facility may be used for general corporate purposes and working capital. The Credit Facility expires, absent default or early termination by us, on the earlier of (i) August 24, 2025 or (ii) 91 days prior to the stated maturity of the convertible senior notes unless, on such date and each subsequent day until the convertible senior notes are paid in full, the sum of our cash, cash equivalents and marketable securities and the aggregate unused commitments then available to us exceed \$625.0 million. The annual interest rates applicable to loans under the Credit Facility are, at our option, equal to either a base rate plus a margin ranging from 0.50% to 1.25% or LIBOR (based on one, three, or six-month interest periods), subject to a floor of 0%, plus a margin ranging from 1.50% to 2.25%. Interest on revolving loans is payable quarterly in arrears with respect to loans based on the base rate and at the end of an interest period in the case of loans based on LIBOR (or at each three-month interval, if the interest period is longer than three months). We are also required to pay a commitment fee on the unused portion of the commitments ranging from 0.25% to 0.40% per annum, payable quarterly in arrears that commenced on September 30, 2020. Loans under the Credit Facility are collateralized by substantially all of our assets and subject to certain restrictions and two financial ratios measured as of the last day of each fiscal quarter, commencing with the fiscal quarter ending January 31, 2021.

In September 2020, we drew down \$250.0 million under the Credit Facility to fund the acquisition of Portworx which remained outstanding at the end of the third quarter of fiscal 2021. The outstanding loan bore interest at the one-month LIBOR of approximately 1.65%. Assuming interest rates remain relatively constant and no repayment, we expect our quarterly interest expense for the outstanding borrowing under the revolver to be approximately \$1.0 million. We were in compliance with all covenants under the Credit Facility at the end of the third quarter of fiscal 2021.

Letters of Credit

At the end of fiscal 2020 and the end of the third quarter of fiscal 2021, we had outstanding letters of credit in the aggregate amount of \$11.5 million and \$7.5 million, in connection with our facility leases. In September 2020, we executed an amendment that reduced our letter of credit related to our headquarters lease by \$3.6 million. The letters of credit are collateralized by restricted cash and mature on various dates through August 2029.

Convertible Senior Notes

In April 2018, we issued \$575.0 million of 0.125% convertible senior notes due 2023 (the Notes), in a private placement and received proceeds of \$562.1 million, after deducting the underwriters' discounts and commissions. The Notes are unsecured obligations that do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by us or any of our subsidiaries. The Notes mature on April 15, 2023 unless repurchased or redeemed by us or converted in accordance with their terms prior to the maturity date. The Notes are convertible for up to 21,884,155 shares of our common stock at an initial conversion rate of approximately 38.0594 shares of common stock per \$1,000 principal amount, which is equal to an initial conversion price of approximately \$26.27 per share of common stock, subject to adjustment.

Holders may surrender their Notes for conversion at their option at any time prior to the close of business on the business day immediately preceding October 15, 2022, only under specific circumstances. On or after October 15, 2022 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes at any time regardless of the foregoing conditions. Upon conversion, holders will receive cash, shares of our common stock, or a combination of cash and shares of our common stock, at our election. We intend to settle the principal of the Notes in cash. See further discussion in Note 7 in Part I, Item 1 of this report.

Share Repurchase Program

In August 2019, our board of directors approved the repurchase of up to \$150.0 million of our common stock. During the third quarter of fiscal 2021, we repurchased and retired 1,360,000 shares of common stock at an average purchase price of \$15.72 per share for an aggregate repurchase price of \$21.4 million. During the first three quarters of fiscal 2021, we repurchased and retired 8,496,191 shares of common stock at an average purchase price of \$13.11 per share for an aggregate repurchase price of approximately \$111.4 million. Approximately \$23.6 million remained under our share repurchase authorization as of the end of the third quarter of fiscal 2021.

The following table summarizes our cash flows for the periods presented (in thousands, unaudited):

	First Three Quarters of Fiscal	
	2020	2021
Net cash provided by operating activities	\$ 119,716	\$ 118,608
Net cash used in investing activities	\$ (312,649)	\$ (415,853)
Net cash provided by financing activities	\$ 48,753	\$ 194,374

Operating Activities

Net cash provided by operating activities during the first three quarters of fiscal 2021 was primarily driven by cash collections from sales of our product and subscription services including certain invoices with extended payment terms and deferral of the employer portion of social security payroll tax under the CARES Act, partially offset by payments to our contract manufacturers, employee compensation, and general corporate operating expenditures.

Net cash provided by operating activities during the first three quarters of fiscal 2020 was primarily driven by cash collections from sales of our product and subscription services, partially offset by payments to our contract manufacturers, employee compensation, and general corporate operating expenditures.

Investing Activities

Net cash used in investing activities during the first three quarters of fiscal 2021 was driven by net cash paid for our acquisition of Portworx, capital expenditures, partially offset by net sales of marketable securities.

Net cash used in investing activities during the first three quarters of fiscal 2020 was driven by net purchases of marketable securities, capital expenditures, net cash paid for our acquisition of Compuverde, and intangible assets acquired.

Financing Activities

Net cash provided by financing activities during the first three quarters of fiscal 2021 was primarily driven by net proceeds from borrowing under revolving line of credit, proceeds from exercise of stock options and issuance of common stock from employee stock purchase plan (ESPP), partially offset by share repurchases.

Net cash provided by financing activities during the first three quarters of fiscal 2020 was driven by proceeds from issuance of common stock from ESPP and exercise of stock options, partially offset by repayment of debt assumed in connection with the acquisition of Compuverde, and tax withholding on vesting of restricted stock.

Contractual Obligations and Commitments

Except as set forth in Notes 8 to 10 of Part I, Item 1 of this Quarterly Report on Form 10-Q, there have been no material changes to our non-cancelable contractual obligations and commitments disclosed in our Annual Report on 10-K for fiscal 2020. As events continue to evolve and additional information becomes available in regards to the COVID-19 pandemic, our contractual obligations and commitments may be impacted in future periods.

Critical Accounting Policies and Estimates

Our financial statements are prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

Refer to Note 2 of Part I, Item 1 of this Quarterly Report on Form 10-Q for the summary of significant accounting policies. In addition, see “Critical Accounting Policies and Estimates” in our latest 10-K. There have been no material changes to our critical accounting policies and estimates since our 10-K filed on March 27, 2020, except for the change in estimate of the useful life for certain property and equipment.

Available Information

Our website is located at www.purestorage.com, and our investor relations website is located at investor.purestorage.com. The following filings will be available through our investor relations website free of charge after we file them with the SEC: Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and our Proxy Statements for our annual meetings of stockholders. We will also provide a link to the section of the SEC’s website at www.sec.gov that has all of our public filings, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, all amendments to those reports, our Proxy Statements, and other ownership related filings.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases, social media accounts (Twitter, Facebook and LinkedIn), and blogs as part of our investor relations website. Investors and others can receive notifications of new information posted on our investor relations website in real time by signing up for email alerts and RSS feeds. Further corporate governance information, including our certificate of incorporation, bylaws, governance guidelines, board committee charters, and code of conduct, is also available on our investor relations website under the heading “Corporate Governance.” The content of our websites are not incorporated by reference into this Quarterly Report on Form 10-Q or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

We have operations both within the United States and internationally, and we are exposed to market risk in the ordinary course of our business.

Interest Rate Risk

Our cash, cash equivalents and marketable securities primarily consist of bank deposits and money market accounts, highly rated debt instruments of the U.S. government and its agencies, debt instruments of highly rated corporations, debt instruments issued by foreign governments, and asset-backed securities. At the end of the third quarter of fiscal 2021 we had cash, cash equivalents and marketable securities of \$1,201.4 million. The carrying amount of our cash equivalents reasonably approximates fair value, due to the short maturities of these instruments. The primary objectives of our investment activities are the preservation of capital, the fulfillment of liquidity needs and the fiduciary control of cash and investments. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to fluctuation in interest rates, which may affect our interest income and the fair value of our investments.

We considered the historical volatility of short-term interest rates and determined that it was reasonably possible that an adverse change of 100 basis points could be experienced in the near term. A hypothetical 1.00% (100 basis points) increase in interest rates would have resulted in a decrease in the fair value of our marketable securities of approximately \$11.2 million at the end of the third quarter of fiscal 2021.

Foreign Currency Exchange Risk

Our sales contracts are primarily denominated in U.S. dollars with a proportionally small number of contracts denominated in foreign currencies. A portion of our operating expenses are incurred outside the United States and denominated in foreign currencies and are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the British pound and Euro. Additionally, fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. Given the impact of foreign currency exchange rates has not been material to our historical operating results, we have not entered into any derivative or hedging transactions, but we may do so in the future if our exposure to foreign currency exchange should become more significant.

We considered the historical trends in currency exchange rates and determined that it was reasonably possible that adverse changes in exchange rates of 10% for all currencies could be experienced in the near term. These reasonably possible adverse changes in exchange rates of 10% were applied to total monetary assets and liabilities denominated in currencies other than U.S. dollar at the end of the third quarter of fiscal 2021 to compute the adverse impact these changes would have had on our loss before income taxes in the near term. These changes would have resulted in an adverse impact on loss before provision for income taxes of approximately \$3.6 million at the end of the third quarter of fiscal 2021.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer (CEO) and Chief Financial Officer (CFO), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this report. Based on such evaluation, our CEO and CFO concluded that, at the end of the third quarter of fiscal 2021, our disclosure controls and procedures were designed at a reasonable assurance level and were effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

As a result of COVID-19, most of our workforce has been working from home since March 2020. During the third quarter of fiscal 2021 there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) or 15d-15(d) of the Exchange Act that occurred during the third quarter of fiscal 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls

In designing and evaluating the disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we are involved in various legal proceedings arising from the normal course of business, and an unfavorable resolution of any of these matters could negatively affect our future results of operations, cash flows or financial position. We are not presently party to any legal proceedings that, in the opinion of management, would have a material adverse effect on our business.

Item 1A. Risk Factors.

Investing in our Class A common stock, which we refer to as our "common stock", involves a high degree of risk. Investors should carefully consider the risks and uncertainties described below, together with all of the other information contained in this report, including our consolidated financial statements and the related notes appearing in this quarterly report, before deciding to invest in our common stock. If any of the following risks actually occur, it could harm our business, prospects, operating results and financial condition. In such event, the trading price of our common stock could decline and investors might lose all or part of their investment.

Summary of Risk Factors

Our business is subject to numerous risks and uncertainties, many of which are beyond our control. Some of the principal risks associated with our business include the following:

- Our business, operating results, cash flows and financial condition may be materially adversely affected by the COVID-19 pandemic, including the resulting global economic uncertainty and measures taken in response to the pandemic.
- The rapidly evolving market for data storage products makes it difficult to forecast demand for our products.
- Our business may be harmed by trends in the overall external storage market.
- We face intense competition from established companies and new entrants.
- Many of our competitors have long-standing relationships with key decision makers at current and prospective customers, which may inhibit our ability to compete.
- If we fail to develop and introduce new or enhanced products successfully, our ability to attract and retain customers could be harmed.
- If we fail to manage our transition to subscription offerings successfully, our revenues and results of operation may be harmed.
- We intend to continue focusing on revenue growth and increasing our market penetration and international presence by investing heavily in our business, which may put pressure on near-term profitability.
- Our gross margins are impacted by a variety of company-specific factors and vary from period to period.
- The sales prices of our products and services may fluctuate or decline, which may reduce our gross profits, revenue growth, and adversely impact our financial results.
- Any disruption to our contract manufacturer or other supply arrangements could delay shipments of our products and could harm our relationships with current and prospective customers.
- We derive the majority of our revenue from our *FlashArray* products, and a decline in demand for these products would cause our revenue to grow more slowly or to decline.

Risks Related to Our Business and Industry

Our business, operating results, cash flows and financial condition may be materially adversely affected by the COVID-19 pandemic, including the resulting global economic uncertainty and measures taken in response to the pandemic, the impacts of which will depend on ongoing and future developments, which are highly uncertain and difficult to predict.

The COVID-19 pandemic has resulted in significant global social and business disruption and economic contraction. The pandemic has impacted our business and has also put unprecedented strains on governments, health care systems, educational institutions, businesses and individuals around the world. The ongoing impact on the global population and the magnitude and duration of the COVID-19 pandemic is difficult to assess or predict. It is even more difficult to predict the ongoing impact on the global economic market, which will be highly dependent, among other things, upon the actions of governments, businesses and other organizations in response to the pandemic and the effectiveness of those actions.

The extent and continued impact of the COVID-19 pandemic on our business and operational and financial performance depends on many factors, including the duration and spread of the outbreak; the availability and effectiveness of a vaccine; government responses to and restrictions related to the pandemic; impact on our customers and our sales efforts and cycles; impact on our customer, industry or employee events; and effect on our partners, vendors and supply chains, all of which are uncertain and outside of our control. Potential negative impacts of these external factors include, but are not limited to, material adverse effects on demand for our products and services, including due to budget constraints and other uncertainties; our ability to gain new customers; our employee productivity; our supply chain and sales and distribution channels; collectability of customer accounts; our ability to execute strategic plans; impairments; and our profitability and cost structure.

Further, the COVID-19 pandemic has enhanced, and may further exacerbate, other risks discussed in this “Risk Factors” section, particularly risks associated with demand, market trends, relationship building and sales efforts, as well as risks affected by the shift to our workforce largely working from home. We are continuing to monitor the pandemic and intend to continue taking appropriate steps in accordance with the recommendations and requirements of relevant authorities.

The rapidly evolving market for data storage products makes it difficult to forecast demand for our products.

The market for data storage products is rapidly evolving. Changes in the application requirements, data center infrastructure trends and the broader technology landscape result in evolving customer requirements for capacity, performance scalability and enterprise features of storage systems. Our future financial performance depends on our ability to adapt to competitive dynamics and emerging customer demands and trends. The introduction of all-flash storage products by incumbent vendors and changes or advances in alternative technologies or adoption of cloud storage offerings that do not utilize our storage platform could adversely affect the demand for our products.

Offerings from large public cloud providers are expanding quickly and may serve as alternatives to our products for a variety of customer workloads. Since these providers are known for developing storage systems internally, this trend could reduce the demand for storage systems developed by original equipment manufacturers, such as us. It is difficult to predict with any precision customer adoption rates of new offerings, customer demand for our products or the future growth rate and size of our addressable market. A slowing or reduction in demand for our data storage products caused by technological challenges, alternative technologies and products or any other reason would result in a lower revenue growth rate or decreased revenue, either of which would negatively impact our business and operating results.

Our business may be harmed by trends in the overall external storage market.

Despite ongoing data growth, the external storage market in which we compete has not experienced substantial growth in the past few years due to a combination of technology transitions, increased storage efficiency, competitive pricing dynamics and changing economic and business environments. Customers are rethinking how they consume IT, increasing spending toward the public cloud, software as a service, hyperconverged and converged infrastructure and software-defined storage. Any failure on our part to accurately predict trends, successfully update our product offerings or to adapt our sales programs to meet changing customer demands could harm our business, operating results and financial condition. The future impact of these trends on both the short-term and long-term growth of the overall external storage market is uncertain. Reductions in the overall external storage market or the specific markets in which we compete would harm our business and operating results.

We face intense competition from established companies and new entrants.

We face intense competition from a number of established companies that sell competitive storage products, including Dell EMC, HP Enterprise, Hitachi Vantara, IBM, NetApp and others. Our competitors may have:

- greater name and brand recognition and longer operating histories;
- larger sales and marketing and customer support budgets and resources;
- broader distribution and established relationships with distribution partners and customers;
- the ability to bundle storage products with other products and services to address customers' requirements;
- greater resources to make acquisitions;
- larger and more mature product and intellectual property portfolios; and
- substantially greater financial, technical and other resources.

We also compete against cloud providers and vendors of hyperconverged products, which combine networking and storage. These providers are growing and expanding their product offerings, potentially displacing some demand for our products. In addition, some of our competitors offer bundled products and services in order to reduce the initial cost of their storage products. Further, some of our competitors offer their storage products either at significant discounts or even for free in competing against us.

Many competitors have developed or acquired competing storage technologies with features or data reduction technologies that directly compete with our products or have introduced business programs designed, among other things, to compete with our innovative programs, such as our *Evergreen Storage* model. We expect our competitors to continue to improve their products, reduce their prices and introduce new features, services and technologies that may, or may claim to, offer greater value compared to our products. In addition, these developments may render our products or technologies obsolete or less competitive. These and other competitive pressures may prevent us from competing successfully against our current or future competitors.

Many of our competitors have long-standing relationships with key decision makers at current and prospective customers, which may inhibit our ability to compete.

Many of our competitors benefit from established brand awareness and long-standing relationships with key decision makers at our current and prospective customers. Our competitors often leverage these existing relationships to discourage customers from evaluating or purchasing our products. Additionally, most of our prospective customers have existing storage products supplied by our competitors who have an advantage in retaining the customer because, among other things, the incumbent vendor already understands the customer's IT infrastructure, user demands and needs, or the customer is concerned about actual or perceived costs of switching to a new vendor and technology, particularly during the uncertainty created by COVID-19. If we are unable to successfully sell our products to new customers or persuade our customers to continue purchasing our products, we will not be able to maintain or increase our market share and revenue, which would adversely affect our business and operating results.

Our brand name and our business may be harmed by the marketing strategies of our competitors.

We believe that building and maintaining brand recognition and customer goodwill is critical to our success. Our efforts in this area have, on occasion, been hampered by the marketing efforts of our competitors, which have included negative or misleading statements about us and our products. If we are unable to effectively respond to the marketing efforts of our competitors and protect our brand and customer goodwill now or in the future, our business will be adversely affected.

If we fail to successfully maintain or grow our relationships with partners, our business, operating results and financial condition could be harmed.

Our future success is highly dependent upon our ability to establish and maintain successful relationships with our partners, including value-added resellers, service providers and systems integrators. In addition to selling our products, our partners may offer installation, post-sale service and support in their local markets. In markets where we rely on partners more heavily, we have less contact with our customers and less control over the sales process and the quality and responsiveness of our partners. As a result, it may be more difficult for us to ensure the proper delivery and installation of our products or the quality or responsiveness of the support and services being offered. Any failure on our part to effectively identify, train and manage our channel partners and to monitor their sales activity, as well as the customer support and services provided to our customers, could harm our business, operating results and financial condition.

Our partners may choose to discontinue offering our products and services or may not devote sufficient attention and resources toward selling our products and services. We typically enter into non-exclusive, written agreements with our channel partners. These agreements generally have a one-year, self-renewing term, have no minimum sales commitment and do not prohibit our channel partners from offering products and services that compete with ours. Additionally, our competitors provide incentives to our existing and potential channel partners to use, purchase or offer their products and services or to prevent or reduce sales of our products and services. The occurrence of any of these events could harm our business, operating results and financial condition.

Our sales cycles can be long, unpredictable and expensive, making it difficult for us to predict future sales.

Our sales efforts involve educating our customers about the use and benefits of our products and often involves evaluation process that can result in a lengthy sales cycle, particularly for larger customers. We spend substantial time and resources on our sales efforts without any assurance that our efforts will produce any sales. COVID-19 has impacted our sales efforts. In addition, product purchases are frequently subject to budget constraints, multiple approvals and unplanned administrative and other delays. A substantial portion of our quarterly sales typically occurs during the last several weeks of the quarter, which we believe largely reflects customer buying patterns of products similar to ours and other products in the technology industry generally.

Since revenue from a product sale is not recognized until performance obligations are satisfied, a substantial portion of our sales late in a quarter may negatively impact the recognition of the associated revenue. Furthermore, our products come with a 30-day money back guarantee, allowing a customer to return a product within 30 days of receipt if the customer is not satisfied with its purchase for any reason. These factors, among others, make it difficult for us to predict when customers will purchase our products, which may adversely affect our operating results and cause our operating results to fluctuate. In addition, if sales expected from a specific customer for a particular quarter are not realized in that quarter or at all, our operating results may suffer.

Sales to U.S. federal, state, local and foreign governments are subject to a number of challenges and risks that may adversely impact our business.

Sales to U.S. federal, state, local and foreign governmental agencies may in the future account for a significant portion of our revenue and sales to governmental agencies impose additional challenges and risks to our sales efforts. Government certification requirements applicable to our products may change and in doing so restrict our ability to sell into the U.S. federal government sector until we have attained the revised certification. Government demand and payment for our products and services may be impacted by public sector budgetary cycles and funding authorizations, including in connection with an extended federal government shutdown, with funding reductions or delays adversely affecting public sector demand for our products and services. We sell our products to governmental agencies through our channel partners, and these agencies may have statutory, contractual or other legal rights to terminate contracts with our distributors and resellers for convenience or due to a default, and any such termination may adversely impact our future results of operations. Governments routinely investigate and audit government contractors' administrative processes, and any unfavorable audit could result in the government refusing to continue buying our products, which would adversely impact our revenue and results of operations, or institute fines or civil or criminal liability if the audit uncovers improper or illegal activities. Finally, governments may require certain products to be manufactured in the United States and other relatively high-cost manufacturing locations, and we may not manufacture all products in locations that meet these requirements, affecting our ability to sell these products to governmental agencies.

Risks Related to Our Products and Subscription Services Offerings

If we fail to develop and introduce new or enhanced products successfully, our ability to attract and retain customers could be harmed.

We operate in a dynamic environment characterized by rapidly changing technologies and industry standards and technological obsolescence. To compete successfully, we must design, develop, market and sell new or enhanced products that provide increasingly higher levels of performance, capacity and reliability and that meet the expectations of our customers, which is a complex and uncertain process. We believe that we must continue to dedicate significant resources to our research and development efforts to maintain or expand our competitive position. Our investments may take longer to generate revenue or may generate less revenue than we anticipate. The introduction of new products by our competitors, or the emergence of alternative technologies or industry standards could render our existing or future products obsolete or less competitive.

As we introduce new or enhanced products, we must successfully manage product launches and transitions to the next generations of our products and encourage our customers to adopt new products and features. If we are not able to successfully manage the development and release of new or enhanced products, our business, operating results and financial condition could be harmed. Similarly, if we fail to introduce new or enhanced products, such as new or improved software features, that meet our customers' needs in a timely or cost-effective fashion, we may lose market share and our operating results could be adversely affected.

If we fail to manage our transition to subscription offerings successfully, our revenues and results of operation may be harmed.

We are now offering all of our products and services on a subscription basis, including our hardware and software products through *Pure as-a-Service* and *Cloud Data Services*. These business models are relatively new to the storage market and will continue to evolve, and we may not be able to compete effectively, drive continued revenue growth or maintain the profitability with these business models. Additionally, the subscription models offered by us and our competitors may unfavorably impact the pricing of and demand for our on-premise offerings, which could reduce our revenues and profitability. If we do not successfully execute our business strategy, which includes subscription offerings, or anticipate the needs of our customers, our revenues and profitability could be negatively impacted.

Our products are highly technical and may contain defects, which could cause data unavailability, loss or corruption that might, in turn, result in liability and harm to our reputation and business.

Our products are highly technical and complex and are often used to store information critical to our customers' business operations. Our products may contain errors, defects or security vulnerabilities that could result in data unavailability, loss, corruption or other harm to our customers. Some errors in our products may only be discovered after they have been installed and used by customers. Any errors, defects or security vulnerabilities in our products could result in a loss of revenue, injury to our reputation, loss of customers or increased service and warranty costs, any of which could adversely affect our business and operating results. In addition, errors or failures in the products of third-party technology vendors may be attributed to us and may harm our reputation.

We could face claims for product liability, tort or breach of warranty. We may not be able to enforce provisions in our contracts relating to warranty disclaimers and liability limitations. Defending a lawsuit, regardless of its merit, would be costly and could divert management's attention and adversely affect the market's perception of us and our products. Our business liability insurance coverage may be inadequate with respect to a claim and future coverage may not be available on acceptable terms or at all. These product-related issues could result in claims against us, and our business, operating results and financial condition could be harmed.

If we are unable to ensure that our products interoperate with third party operating systems, software applications and hardware, we may lose or fail to increase our market share.

Our products must interoperate with our customers' infrastructure, specifically networks, servers, software and operating systems, which are offered by a wide variety of vendors. When new or updated versions of these operating systems or applications are introduced, we may need to develop updated versions of our software so that our products continue to interoperate properly. We may not deliver or maintain interoperability quickly, cost-effectively or at all as these efforts require capital investment and engineering resources. If we fail to maintain compatibility of our products with these infrastructure components, our customers may not be able to fully utilize our products, and we may, among other consequences, lose or fail to increase our market share and experience reduced demand for our products, which may harm our business, operating results and financial condition.

Our products must conform to industry standards in order to be accepted by customers in our markets.

Generally, our products comprise only a part of an IT environment. The servers, network, software and other components and systems deployed by our customers must comply with established industry standards in order to interoperate and function efficiently together. We depend on companies that provide other systems in this ecosystem to conform to prevailing industry standards. These companies are often significantly larger and more influential in driving industry standards than we are. Some industry standards may not be widely adopted or implemented uniformly and competing standards may emerge that may be preferred by our customers. If larger companies do not conform to the same industry standards that we do, or if competing standards emerge, sales of our products could be adversely affected, which may harm our business.

Our ability to successfully market and sell our products is dependent in part on ease of use and the quality of our support offerings, and any failure to offer high-quality installation and technical support could harm our business.

Once our products are deployed by our customers, customers depend on our support organization to resolve technical issues relating to our products. Our ability to provide effective support is largely dependent on our ability to attract, train and retain qualified personnel, as well as to engage with qualified support partners that provide a similar level of customer support. In addition, our sales process is highly dependent on our product and business reputation and on recommendations from our existing customers. Although our products are designed to be interoperable with existing servers and systems, we may need to provide customized installation and configuration support to our customers before our products become fully operational in their environments. Any failure to maintain or a market perception that we do not maintain, high-quality installation and technical support could harm our reputation, our ability to sell our products to existing and prospective customers and our business.

We rely on contract manufacturers to manufacture our products, and if we fail to manage our relationships with our contract manufacturers successfully, our business could be negatively impacted.

We rely on a limited number of contract manufacturers to manufacture our products, which reduces our control over the assembly process and exposes us to risks, such as reduced control over quality assurance, costs and product supply. If we fail to manage our relationships with these contract manufacturers effectively, or if these contract manufacturers experience delays, disruptions, capacity constraints or quality control problems, our ability to timely ship products to our customers will be impaired, potentially on short notice, and our competitive position, reputation and financial results could be harmed. If we are required, for whatever reason, to change contract manufacturers or assume internal manufacturing operations, we may lose revenue, incur increased costs and damage our customer relationships. Qualifying a new contract manufacturer and commencing production is expensive and time-consuming. We may need to increase our component purchases, contract manufacturing capacity and internal test and quality functions if we experience increased demand. The inability of our contract manufacturers to provide us with adequate supplies of high-quality products could cause a delay in our order fulfillment, and our business, operating results and financial condition may be harmed.

We rely on a limited number of suppliers, and in some cases single-source suppliers, and any disruption or termination of our supply arrangements could delay shipments of our products and could harm our relationships with current and prospective customers.

We rely on a limited number of suppliers and, in some cases, on single-source suppliers, for several key components of our products, and we have not generally entered into agreements for the long-term purchase of these components. For example, the CPUs utilized in our products are supplied by Intel Corporation (Intel), and neither we nor our contract manufacturers have an agreement with Intel for the procurement of these CPUs. Instead, we purchase the CPUs either directly from Intel or through a reseller on a purchase order basis. Intel or its resellers could stop selling to us at any time or could raise their prices without notice. While we actively monitor and manage our supply chain, we cannot anticipate the potential impact that new or current restrictions due to COVID-19 may have on the manufacturing and shipment of our products.

This reliance on a limited number of suppliers and the lack of any guaranteed sources of supply exposes us to several risks, including:

- the inability to obtain an adequate supply of key components, including flash;
- price volatility for the components of our products;
- failure of a supplier to meet our quality or production requirements;
- failure of a supplier of key components to remain in business or adjust to market conditions; and
- consolidation among suppliers, resulting in some suppliers exiting the industry, discontinuing the manufacture of components or increasing the price of components.

Further, some of the components in our products are sourced from component suppliers outside the United States, including from China. The portion of our products that are sourced outside the United States may subject us to additional logistical risks or risks associated with complying with local rules and regulations in foreign countries. Significant changes to existing international trade agreements could lead to sourcing or logistics disruption resulting from import delays or the imposition of increased tariffs on our sourcing partners. For example, there have been discussions regarding potential significant changes to U.S. trade policies, legislation, treaties and tariffs, and the United States and Chinese governments have announced import tariffs by both countries. If any new legislation and/or regulations are implemented, if existing trade agreements are renegotiated or terminated, or if tariffs are imposed on foreign-sourced or U.S. goods, it may be inefficient and expensive for us to alter our business operations in order to adapt to or comply with such changes. Such operational changes could have a material adverse effect on our business, financial condition, results of operations or cash flows.

As a result of these risks, we cannot assure investors that we will be able to obtain a sufficient supply of these key components in the future or that the cost of these components will not increase. If our supply of components is disrupted or delayed, or if we need to replace our existing suppliers, there can be no assurance that additional components will be available when required or that components will be available on terms that are favorable to us, which could extend our lead times, increase the costs of our components and harm our business, operating results and financial condition. We may not be able to continue to procure components at reasonable prices, which may require us to enter into longer-term contracts with component suppliers to obtain components at competitive prices. Any of the foregoing disruptions could increase our costs and decrease our gross margins, harming our business, operating results and financial condition.

If we do not manage the supply of our products and their components efficiently, our results of operation could be adversely affected.

Managing the supply of our products and underlying components is complex. Our third-party contract manufacturers procure components and build our products based on our forecasts, and we generally do not hold inventory for a prolonged period of time. These forecasts are based on estimates of future demand for our products, which are in turn based on historical trends and analyses from our sales and marketing organizations, adjusted for overall market conditions. In order to reduce manufacturing lead times and plan for adequate component supply, from time to time we may issue orders for components and products that are non-cancelable and non-returnable. Our inventory management systems and related supply chain visibility tools may be inadequate to enable us to make accurate forecasts and effectively manage the supply of our products and components. If we ultimately determine that we have excess supply, we may have to reduce our prices and write down or write off excess or obsolete inventory, which in turn could result in lower gross margins. Alternatively, insufficient supply levels may lead to shortages that result in delayed revenue, reduced product margins or loss of sales opportunities altogether. If we are unable to effectively manage our supply and inventory, our results of operations could be adversely affected.

Risks Related to Our Operating Results or Financial Condition

We have experienced growth in prior periods, and we may not be able to sustain future growth effectively or at all.

We have significantly expanded our overall business, customer base, headcount, channel partner relationships and operations in prior periods, and we anticipate that we will continue to expand and experience growth in future periods. For example, while our year-over-year revenue declined 4% for the third quarter of fiscal 2021 compared to the third quarter of fiscal 2020, our headcount increased from over 3,350 at the end of the third quarter of fiscal 2020 to over 3,850 employees at the end of the third quarter of fiscal 2021. Our future operating results will depend to a large extent on our ability to successfully sustain our growth and manage our anticipated expansion. To sustain our growth successfully, we believe that we must, among other things, effectively allocate resources and operate our business across a wide range of priorities.

We expect that our future growth will continue to place strain on our managerial, administrative, operational, financial and other resources. We will incur costs associated with this future growth prior to realizing the anticipated benefits, and the return on these investments may be lower, may develop more slowly than we expect or may never materialize. Investors should not consider our revenue growth in prior quarterly or annual periods as indicative of our future performance. In future periods, we may not achieve similar percentage revenue growth rates as we have achieved in some past periods. If we are unable to maintain adequate revenue or revenue growth, our stock price could be volatile, and it may be difficult to achieve and maintain profitability. If we are unable to manage our growth successfully, we may not be able to take advantage of market opportunities or release new products or enhancements in a timely manner, and we may fail to satisfy customers' expectations, maintain product quality, execute on our business plan or adequately respond to competitive pressures, each of which could adversely impact our growth and affect our business and operating results.

We intend to continue focusing on revenue growth and increasing our market penetration and international presence by investing heavily in our business, which may put pressure on near-term profitability.

We have not achieved profitability for any year since our inception. We incurred a net loss of \$201.0 million for fiscal 2020, and \$229.8 million for the first three quarters of fiscal 2021, and we had an accumulated deficit of \$1,282.9 million at the end of fiscal 2020 and \$1,512.7 million at the end of the third quarter of fiscal 2021. Our operating expenses largely are based on anticipated revenue, and a high percentage of our expenses are, and will continue to be, fixed in the short term. If we fail to adequately increase revenue and manage costs, we may not achieve or maintain profitability in the future. As a result, our business could be harmed, and our operating results could suffer.

Our strategy is to continue investing in marketing, sales, support and research and development. We believe continuing to invest heavily in our business is critical to our future success and meeting our growth objectives. We anticipate that our operating costs and expenses will continue to increase in absolute terms. Even if we achieve or maintain significant revenue growth, we may continue to experience losses, forgoing near-term profitability on a U.S. GAAP basis.

Our gross margins are impacted by a variety of factors and vary from period to period, making them difficult to predict with certainty.

Our gross margins fluctuate from period to period due primarily to product costs, customer mix and product mix. A variety of factors may cause our gross margins to fluctuate and make them difficult to predict, including, but not limited to:

- sales and marketing initiatives, discount levels, rebates and competitive pricing;
- changes in customer, geographic or product mix, including mix of product configurations;
- the cost of components, including flash and DRAM, and freight;
- new product introductions and enhancements with higher product costs;
- excess inventory levels or purchase obligations as a result of changes in demand forecasts or product transitions;
- an increase in product returns, order rescheduling and cancellations;
- the timing of technical support service contracts and contract renewals; and
- inventory stocking requirements to mitigate supply constraints, accommodate unforeseen demand or support new product introductions.

If we are unable to manage these factors effectively, our gross margins may decline, and fluctuations in gross margins may make it difficult to manage our business and achieve or maintain profitability, which could materially harm our business, operating results and financial condition.

Our operating results may fluctuate significantly, which could make our future results difficult to predict and could cause our operating results to fall below expectations.

Our operating results may fluctuate due to a variety of factors, a portion of which are outside of our control. As a result, comparing our results on a period-to-period basis may not be meaningful.

Factors that are difficult to predict and that could cause our operating results to fluctuate include:

- the timing and magnitude of orders, shipments and acceptance of our products in any quarter, including product returns, order rescheduling and cancellations by our customers;
- fluctuations or seasonality in demand and prices for our products;
- our ability to control the costs of the components we use or to timely adopt subsequent generations of components;

- disruption in our supply chains, component availability and related procurement costs;
- reductions in customers' budgets for IT purchases;
- changes in industry standards in the data storage industry;
- our ability to develop, introduce and ship new products and product enhancements that meet customer requirements and to effectively manage product transitions;
- changes in the competitive dynamics of our markets, including new entrants or discounting of product prices;
- our ability to control costs, including our operating expenses;
- the impact of adverse economic conditions and the impact of public health epidemics or pandemics, such as the COVID-19 pandemic; and
- future accounting pronouncements and changes in accounting policies.

The occurrence of any one of these factors could negatively affect our operating results in any particular quarter.

The sales prices of our products and services may fluctuate or decline, which may reduce our gross profits, revenue growth, and adversely impact our financial results.

The sales prices of our products and services may fluctuate or decline for a variety of reasons, including competitive pricing pressures, discounts, cost of components, a change in our mix of products and services, and the introduction of competing products or services or promotional programs. Competition continues to increase in the markets in which we participate, and we expect competition to further increase in the future, thereby leading to increased pricing pressures. Larger competitors may reduce the price of products or services that compete with ours or may bundle them with other products and services. Additionally, although we price our products and services predominantly in U.S. dollars, currency fluctuations in certain countries and regions may negatively impact actual prices that partners and customers are willing to pay in those countries and regions. Furthermore, we anticipate that the prices for our products will decrease over product life cycles. If we are required to decrease our prices to be competitive and are not able to offset this decrease by increases in the volume of sales or the sales of new products with higher margins, our gross margins and operating results could be adversely affected.

We derive the majority of our revenue from our FlashArray products, and a decline in demand for these products would cause our revenue to grow more slowly or to decline.

Our *FlashArray* products have historically accounted for the majority of our revenue and will continue to comprise a significant portion of our revenue for the foreseeable future, including through our subscription offerings. We have seen slower revenue growth in recent periods, which we believe has largely been driven by the pandemic. As a result, our revenue could be reduced by any decline or fluctuation in demand for these products, regardless of the reason. If demand for our core products slows or declines, we may not be able to increase our revenue or achieve and maintain profitability.

If we are unable to sell renewals of our subscription services to our customers, our future revenue and operating results will be harmed.

Existing customers may not renew their subscription services agreements after the initial period and, given changing customer purchasing preferences, we may not be able to accurately predict our renewal rates. Our customers' renewal rates may decline or fluctuate as a result of a number of factors, including their available budget and the level of their satisfaction with our products, customer support and pricing compared to that offered by our competitors. If our customers renew their contracts, they may renew on terms that are less economically beneficial to us. If our customers do not renew their agreements or renew on less favorable terms, our revenue may grow more slowly than expected, if at all.

We expect that revenue from subscription services will increase as a percentage of total revenue over time, and because we recognize this revenue over the term of the relevant contract period, downturns or upturns in sales of subscription services are not immediately reflected in full in our results of operations.

Our revenue from subscription services has been increasing as a percentage of total revenue over time. We are also increasing the number of our subscription-based offerings, such as *Pure as-a-Service*, though it is more difficult to predict the rate at which customers will adopt, and the rate at which our revenue will grow from these new offerings. We recognize subscription services revenue ratably over the term of the relevant period. As a result, much of the subscription services revenue we report each quarter is derived from agreements that we sold in prior quarters. Consequently, a decline in new or renewed subscription services agreements in any one quarter will not be fully reflected in revenue in that quarter but will negatively affect our revenue in future quarters. Accordingly, the effect of significant downturns in sales of subscription services is not reflected in full in our results of operations until future periods. It is also difficult for us to rapidly increase our subscription services revenue through additional sales in any period, as revenue from renewals must be recognized ratably over the applicable service period.

We may require additional capital to support business growth, and this capital might not be available on acceptable terms, or at all.

We intend to continue to make investments to support our business growth and may require additional funds to support business initiatives, including the need to develop new products or enhance our existing products, enhance our operating infrastructure and acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing we undertake in the future could involve additional restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to support our business growth and to respond to business challenges could be significantly limited and our prospects and financial condition could be harmed.

We are exposed to the credit risk of some of our customers, which could harm our business, operating results and financial condition.

Most of our sales are made on an open credit basis. We monitor individual customer payment capability when we grant open credit arrangements and may limit these open credit arrangements based on perceived creditworthiness. We also maintain allowances we believe are adequate to cover exposure for doubtful accounts. Although we have programs in place that are designed to monitor and mitigate these risks, we cannot assure investors these programs will be effective in managing our credit risks, especially as we expand our business internationally. If we are unable to adequately control these risks, our business, operating results and financial condition could be harmed.

Risks Related to Our Operations

If we are unable to attract, motivate and retain sales, engineering and other key personnel, including our management team, we may not be able to increase our revenue and our business, operating results and financial condition could be harmed.

Our ability to increase our revenue depends on our ability to attract, motivate, and retain qualified sales, engineering and other key employees, including our management. These positions may require candidates with specific backgrounds in software and the storage industry, and competition for employees with such expertise is intense. We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. To the extent that we are successful in hiring to fill these positions, we may need a significant amount of time to train new employees before they are effective and efficient in performing their jobs. From time to time, there may be changes in our management team, which could create short term uncertainty. All of our employees, including members of our management team and executive officers, are generally employed on an at-will basis, which means that they could terminate their employment with us at any time. If we are unable to attract, motivate and retain qualified sales, engineering and other key employees, including our management or if they are unable to work effectively or at all due to the COVID-19 pandemic, our business and operating results could suffer.

If we fail to adequately expand and optimize our sales force, our growth will be impeded.

We need to continue to expand and optimize our sales organization in order to grow our customer base and our business. We plan to continue to expand and train our sales force, both domestically and internationally. We must design and implement effective sales incentive programs, and it can take time before new sales representatives are fully trained and productive. We must adapt our sales processes for new sales and marketing approaches, including those required by the changes resulting from the pandemic. If we are unable to hire, develop and retain qualified sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of these investments or increase our revenue and our business and operating results could suffer.

Our company culture has contributed to our success, and if we cannot maintain this culture as we grow, we could lose the innovation, creativity and teamwork fostered by our culture, and our business may be harmed.

We believe that our company culture has been a critical contributor to our success. Our culture fosters innovation, creativity, teamwork, passion for customers and focus on execution, and facilitates critical knowledge transfer and knowledge sharing. In particular, we believe that the difference between our sales, support and engineering cultures and those of incumbent vendors, is a key competitive advantage and differentiator for our customers and partners. As we grow and change or are required to adapt to changes in business operations as a result of the COVID-19 pandemic, we may find it difficult to maintain these important aspects of our company culture, which could limit our ability to innovate and operate effectively. Any failure to preserve our culture could also negatively affect our ability to retain and recruit personnel, continue to perform at current levels or execute on our business strategy.

Our long-term success depends, in part, on sales outside of the United States, which subjects us to costs and risks associated with international operations.

We maintain operations outside of the United States, which we have been expanding and intend to continue to expand in the future. As a company headquartered in the United States, conducting and expanding international operations subjects us to costs and risks that we may not generally face in the United States, including:

- exposure to foreign currency exchange rate risk;
- difficulties in collecting payments internationally;
- managing and staffing international operations;
- public health pandemics or epidemics, such as the COVID-19 pandemic;

- establishing relationships with channel partners in international locations;
- increased travel, infrastructure and legal compliance costs associated with international locations;
- requirements to comply with a wide variety of laws and regulations associated with international operations, including taxes and customs;
- significant fines, penalties and collateral consequences if we or our partners fail to comply with anti-bribery laws;
- heightened risk of improper, unfair or corrupt business practices in certain geographies;
- potentially adverse tax consequences, including repatriation of earnings;
- increased financial accounting and reporting burdens and complexities;
- political, social and economic instability abroad, terrorist attacks and security concerns in general; and
- reduced or varied protection for intellectual property rights in some countries.

The occurrence of any one of these risks could negatively affect our international operations and, consequently, our business, operating results and financial condition generally.

Our international operations, as well as changes in tax laws, could expose us to potentially adverse tax consequences.

The U.S. Tax law changes enacted through the Tax Cuts and Jobs Act (the Tax Act) in December 2017 are subject to further interpretations from the U.S. federal and state governments and regulatory organizations. Such interpretations could have a material adverse effect on our cash tax liabilities, results of operations, and financial condition.

We generally conduct our international operations through wholly owned subsidiaries and report our taxable income in various jurisdictions worldwide based upon our business operations in those jurisdictions. Given the passage of the Tax Act and other global tax developments, we continue to evaluate our corporate structure and intercompany relationships. Future changes to U.S. and global tax laws may adversely impact our effective tax rate.

Our intercompany relationships are, and after the implementation of any changes to our corporate structure will continue to be, subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. The relevant taxing authorities may disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and our position were not sustained, we could be required to pay additional taxes, interest and penalties, which could result in tax charges, higher effective tax rates, reduced cash flows and lower overall profitability of our operations.

Third-party claims that we infringe their intellectual property rights could be costly and harm our business.

There is a substantial amount of intellectual property litigation in the data storage industry, and we may become party to, or threatened with, litigation or other adversarial proceedings regarding our intellectual property rights. The outcome of intellectual property litigation is subject to uncertainties that cannot be adequately quantified in advance. We have been, and may in the future be, subject to claims that we infringe upon the intellectual property rights of other intellectual property holders, particularly as we grow and face increasing competition.

Any intellectual property rights claim against us or our customers, suppliers, and channel partners, with or without merit, could be time-consuming and expensive to litigate or settle, could divert management's resources and attention from operating our business and could force us to acquire intellectual property rights and licenses, which may involve substantial royalty payments. Further, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. An adverse determination also could invalidate our intellectual property rights, prevent us from manufacturing and selling our products and may require that we procure or develop substitute products that do not infringe, which could require significant effort and expense.

We may not be able to re-engineer our products to avoid infringement, and we may have to seek a license for the infringed technology, which may not be available on reasonable terms or at all, may significantly increase our operating expenses or may require us to restrict our business activities in one or more respects. Even if we were able to obtain a license, it could be non-exclusive, which may give our competitors access to the same technologies licensed to us. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business. Any of these events could harm our business and financial condition.

We currently have a number of agreements in effect with our customers, suppliers and channel partners pursuant to which we have agreed to defend, indemnify and hold them harmless from damages and costs which may arise from claims of infringement by our products of third-party patents, trademarks or other proprietary rights. The scope of these indemnity obligations varies but may, in some instances, include indemnification for damages and expenses, including attorneys' fees. Our insurance may not cover intellectual property infringement claims. A claim that our products infringe a third party's intellectual property rights could harm our relationships with our customers, deter future customers from purchasing our products and expose us to costly litigation and settlement expenses. Even if we are not a party to any litigation between a customer and a third party relating to infringement claims by our products, an adverse outcome in any such litigation could make it more difficult for us to defend our products against intellectual property infringement claims in any subsequent litigation in which we are a named party. Any of these results could harm our brand, business and financial condition.

The success of our business depends in part on our ability to protect and enforce our intellectual property rights.

We rely on a combination of patent, copyright, service mark, trademark and trade secret laws, as well as confidentiality procedures and contractual restrictions, to establish and protect our proprietary rights, all of which provide only limited protection. We have over 2,000 issued patents and patent applications in the United States and foreign countries. We cannot assure investors that future patents issued to us, if any, will give us the protection that we seek, if at all, or that any patents issued to us will not be challenged, invalidated, circumvented or held to be unenforceable. Our issued and future patents may not provide sufficiently broad protection or may not be enforceable. Further, the laws of certain foreign countries do not provide the same level of protection of corporate proprietary information and assets such as intellectual property, trademarks, trade secrets, know-how and records, as the laws of the United States. For instance, the legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection. As a result, we may encounter significant problems in protecting and defending our intellectual property or proprietary rights abroad.

Changes to the intellectual property law in the United States and other jurisdictions could also diminish the value of our patents and patent applications or narrow the scope of our patent protection, among other intellectual property rights. We cannot be certain that the steps we have taken will prevent theft, unauthorized use or the reverse engineering of our proprietary information and other intellectual property, including technical data, manufacturing processes, data sets or other sensitive information. Moreover, others may independently develop technologies that are competitive to ours or that infringe our intellectual property. Furthermore, any of our trademarks may be challenged by others or invalidated through administrative process or litigation.

Protecting against the unauthorized use of our intellectual property, products and other proprietary rights is expensive and difficult. Litigation may be necessary in the future to enforce or defend our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Any such litigation could result in substantial costs and diversion of management's resources and attention, either of which could harm our business, operating results and financial condition. Further, many of our current and potential competitors have the ability to dedicate substantially greater resources than us to defend intellectual property infringement claims and enforce their intellectual property rights. Accordingly, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Effective patent, trademark, service mark, copyright and trade secret protection may not be available in every country in which our products are available. An inability to adequately protect and enforce our intellectual property and other proprietary rights could harm our business and financial condition.

Our use of open source software could impose limitations on our ability to commercialize our products.

We use open source software in our products and expect to continue to use open source software in the future. Although we monitor our use of open source software, the terms of many open source licenses have not been interpreted by U.S. or foreign courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market our products. From time to time, we may face claims from third parties claiming ownership of, or demanding release of, the open source software or derivative works that we have developed using such software, which could include our proprietary source code, or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to make our software source code freely available, seek licenses from third parties in order to continue offering our products for certain uses or cease offering the implicated solutions unless and until we can re-engineer them to avoid infringement. This re-engineering process could require significant additional research and development resources, and we may be required to discontinue providing some of our software if re-engineering cannot be accomplished on a timely basis, any of which could harm our business, operating results and financial condition.

Failure to comply with governmental laws and regulations could harm our business.

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, workplace safety, product safety, environmental laws, consumer protection laws, anti-bribery laws, import/export controls, federal securities laws and tax laws and regulations. In certain jurisdictions, these regulatory requirements may be more stringent than in the United States. For example, the European Union has adopted certain directives to facilitate the recycling of electrical and electronic equipment sold in the European Union, including the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment directive and the Waste Electrical and Electronic Equipment directive.

Changes in applicable laws, regulations and standards could harm our business, operating results and financial condition. For example, we have been subject to the EU General Data Protection Regulation, or GDPR, since May 2018 and to the California Consumer Privacy Act (CCPA) since January 2020. These and potentially other future privacy regulations may require us to make further changes to our policies and procedures in the future beyond what we have already done. Our business could be impacted, to some extent, by the United Kingdom's exit from the European Union and related changes in law and regulation. We made changes to our data protection compliance program in relation to data privacy regulations and will continue to monitor the implementation and evolution of global data protection regulations, but if we are not compliant with such privacy regulations, we may be subject to significant fines and our business may be harmed. In addition, the CCPA places additional requirements on the handling of personal data and is currently subject to a revision and update process. The potential effects of this legislation are far-reaching and may require us to modify our data processing practices and policies and to incur substantial costs and expenses. Customers may choose to implement technological solutions to comply with such regulations that impact the performance and competitiveness of our products and solutions.

Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties or injunctions. If any governmental sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, operating results and financial condition could be harmed. Even the perception of privacy concerns, whether or not valid, may harm our reputation and inhibit competitiveness and adoption of our products by current and future customers. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees. Enforcement actions and sanctions could harm our business, operating results and financial condition.

Governmental regulations affecting the import or export of products could negatively affect our revenue.

The U.S. and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of some technologies, especially encryption technology. From time to time, governmental agencies have proposed additional regulation of encryption technology, such as requiring the escrow of imports or exports. If we fail to obtain required import or export approval for our products or its various components, our international and domestic sales could be harmed and our revenue may be adversely affected. In many cases, we rely on vendors and channel partners to handle logistics associated with the import and export of our products, so our visibility and control over these matters may be limited. In addition, failure to comply with such regulations could result in penalties, costs and restrictions on export privileges, which could harm our business, operating results and financial condition.

If we or our products suffer a cybersecurity or other security breach, we may lose customers and incur significant liabilities.

In the ordinary course of business, we store sensitive data on our internal systems, networks and servers, which may include intellectual property, our proprietary business information and that of our customers, suppliers and business partners and sales data, which may, on occasion, include personally identifiable information. Additionally, we design and sell products that allow our customers to store their data. The security of our own networks and the intrusion protection features of our products are both critical to our operations and business strategy.

We devote significant resources to network security, data encryption and other security measures to protect our systems and data, but these security measures cannot provide absolute security. While we use encryption and authentication technologies to secure the transmission and storage of data and prevent third-party access to data or accounts, these security measures are subject to third party security breaches, employee error, malfeasance, faulty password management or other irregularities. Any destructive or intrusive breach of our internal systems could result in the information stored on our networks being accessed, publicly disclosed, lost or stolen.

Additionally, an effective attack on our products could disrupt the proper functioning of our products, allow unauthorized access to sensitive, proprietary or confidential information of ours or our customers, disrupt or temporarily interrupt our and our customers' operations or cause other destructive outcomes, including the theft of information sufficient to engage in fraudulent transactions. The risk that these types of events could seriously harm our business is likely to increase as we expand our network of channel partners, resellers and authorized service providers and operate in more countries. The economic costs to us to eliminate or alleviate cyber or other security problems, viruses, worms, malicious software systems and security vulnerabilities could be significant and may be difficult to anticipate or measure because the damage may differ based on the identity and motive of the programmer or hacker, which are often difficult to identify. If any of these types of security breaches were to occur and we were unable to protect sensitive data, our relationships with our business partners and customers could be materially damaged, our reputation and brand could be materially harmed, use of our products could decrease and we could be exposed to a risk of loss or litigation and possible liability.

We may acquire other businesses which could require significant management attention, disrupt our business, dilute stockholder value, and adversely affect our operating results.

We may, from time to time, acquire complementary products, technologies or businesses, such as our acquisitions of Portworx in October 2020 and Compuverde AB in April 2019. We also may enter into relationships with other businesses in order to expand our product offerings, which could involve preferred or exclusive licenses, additional channels of distribution or discount pricing or investments in other companies. Negotiating these transactions can be time-consuming, difficult and expensive, and our ability to close these transactions may be subject to third-party or government approvals, which are beyond our control. Consequently, we can make no assurance that these transactions, once undertaken and announced, will close.

These kinds of acquisitions or investments may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products, personnel or operations of acquired companies, particularly if the key personnel of the acquired business choose not to work for us, and we may have difficulty retaining the customers of any acquired business. Acquisitions may also disrupt our ongoing business, divert our resources and require significant management attention that would otherwise be available for development of our business. Any acquisition or investment could expose us to unknown liabilities. Moreover, we cannot assure investors that the anticipated benefits of any acquisition or investment will be realized. In connection with these types of transactions, we may issue additional equity securities that would dilute our stockholders, use cash that we may need in the future to operate our business, incur debt on terms unfavorable to us or that we are unable to repay, incur large charges or substantial liabilities, encounter difficulties integrating diverse business cultures and become subject to adverse tax consequences, substantial depreciation or deferred compensation charges. These challenges related to acquisitions or investments could harm our business and financial condition.

General Risk Factors

Adverse economic conditions may harm our revenues and profitability.

Our operations and performance depend in part on worldwide economic conditions and the economic health of our current and prospective customers. Global economic uncertainty, civil unrest and political and fiscal challenges in the United States and abroad can arise suddenly and affect the rate of information technology spending and could adversely affect our customers' ability or willingness to purchase our products and services. For example, the global macroeconomic environment could be negatively affected by the growth rate in the economy of the European Union, China, or the United States, trade relations between the United States and China, the impact of public health epidemics or pandemics, such as the COVID-19 pandemic, political uncertainty in the Middle East and other geopolitical events. Additionally, the United Kingdom's exit from the European Union is disruptive and remains subject to the successful conclusion of a final withdrawal agreement between the parties. In the absence of such an agreement, there would be no transitional provisions and any exit from the European Union could lead to adverse economic consequences. Weak economic conditions would likely adversely impact our business, operating results and financial condition in a number of ways, including by reducing sales, lengthening sales cycles and lowering prices of our products and services.

Our business is subject to the risks of earthquakes, fires, floods and other natural catastrophic events, and to interruption by man-made factors such as computer viruses or terrorism or by the impact of public health epidemics or pandemics, such as the COVID-19 pandemic.

We and our suppliers have operations in locations, including our headquarters in California, that are subject to earthquakes, fires, floods and other natural catastrophic events, such as severe weather and geological events, which could disrupt our operations or the operations of our customers and suppliers. Our customers affected by a natural disaster could postpone or cancel orders of our products, which could negatively impact our business. Moreover, should any of our key suppliers fail to deliver components to us as a result of a natural disaster, we may be unable to purchase these components in necessary quantities or may be forced to purchase components in the open market at significantly higher costs. We may also be forced to purchase components in advance of our normal supply chain demand to avoid potential market shortages. Our business interruption insurance may be insufficient to compensate us for losses due to a significant natural disaster or due to man-made factors. Any natural catastrophic events may also prevent our employees from being able to reach our offices in any jurisdiction around the world, and therefore impede our ability to conduct business as usual.

In addition, man-made factors, such as acts of terrorism or malicious computer viruses, and public health epidemics or pandemics, such as the COVID-19 pandemic, could cause disruptions in our or our customers' businesses or the economy as a whole. To the extent that these disruptions result in delays or cancellations of customer orders or the deployment of our products, our business, operating results and financial condition could be harmed.

Risks Related to Our Credit Facility and Notes

Restrictive covenants in the agreement governing our senior secured revolving credit facility may restrict our ability to pursue business strategies.

In August 2020, we entered into a Credit Agreement with a consortium of financial institutions and lenders that provides for a five-year, senior secured revolving credit facility of \$300.0 million (Credit Facility). We have borrowed \$250.0 million under this Credit Facility. We could repay and re-borrow funds under this Credit Facility at any time, subject to customary borrowing conditions, for general corporate purposes and working capital.

The agreement governing our senior secured revolving Credit Facility limits our ability, among other things, to: incur additional secured indebtedness; sell, transfer, license or dispose of assets; consolidate or merge; enter into transactions with our affiliates; and incur liens. In addition, our senior secured revolving Credit Facility contains financial and other restrictive covenants that limit our ability to engage in activities that may be in our long term best interest, such as, subject to permitted exceptions, making capital expenditures in excess of certain thresholds, making investments, loans and other advances, and prepaying any additional indebtedness while our indebtedness under our senior secured revolving Credit Facility is outstanding. Our failure to comply with financial and other restrictive covenants could result in an event of default, which if not cured or waived, could result in the lenders requiring immediate payment of all outstanding borrowings or foreclosing on collateral pledged to them to secure the indebtedness.

We may not have the ability to raise the funds necessary to settle conversions of the Notes or to repurchase the Notes upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the Notes.

Holders of the Notes will have the right to require us to repurchase all or a portion of their Notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest. In addition, if a make-whole fundamental change (as defined in the indenture for the Notes) occurs prior to the maturity date of the Notes, we will in some cases be required to increase the conversion rate for a holder that elects to convert its Notes in connection with such make-whole fundamental change. Upon a conversion of the Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Notes being converted. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Notes surrendered therefor or pay cash with respect to Notes being converted.

In addition, our ability to repurchase or to pay cash upon conversion of the Notes may be limited by law, regulatory authority or agreements governing our future indebtedness. Our failure to repurchase the Notes at a time when the repurchase is required by the indenture governing the Notes or to pay cash upon conversion of the Notes as required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the payment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Notes or to pay cash upon conversion of the Notes.

Servicing our debt will require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the amounts payable under the Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

We may still incur substantially more debt or take other actions that would diminish our ability to make payments on the Notes when due.

We and our subsidiaries may incur substantial additional debt in the future, subject to the restrictions contained in our future debt instruments, some of which may be secured debt, like the Credit Facility. We are not restricted under the terms of the indenture governing the Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that could have the effect of diminishing our ability to make payments on the Notes when due. Furthermore, the indenture prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Notes and the indenture. These and other provisions in the indenture could deter or prevent a third party from acquiring us even when the acquisition may be favorable to holders of the Notes.

The conditional conversion feature of the Notes, if triggered, may adversely affect our financial condition and operating results.

If the conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert the Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than by paying cash in lieu of delivering any fractional share), we may settle all or a portion of our conversion obligation in cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The capped call transactions may affect the value of the Notes and our common stock.

In connection with the Notes, we entered into capped call transactions with certain financial institutions (the option counterparties). The capped call transactions are expected generally to reduce the potential dilution upon any conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount upon conversion of the Notes, with such reduction and/or offset subject to a cap.

In connection with establishing their initial hedges of the capped call transactions, the option counterparties and/or their respective affiliates purchased shares of our common stock and/or entered into various derivative transactions with respect to our common stock. This activity could have increased (or reduced the size of any decrease in) the market price of our common stock or the Notes at that time.

In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock in secondary market transactions (and are likely to do so during any observation period related to a conversion of notes or following any repurchase of notes by us on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or a decrease in the price of our common stock or the Notes.

The potential effect, if any, of these transactions and activities on the price of our common stock or the Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

Risks Related to Our Common Stock

The trading price of our common stock has been and may continue to be highly volatile, and an active, liquid, and orderly market for our common stock may not be sustained.

The trading price of our common stock has been, and will likely continue to be, highly volatile. Since shares of our common stock were sold in our initial public offering in October 2015 at a price of \$17.00 per share, our closing stock price has ranged from \$8.76 to \$28.66, through December 4, 2020. Some of the factors, many of which are beyond our control, affecting our volatility may include:

- price and volume fluctuations in the overall stock market from time to time;
- significant volatility in the market price and trading volume of technology companies in general and of companies in our industry;
- actual or anticipated changes in our results of operations or fluctuations in our operating results;
- whether our operating results meet the expectations of securities analysts or investors;
- issuance or new or updated research or reports by securities analysts, including the publication of unfavorable reports or change in recommendation or downgrading of our common stock;
- actual or anticipated developments in our competitors' businesses or the competitive landscape generally;
- litigation involving us, our industry or both;
- general economic conditions and trends, including the impact of the COVID pandemic;
- major catastrophic events;
- sales of large blocks of our stock; or
- departures of key personnel.

In several recent situations where the price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our stockholders were to bring a lawsuit against us, the defense and disposition of the lawsuit could be costly and divert the time and attention of our management and harm our business, operating results and financial condition.

We cannot guarantee that our share repurchase program will enhance shareholder value, and share repurchases could affect the price of our common stock.

In August 2019, our board of directors authorized a \$150 million share repurchase program, which is being funded from available working capital. A large portion of the currently authorized program has been used. The repurchase authorization has no fixed end date. Although our board of directors has authorized a share repurchase program, this program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares. The share repurchase program could affect the price of our common stock, increase volatility and diminish our cash reserves.

If securities analysts do not publish research or reports about our business, or if they downgrade our stock, the price of our stock could decline.

The trading market for our common stock will likely be influenced by research and reports that securities or industry analysts publish about us or our business. If one or more of these analysts downgrades our stock, lowers their price target, or publishes unfavorable or inaccurate research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

We have never paid dividends on our common stock and we do not anticipate paying any cash dividends in the foreseeable future.

We have never declared or paid any dividends on our common stock. We intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the future. As a result, investors may only receive a return on their investment in our common stock if the market price of our common stock increases.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws and under Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the price of our common stock.

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- establish a classified board of directors so that not all members of our board of directors are elected at one time;
- authorize the issuance of “blank check” preferred stock that our board of directors could issue to increase the number of outstanding shares to discourage a takeover attempt;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit stockholders from calling a special meeting of our stockholders;
- provide that the board of directors is expressly authorized to make, alter or repeal our bylaws; and
- establish advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Additionally, we are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder and which may discourage, delay, or prevent a change of control of our company.

Any provision of our amended and restated certificate of incorporation, bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. If a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business and financial condition.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Purchases of Equity Securities by the Issuer

The following table summarizes our stock repurchase activity for the third quarter of fiscal 2021 (in thousands except for price per share):

Period	Average Price Paid per Share	Total Number of Shares Purchased as Part of Share Repurchase Program ⁽¹⁾	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Program
August 3 - August 30	\$ —	—	\$ 45,000
August 31 - September 27	\$ 14.64	510	\$ 37,532
September 28 - November 1	\$ 16.37	850	\$ 23,616

⁽¹⁾ In August 2019, our board of directors authorized us to repurchase up to \$150.0 million of our outstanding common stock under our share repurchase program. See "Liquidity and Capital Resources—Share Repurchase Program" included under Part I, Item 2 in this Quarterly Report on Form 10-Q.

The following table summarizes the shares of restricted common stock that were delivered by certain employees upon vesting of equity awards to satisfy tax withholding requirements during the third quarter of fiscal 2021 (in thousands except for price per share):

Period	Average Price per Share Delivered	Total Number of Shares Delivered to Satisfy Tax Withholding Requirements	Approximate Dollar Value of Shares Delivered to Satisfy Tax Withholding Requirements
August 3 - August 30	\$ —	—	\$ —
August 31 - September 27	\$ 14.48	86	\$ 1,239
September 28 - November 1	\$ —	—	\$ —

Item 3. Defaults upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits.

Exhibit Number	Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
2.1*	Agreement and Plan of Merger, dated as of September 14, 2020, among Pure Storage, Inc., Porsche Acquisition Corp., Portworx Inc., and Shareholder Representative Services LLC.				
3.1	Amended and Restated Certificate of Incorporation.	10-Q	001-37570	3.1	12/11/2015
3.2	Amended and Restated Bylaws.	S-1	333-206312	3.4	9/9/2015
4.1	Form of Class A Common Stock Certificate of the Company.	S-1	333-206312	4.1	9/9/2015
4.2	Indenture dated as of April 9, 2018 by and between Pure Storage, Inc. and U.S. Bank National Association, as Trustee	8-K	001-37570	4.1	4/10/2018
4.3	Form of Global Note, representing Pure Storage, Inc.'s 0.125% Convertible Senior Notes due 2023 (included as Exhibit A to the Indenture incorporated by reference as Exhibit 4.2 hereto)	8-K	001-37570	4.2	4/10/2018
4.4	Reference is made to Exhibits 3.1 and 3.2				
10.12*+	Pure Storage, Inc. Change in Control Severance Benefit Plan, effective as of November 24, 2020				
10.14*+	Transition Services, Separation & Release Agreement by and between Pure Storage, Inc. and Paul Mountford dated as of November 3, 2020.				
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1**	Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
99.1	Form of Confirmation for Capped Call Transactions.	8-K	001-37570	99.1	4/10/2018
101.INS	XBRL Instance Document				
101.SCH	XBRL Taxonomy Extension Schema Document				
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document (included in Exhibit 101)				

* Filed herewith.

** Furnished herewith.

+ Indicates management contract or compensatory plan.

SIGNATURES

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

PURE STORAGE, INC.

Date: December 9, 2020

By: /s/ CHARLES GIANCARLO
Charles Giancarlo
Chief Executive Officer and Director
(Principal Executive Officer)

Date: December 9, 2020

By: /s/ KEVAN KRYSLER
Kevan Kryslar
Chief Financial Officer
(Principal Financial and Accounting Officer)

AGREEMENT AND PLAN OF MERGER

among:

Pure Storage, Inc.,
a Delaware corporation;

Porsche Acquisition Corp.,
a Delaware corporation;

Portworx Inc.,
a Delaware corporation;

and

Shareholder Representative Services LLC
as the Securityholders' Agent

Dated as of September 14, 2020

Table of Contents

	Page
<u>1. Description of Transaction</u>	1
<u>1.1 Merger of Merger Sub into the Company</u>	1
<u>1.2 Effect of the Merger</u>	2
<u>1.3 Closing; Effective Time</u>	2
<u>1.4 Certificate of Incorporation and Bylaws; Directors and Officers</u>	7
<u>1.5 Conversion of Shares</u>	7
<u>1.6 Treatment of Company Options, Company Warrants and New Restricted Stock Units</u>	11
<u>1.7 Dissenting Shares</u>	14
<u>1.8 Exchange of Certificates and Payment</u>	14
<u>1.9 Further Action</u>	16
<u>1.10 Closing Adjustment.</u>	17
<u>2. Representations and Warranties About the Acquired Entities</u>	18
<u>2.1 Organizational Matters</u>	19
<u>2.2 Organizational Documents</u>	19
<u>2.3 Capital Structure</u>	20
<u>2.4 Financial Statements and Related Information</u>	22
<u>2.5 No Liabilities</u>	23
<u>2.6 Absence of Changes</u>	24
<u>2.7 Title to Assets</u>	24
<u>2.8 Bank Accounts</u>	24
<u>2.9 Equipment; Real Property</u>	24
<u>2.10 Intellectual Property</u>	25
<u>2.11 Contracts</u>	33
<u>2.12 Compliance with Legal Requirements</u>	36
<u>2.13 Governmental Authorizations; No Subsidies</u>	36
<u>2.14 Tax Matters</u>	37
<u>2.15 Employment Matters; Benefit Plans</u>	41
<u>2.16 Environmental Matters</u>	46
<u>2.17 Insurance</u>	46
<u>2.18 Transactions with Related Parties</u>	46
<u>2.19 Legal Proceedings; Orders</u>	47
<u>2.20 Authority; Binding Nature of Agreement.</u>	47
<u>2.21 Non-Contravention; Consents</u>	47
<u>2.22 Significant Business Relationships</u>	48
<u>2.23 Export Control Laws</u>	49
<u>2.24 No PPP Loans</u>	49
<u>2.25 Vote Required</u>	49

2.26	<u>Brokers</u>	50
3.	<u>Representations and Warranties of Parent and Merger Sub</u>	50
3.1	<u>Organization and Standing</u>	50
3.2	<u>Authority; Binding Nature of Agreement</u>	50
3.3	<u>Non-Contravention; Consents</u>	50
3.4	<u>Merger Sub</u>	50
3.5	<u>Merger Consideration</u>	51
3.6	<u>Litigation</u>	51
4.	<u>Certain Covenants of the Company</u>	51
4.1	<u>Access and Investigation</u>	51
4.2	<u>Operation of the Business of the Acquired Entities</u>	51
4.3	<u>No Negotiation</u>	54
4.4	<u>Treatment of Certain Benefit Plans</u>	55
4.5	<u>Termination/Amendment of Agreements and Release of Encumbrances</u>	55
4.6	<u>Communications with Employees</u>	55
4.7	<u>Tail Insurance</u>	55
4.8	<u>Payoff Letters and Invoices; Estimated Merger Consideration Certificate</u>	55
4.9	<u>Employment Agreements and Termination of Non-Continuing Employees</u>	56
4.10	<u>Retention Pool</u>	56
4.11	<u>Joinder and Support Agreements; Option Conversion Agreements</u>	57
4.12	<u>Foreign Subsidiary Transfer</u>	57
5.	<u>Certain Covenants of the Parties</u>	57
5.1	<u>Filings and Consents</u>	57
5.2	<u>Stockholder Consent</u>	58
5.3	<u>Reasonable Efforts</u>	58
5.4	<u>S-8</u>	58
5.5	<u>Employee Matters.</u>	59
5.6	<u>Company Indemnification Provisions.</u>	60
6.	<u>Tax Matters</u>	60
6.1	<u>Transfer Taxes</u>	60
6.2	<u>Tax Returns</u>	61
6.3	<u>Post-Closing Tax Actions</u>	61
6.4	<u>Assistance and Cooperation</u>	61
6.5	<u>Termination of Tax Allocation Arrangements</u>	62
6.6	<u>Ownership Changes</u>	62
6.7	<u>Straddle Period</u>	62
7.	<u>Conditions Precedent to Obligations of Parent and Merger Sub</u>	63
7.1	<u>Accuracy of Representations</u>	63

7.2	<u>Performance of Covenants</u>	63
7.3	<u>Governmental and Other Consents</u>	63
7.4	<u>No Material Adverse Effect</u>	64
7.5	<u>Stockholder Approval</u>	64
7.6	<u>Officer's Certificate</u>	64
7.7	<u>Closing Documents</u>	64
7.8	<u>No Restraints</u>	64
7.9	<u>No Legal Proceedings</u>	64
7.10	<u>Section 280G Stockholder Approval</u>	64
7.11	<u>Termination of Employee Plans</u>	64
7.12	<u>Tail Insurance</u>	64
8.	<u>Conditions Precedent to Obligations of the Company</u>	65
8.1	<u>Accuracy of Representations</u>	65
8.2	<u>Performance of Covenants</u>	65
8.3	<u>Governmental Consents</u>	65
8.4	<u>Officer's Certificate</u>	65
8.5	<u>Stockholder Approval</u>	65
8.6	<u>No Restraints</u>	65
9.	<u>Termination</u>	65
9.1	<u>Termination Events</u>	65
9.2	<u>Termination Procedures</u>	66
9.3	<u>Effect of Termination</u>	67
10.	<u>Indemnification, Etc.</u>	67
10.1	<u>Survival of Representations, Etc.</u>	67
10.2	<u>Indemnification</u>	68
10.3	<u>Limitations</u>	69
10.4	<u>No Contribution</u>	71
10.5	<u>Claim Procedures</u>	71
10.6	<u>Defense of Third Party Claims</u>	74
10.7	<u>Exclusive Remedy</u>	75
10.8	<u>Exercise of Remedies Other Than by Parent</u>	75
10.9	<u>Tax Treatment of Indemnity Payments</u>	75
11.	<u>Miscellaneous Provisions</u>	75
11.1	<u>Securityholders' Agent</u>	75
11.2	<u>Further Assurances</u>	77
11.3	<u>No Waiver Relating to Claims for Fraud or Intentional Misrepresentation</u>	78
11.4	<u>Fees and Expenses</u>	78
11.5	<u>Attorneys' Fees</u>	78
11.6	<u>Notices</u>	78
11.7	<u>Headings</u>	79

<u>11.8</u>	<u>Counterparts and Exchanges by Electronic Transmission</u>	79
<u>11.9</u>	<u>Governing Law; Dispute Resolution</u>	80
<u>11.10</u>	<u>Successors and Assigns; Parties in Interest</u>	80
<u>11.11</u>	<u>Remedies Cumulative; Specific Performance</u>	80
<u>11.12</u>	<u>Waiver</u>	80
<u>11.13</u>	<u>Waiver of Jury Trial</u>	81
<u>11.14</u>	<u>Amendments</u>	81
<u>11.15</u>	<u>Severability</u>	81
<u>11.16</u>	<u>Confidential Nature of Information</u>	81
<u>11.17</u>	<u>No Public Announcement</u>	81
<u>11.18</u>	<u>Entire Agreement</u>	82
<u>11.19</u>	<u>Disclosure Schedule</u>	82
<u>11.20</u>	<u>Construction</u>	82
<u>11.21</u>	<u>Waiver of Conflicts; Privilege.</u>	83
<u>11.22</u>	<u>Independent Investigation; Non-Reliance.</u>	84

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Certain Definitions
Exhibit B	Form of Joinder and Support Agreement
Exhibit C	Form of Non-Competition Agreement
Exhibit D	Form of Holdback Agreement
Exhibit E	Form of Option Conversion Agreement
Exhibit F	Form of Escrow Agreement
Exhibit G	Form of Warrant Surrender Agreement
Exhibit H	Form of Letter of Transmittal
Exhibit I	Persons Whose Knowledge Is Imputed to the Company
Exhibit J	New Stock Plan

SCHEDULES

Schedule A-1	Sample Net Working Capital Calculation
Schedule B	Persons Entering Into Joinder and Support Agreements
Schedule C	Founders and Key Employee
Schedule 1.3(b)(xx)	India Share Transferor
Schedule 1.5	Treatment of Restricted Stock
Schedule 4.2	Parent Representatives
Schedule 4.5(a)	Agreements to be Terminated
Schedule 5.6	Company Indemnification Obligations
Schedule 7.3(b)	Other Consents

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this “Agreement”) is made and entered into as of September 14, 2020, by and among: **Pure Storage, Inc.**, a Delaware corporation (“Parent”); **Porsche Acquisition Corp.**, a Delaware corporation and a wholly owned Subsidiary of Parent (“Merger Sub”); **Portworx Inc.**, a Delaware corporation (together with each corporation or other Entity that has been merged into or that otherwise is a predecessor thereto, the “Company”); and **Shareholder Representative Services LLC**, a Colorado limited liability company, solely in its capacity, as the Securityholders’ Agent (as defined in Section 11.1). Certain capitalized terms used in this Agreement are defined in Exhibit A.

RECITALS

A. Parent, Merger Sub and the Company intend to effect a merger of Merger Sub with and into the Company (the “Merger”) in accordance with this Agreement and the Delaware General Corporation Law (the “DGCL”). Upon the consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly owned Subsidiary of Parent.

B. The respective boards of directors of Parent, Merger Sub and the Company have approved this Agreement and the Merger.

C. As an inducement for Parent and Merger Sub to enter into this Agreement and consummate the Merger, concurrently with the execution and delivery hereof, certain entities and individuals identified in Schedule B are entering into Joinder and Support Agreements in favor of Parent (collectively, the “Joinder and Support Agreements”) in the form attached hereto as Exhibit B.

D. As an inducement for Parent and Merger Sub to enter into this Agreement and consummate the Merger, concurrently with the execution and delivery hereof, each Founder is entering into a Non-Competition and Non-Solicitation Agreement, in the form attached hereto as Exhibit C (collectively, the “Non-Competition Agreements”), in favor of Parent, which shall become effective at the Effective Time.

E. As an inducement for Parent and Merger Sub to enter into this Agreement and consummate the Merger, concurrently with the execution and delivery hereof, each Founder and each Key Employee is entering into an Employment Offer Letter with Parent or a Subsidiary thereof (and other customary employment documents) (collectively, the “Key Employee Offer Letters”), which shall become effective at the Effective Time.

F. As an inducement for Parent and Merger Sub to enter into this Agreement and consummate the Merger, concurrently with the execution and delivery hereof, each of the

Founders is entering into a Holdback Agreement in the form attached hereto as Exhibit D, which shall become effective at the Effective Time.

AGREEMENT

The parties to this Agreement agree as follows:

1. Description of Transaction

1.1 Merger of Merger Sub into the Company. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the relevant provisions of the DGCL, at the Effective Time (as defined in Section 1.3), Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the “Surviving Corporation”) and a wholly owned Subsidiary of Parent.

1.2 Effect of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

1.3 Closing; Effective Time.

(a) The consummation of the transactions contemplated by this Agreement (the “Closing”) shall be conducted remotely via electronic exchange of documents no later than the third Business Day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 7 and 8 (other than those conditions which are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions). The date on which the Closing actually takes place is referred to in this Agreement as the “Closing Date.” Contemporaneously with or as promptly as practicable after the Closing, the parties hereto shall cause a certificate of merger (the “Certificate of Merger”) conforming to the requirements of the DGCL to be executed and filed with the Secretary of State of the State of Delaware. The Merger shall become effective on the Closing Date as of the time that the Certificate of Merger is filed with and accepted by the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the “Effective Time”).

(b) At the Closing, the Company shall deliver, or cause to be delivered, the following agreements and documents to Parent:

- (i) the Escrow Agreement, duly executed by the Securityholders’ Agent;

- (ii) the Payment Agent Agreement, duly executed by the Securityholders' Agent;
- (iii) Joinder and Support Agreements duly executed by the holders of at least 92% of the outstanding shares of Company Capital Stock (on an as-converted basis), each of which shall be in full force and effect;
- (iv) agreements, in form and substance reasonably satisfactory to Parent, terminating the agreements identified in Schedule 4.5(a);
- (v) a certificate, in form and substance reasonably satisfactory to Parent, duly executed on behalf of the Company by the chief executive officer or chief financial officer of the Company, containing the following information (to be set forth on an accompanying spreadsheet) and the representation and warranty of the Company that all of such information is accurate and complete (and in the case of dollar amounts, properly calculated) as of the Closing (such spreadsheet and accompanying certificate being referred to hereafter collectively as the "Merger Consideration Certificate"):
 - (1) (A) the Aggregate Pro Rata Share of each Effective Time Holder; and (B) the Per Share Amount;
 - (2) with respect to each Person who is a holder of Outstanding Capital Stock, which in each case, to the extent required, shall be determined at the Closing based on the Estimated Purchase Price:
 - (A) the name and the email address of record of each such holder;
 - (B) the number of shares of Outstanding Capital Stock of each class and series held by each such holder;
 - (C) the number of shares of the Company Restricted Stock held by such Person, if any;
 - (D) the vesting schedule applicable to each share of the Company Restricted Stock held by such Person (in each case, after giving effect to any vesting that is contingent on the completion of the Merger);
 - (E) the consideration that each such holder is entitled to receive pursuant to Section 1.5;
 - (F) whether such shares of Company Capital Stock were acquired upon exercise of a Company Option (and, if so, whether such Company Option was an "incentive stock option" within the meaning of Section 422 of the Code,

- whether the Merger results in a “disqualifying disposition” of such shares described in Section 421(b) of the Code, and whether such shares were ever subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code (and, if so, the fair market value of such shares upon vesting));
- (G) to the extent that such Person is a Founder, (i) the Escrowed Holdback Amount and (ii) the Non-Escrowed Holdback Amount;
 - (H) the cash amounts to be contributed to each of the Escrow Fund with respect to the shares of Outstanding Capital Stock held by each such holder pursuant to Section 1.5(c) and the Securityholders’ Agent Expense Fund with respect to the shares of Outstanding Capital Stock held by each such holder pursuant to Section 11.1(e);
 - (I) the net cash amount to be paid to each such holder by the Payment Agent upon delivery of a Letter of Transmittal and the surrender of any certificates representing such shares of Company Capital Stock, if any, or the electronic transfer of Company Book Entry Shares, in accordance with Section 1.8 (after deduction of any amounts to be contributed to the Escrow Fund by such holder); and
 - (J) whether any Taxes are required to be withheld in accordance with Section 1.8(h) from the consideration that each such holder is entitled to receive pursuant to Section 1.5, including any portion thereof to be contributed to the Escrow Fund or the Securityholders’ Agent Expense Fund;
- (3) with respect to each Outstanding In-the-Money Vested Option, which in each case, to the extent required, shall be determined at the Closing based on the Estimated Purchase Price:
- (A) the name and the email address of record of the holder thereof;
 - (B) the exercise price per share and the number of shares of Company Common Stock subject to such Company Option;
 - (C) the consideration that the holder of such Company Option is entitled to receive pursuant to Section 1.6(a);
 - (D) the net cash amount to be paid to the holder of such Company Option pursuant to Section 1.6(a); and

- (E) whether such Company Option is an Employee Option or Non-Employee Option, and whether any Taxes are required to be withheld in accordance with Section 1.8(h) from the consideration that the holder of such Company Option is entitled to receive pursuant to Section 1.6(a);
 - (F) the cash amounts to be contributed to each of the Escrow Fund with respect to the Outstanding In-the-Money Vested Options held by each such holder pursuant to Section 1.6(a) and the Securityholders' Agent Expense Fund with respect to the Outstanding In-the-Money Vested Options held by each such holder pursuant to Section 11.1(e);
- (4) with respect to each Outstanding In-the-Money Unvested Option:
- (A) the name and the email address of record of the holder thereof;
 - (B) the respective grant date of such Company Option;
 - (C) the exercise price per share, if any, and the number of shares of Company Common Stock subject to such Company Option;
 - (D) the vesting schedule applicable to such Company Option, including the vesting commencement date and the grant date of such Company Option;
 - (E) the expiration date of such Company Option;
 - (F) whether such Company Option is an "incentive stock option" as defined in Section 422 of the Code or subject to Section 409A of the Code;
 - (G) whether such Company Option is an Employee Option or Non-Employee Option;
 - (H) the number of shares of Parent Common Stock that will be subject to such Company Option immediately after the Effective Time; and
 - (I) the exercise price per share of such Company Option as of immediately after the Effective Time;
- (5) with respect to each Outstanding Warrant (after giving effect to any exercises or deemed exercises of Company Warrants prior to the Effective Time), which in each case, to the extent required,

shall be determined at the Closing based on the Estimated Purchase Price:

- (A) the name and the email address of record of the holder of such Outstanding Warrant;
 - (B) the exercise price per share and the number, class and series of shares of Company Capital Stock subject to such Outstanding Warrant;
 - (C) the consideration that the holder of such Outstanding Warrant is entitled to receive pursuant to Section 1.6(d);
 - (D) the cash amounts to be contributed to each of the Escrow Fund with respect to the shares of Company Capital Stock subject to such Outstanding Warrant pursuant to Section 1.6(d) and the Securityholders' Agent Expense Fund with respect to shares of Company Capital Stock subject to such Outstanding Warrant pursuant to Section 11.1(e);
 - (E) the net cash amount to be paid to the holder of such Outstanding Warrant (after deduction of amounts to be contributed to the Escrow Fund and the Securityholders' Agent Expense Fund by such holder) pursuant to Section 1.6(d);
 - (F) whether any Taxes are required to be withheld in accordance with Section 1.8(h) from the consideration that the holder of such Outstanding Warrant is entitled to receive pursuant to Section 1.6(d) (including any portion thereof to be contributed to the Escrow Fund and the Securityholders' Agent Expense Fund); and
- (vi) the Warrant Surrender Agreements; in the form attached hereto as Exhibit G, duly executed by each holder of the Outstanding Warrants, if any;
- (vii) the Certificate of Merger, duly executed by the Company;
- (viii) a certificate of the Secretary of the Company, dated as of the Closing Date and in form and substance reasonably satisfactory to Parent, certifying and attaching: (A) the Charter Documents of the Company; (B) the resolutions adopted by the board of directors of the Company and the stockholders of the Company to (i) authorize and adopt this Agreement, the Merger and the other transactions contemplated hereby, (ii) adopt the New Stock Plan in the form of Exhibit J and (iii) authorize and adopt the Amended & Restated Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware on September 11, 2020; (C) the resolutions adopted by the board of directors of the Company approving the grant and issuance of the

New Restricted Stock Units and (D) the incumbency of the officers of the Company executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of the Company pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby;

(ix) written resignations of each officer, member of the board of directors or managers (or similar body) of each Acquired Entity, effective as of the later of the Effective Time and the date Parent causes such director, officer or manager to be replaced, in form and substance satisfactory to Parent;

(x) evidence reasonably satisfactory to Parent that the Company secured from each “disqualified individual” (within the meaning of Section 280G(c) of the Code) who has a right to any “parachute payment” (within the meaning of Section 280G) a waiver of such individual’s rights to any Waived Section 280G Payments, in form and substance satisfactory to Parent, and has submitted to its stockholders for approval, in accordance with the requirements of Section 280G(b)(5)(B) of the Code and the applicable rulings and regulations thereunder, the Waived Section 280G Payments;

(xi) evidence reasonably satisfactory to Parent that all Insider Receivables and Insider Payables, if any, have been repaid in full;

(xii) dated as of the Closing Date, a statement conforming to the requirements of United States Treasury Regulations Sections 1.897-2(h)(1)(i) and 1.1445-2(c)(3), certifying that the Company is not, and has not been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a “United States real property holding corporation” for purposes of Sections 897 and 1445 of the Code (the “FIRPTA Statement”) and the notification required under United States Treasury Regulations Section 1.897-2(h)(2) (the “FIRPTA Notification”), together with written authorization for Parent to deliver the FIRPTA Notification and a copy of the FIRPTA Statement to the Internal Revenue Service on behalf of the Company after the Closing, in each case in form and substance reasonably satisfactory to Parent and duly executed by the Company and signed by a responsible corporate officer of the Company;

(xiii) the Holdback Agreements, each of which shall be in full force and effect;

(xiv) the Option Conversion Agreements, in the form attached hereto as Exhibit E, duly executed by holders of 85% of Company Options;

(xv) all documents required by Section 4.8;

(xvi) the Non-Competition Agreements, each of which shall be in full force and effect;

(xvii) the Key Employee Offer Letters, each of which shall be in full force and effect, and no Founder or Key Employee shall have expressed an intent to terminate his employment with the Company;

(xviii) Employment Offer Letters duly executed by not less than (i) 90% of the Offered Employees holding the positions of engineers of the Company and (ii) 80% of the remaining Offered Employees, each of which shall be in full force and effect;

(xix) evidence reasonably satisfactory to Parent (A) as to the termination of all Non-Continuing Employees (except for any non-U.S. Acquired Entity Employee who is provided with an Employment Offer Letter and continues to be an employee of any Acquired Entity, Parent or any Affiliate thereof regardless of whether such individual's employment or service to any Acquired Entity is deemed to have been terminated as of the Closing, pursuant to local Legal Requirements or otherwise) and the payment of all Non-Continuing Employee Compensation; and (B) that the Company shall have complied with its obligations set forth in the last sentence of Schedule 4.9;

(xx) (i) a share transfer form duly executed by the individual identified in Schedule 1.3(b)(xx) in respect of his ownership in the Foreign Subsidiary in favor of a nominee of Parent and (ii) evidence reasonably satisfactory to Parent as to the adoption by the board of directors (or similar body) of the Foreign Subsidiary of resolutions approving such share transfer (the "India Share Transfer"); and

(xxi) accurate and complete copies of all executed Contracts and documents relating to the New Restricted Stock Units.

(c) At the Closing, Parent shall deliver to the Company the Escrow Agreement, duly executed by Parent and the Escrow Agent.

(d) At the Closing, Parent shall deliver to the Company a certificate of the Secretary of Parent, dated as of the Closing Date and in form and substance reasonably satisfactory to the Company, certifying and attaching (A) the resolutions adopted by the board of directors (or a committee thereof) of Parent and Merger Sub to authorize and adopt this Agreement, the Merger and the other transactions contemplated hereby and (B) the incumbency of the officers of Parent executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of Parent pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby.

1.4 Certificate of Incorporation and Bylaws; Directors and Officers. Unless otherwise determined by Parent prior to the Effective Time:

(a) the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the certificate of

incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation shall be Portworx Inc.;

(b) the bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time in a form acceptable to Parent; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be those individuals designated by Parent in its sole discretion.

1.5 Conversion of Shares.

(a) Conversion. Subject to Sections 1.5(d), 1.7 and 1.8, at the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company, any stockholder of the Company or any other Person:

(i) each share of Company Capital Stock held in the Company's treasury or owned by Parent, Merger Sub, the Company or any direct or indirect wholly owned Subsidiary of Parent, Merger Sub or the Company immediately prior to the Effective Time ("Disregarded Shares"), if any, shall be extinguished and cancelled without payment of any consideration in respect thereof;

(ii) each share of Company Capital Stock (including each share of Company Restricted Stock) issued and outstanding immediately prior to the Effective Time held by each Non-Dissenting Stockholder (other than Disregarded Shares) shall be converted automatically into the right to receive (following the delivery of a Letter of Transmittal and the surrender of any certificates, if any, or electronic transfer of Company Book Entry Shares, representing such shares of Company Capital Stock in accordance with Section 1.8):

(A) an amount in cash equal to: (1) the Per Share Amount; *minus* (2) the Escrow Contribution Amount for such share of Company Capital Stock held by such Non-Dissenting Stockholder; *minus* (3) the Securityholders' Agent Expense Fund Contribution Amount for such share of Company Capital Stock held by such Non-Dissenting Stockholder; *provided, that*, for the avoidance of doubt, shares of Company Restricted Stock shall not have any Escrow Contribution Amount or Securityholders' Agent Expense Fund Contribution Amount; and

(B) any cash disbursements required to be made from the Escrow Fund and the Securityholders' Agent Expense Fund with respect to such shares to the former holder thereof in accordance with the terms of this Agreement and the Escrow Agreement, if, as and when such disbursements are required to be made;

provided, however, 25% of the Merger Consideration otherwise payable to each Founder pursuant to Section 1.5(a)(ii) in respect of Company Common Stock excluding Company Restricted Stock (the "Holdback Amount")

will not be paid to such Founder. Each Founder's Holdback Amount shall count towards such Founder's Aggregate Escrow Contribution Amount and shall be deposited by Parent into the Escrow Fund pursuant to Section 1.5(c) (the "Escrowed Holdback Amount"). The portion of such Founder's Holdback Amount exceeding such Founder's Aggregate Escrow Contribution Amount, if any, shall be held by Parent (the "Non-Escrowed Holdback Amount"). The Escrowed Holdback Amount and the Non-Escrowed Holdback Amount will be distributed to each Founder and/or Parent, as applicable, in accordance with the terms of this Agreement, the Escrow Agreement and the respective Holdback Agreement; and

provided, further, that as to each share of Company Restricted Stock issued and outstanding immediately prior to the Effective Time, the right to receive an amount in cash pursuant to Section 1.5(a)(ii) shall be subject to the same restrictions and vesting arrangements that were applicable to such shares of Company Restricted Stock immediately prior to the Effective Time, shall be paid within thirty (30) days following the applicable vesting date, and shall be subject to Schedule 1.5.

(iii) each share of the common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted automatically into one share of common stock of the Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Merger Sub, if any, and Company Book Entry Shares, shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

The amount of cash, if any, that each holder is entitled to receive at any particular time for each share of Outstanding Capital Stock held by such holder or Outstanding In-the-Money Vested Options (as defined in Section 1.6(a)) or Outstanding Warrants (as defined in Section 1.6(d)) held by such holder (as the case may be) shall be rounded to the nearest cent and the aggregate amount of cash, if any, that each such holder is entitled to receive at any particular time shall be computed after aggregating the cash amounts payable at such time for all shares of each class and series of Outstanding Capital Stock, all Outstanding In-the-Money Vested Options and all Outstanding Warrants held by such holder.

(b) Definitions. For purposes of this Agreement:

(i) The "Aggregate Exercise Price" shall be the aggregate dollar amount payable to the Company as purchase price for the exercise of all Outstanding In-the-Money Vested Options and the Outstanding Warrants.

(ii) The "Aggregate Escrow Contribution Amount" for each Effective Time Holder shall be determined by adding: (A) the aggregate Escrow Contribution Amounts for the shares of Outstanding Capital Stock held by such Effective Time Holder immediately prior to the Effective Time, (B) the aggregate

Escrow Contribution Amounts for the Outstanding In-the-Money Vested Options held by such Effective Time Holder as of immediately prior to the Effective Time and (C) the aggregate Escrow Contribution Amounts for the shares purchasable under or otherwise subject to Outstanding Warrants held by such Effective Time Holder as of immediately prior to the Effective Time.

(iii) The “Aggregate Pro Rata Share” for each Effective Time Holder shall be determined by *adding*: (A) the aggregate Pro Rata Shares for the shares of Outstanding Capital Stock held by such Effective Time Holder immediately prior to the Effective Time (excluding such shares of Company Restricted Stock), (B) the aggregate Pro Rata Shares for the Outstanding In-the-Money Vested Options held by such Effective Time Holder as of immediately prior to the Effective Time and (C) the aggregate Pro Rata Shares for the shares purchasable under or otherwise subject to Outstanding Warrants held by such Effective Time Holder as of immediately prior to the Effective Time.

(iv) The “Escrow Amount” means \$37,000,000.

(v) The “Escrow Contribution Amount” for each share of Outstanding Capital Stock (excluding such shares of Company Restricted Stock), all Outstanding In-the-Money Vested Options held by an Effective Time Holder, and each share of Company Capital Stock purchasable under or otherwise subject to Outstanding Warrants, in each case as of immediately prior to the Effective Time, equals the product of: (A) the Escrow Amount; *multiplied by* (B) the Pro Rata Share for each share of Outstanding Capital Stock or each share of Company Capital Stock purchasable under or otherwise subject to Outstanding Warrants, as applicable, or, for the Outstanding In-the-Money Vested Options held by each Effective Time Holder as of immediately prior to the Effective Time, the aggregate Pro Rata Share for such Outstanding In-the Money Vested Options.

(vi) The “Exchange Ratio” means the fraction having a numerator equal to the Per Share Amount, and having a denominator equal to the average closing sale price of one share of Parent Common Stock rounded to the nearest penny as reported on the New York Stock Exchange for the period of 10 consecutive trading days ending on (and including) the third trading day immediately preceding the Closing Date (as adjusted as appropriate to reflect any stock splits, stock dividends, combinations, reorganizations, reclassifications or similar events).

(vii) The “Per Share Amount” shall be determined by *dividing*: (A) the sum of the Purchase Price *plus* the Aggregate Exercise Price; *by* (B) the *sum* of (without duplication): (1) the aggregate number of shares of Company Common Stock (excluding any such shares that are shares of Company Restricted Stock); *plus* (2) the aggregate number of shares of Company Common Stock that are issuable upon the conversion in full of all shares of Company Preferred Stock outstanding immediately prior to the Effective Time; *plus* (3) the aggregate number of shares of Company Common Stock purchasable under or otherwise

subject to Outstanding In-the-Money Vested Options; *plus* (4) the aggregate number of shares of Company Common Stock that are issuable upon the conversion in full of all shares of Company Preferred Stock purchasable under or otherwise subject to Outstanding Warrants; *provided, however*, that the New Restricted Stock Units will not be included for the purpose of such determination.

(viii) The “Pro Rata Share” for each share of Outstanding Capital Stock (excluding such shares of Company Restricted Stock), each Outstanding In-the-Money Vested Option, and each share of Company Capital Stock purchasable under or otherwise subject to Outstanding Warrants, in each case as of immediately prior to the Effective Time, shall be determined by *dividing*: (A) the total Merger Consideration payable for such share or Outstanding In-the-Money Vested Option pursuant to Sections 1.5(a)(ii), 1.6(a) and 1.6(d), as the case may be (without regard to whether such Merger Consideration is contributed by such Effective Time Holder to the Escrow Fund); *by* (B) the total Merger Consideration payable to all Effective Time Holders pursuant to Sections 1.5(a)(ii) (except with respect to shares of Company Restricted Stock), 1.6(a) and 1.6(d), as the case may be (without regard to whether such Merger Consideration is contributed by the Effective Time Holders to the Escrow Fund).

(ix) The “Purchase Price” shall be: (A) \$370,000,000; *minus* (B) the Estimated Closing Indebtedness Amount; *minus* (C) the Estimated Closing Company Transaction Expenses; *plus* (D) the Estimated Closing Cash; *plus* (E) the Estimated Net Working Capital Adjustment Amount (it being understood that all amounts used in calculating the Purchase Price shall be based on the corresponding amounts set forth and represented in the Merger Consideration Certificate).

(x) The “Securityholders’ Agent Expense Fund Contribution Amount” for each share of Outstanding Capital Stock (excluding such shares of Company Restricted Stock), all Outstanding In-the-Money Vested Options held by an Effective Time Holder, and each share of Company Capital Stock purchasable under or otherwise subject to Outstanding Warrants, in each case as of immediately prior to the Effective Time, equals the product of: (A) the Securityholders’ Agent Expense Fund Amount; *multiplied by* (B) the Pro Rata Share for each share of Outstanding Capital Stock or each share of Company Capital Stock purchasable under or otherwise subject to Outstanding Warrants, as applicable, or, for the Outstanding In-the-Money Vested Options held by each Effective Time Holder as of immediately prior to the Effective Time, the aggregate Pro Rata Share for such Outstanding In-the Money Vested Options.

(c) Escrow Contribution. Notwithstanding anything to the contrary contained in this Agreement, at the Closing, Parent shall withhold from the Purchase Price payable pursuant hereto and deposit into an escrow account with Acquiom Clearinghouse LLC, or any replacement escrow agent thereafter designated pursuant to the Escrow Agreement (the “Escrow Agent”), to secure the indemnification obligations of the Effective Time Holders under Section 10 of this Agreement, an amount in cash equal to the Escrow

Amount (the “Escrow Fund”). The Escrow Fund shall be non-interest bearing and shall be held by the Escrow Agent and disbursed by it solely for the purposes of and in accordance with the terms of this Agreement and the provisions of the escrow agreement to be entered into among Parent, the Securityholders’ Agent and the Escrow Agent on the Closing Date, substantially in the form attached hereto as Exhibit F to this Agreement (the “Escrow Agreement”). The terms and provisions of the Escrow Agreement and the transactions contemplated thereby are specific terms of the Merger, and the approval and adoption of this Agreement and approval of the Merger by the Effective Time Holders pursuant to written consents evidencing the Required Merger Stockholder Vote and the Holdback Agreements, the Warrant Surrender Agreements and the Letters of Transmittal shall constitute approval by such Effective Time Holders, as specific terms of the Merger, and the irrevocable agreement of such Effective Time Holders to be bound by and comply with, the Escrow Agreement and all of the arrangements and provisions of this Agreement relating thereto, including the deposit of the Escrow Amount into escrow and the indemnification obligations set forth in Section 10 hereof.

(d) Adjustments. In calculating the consideration payable under this Section 1.5, Parent shall be entitled to rely on the representations and warranties contained in Section 2.3, the Company Closing Certificate and the Merger Consideration Certificate.

1.6 Treatment of Company Options, Company Warrants and New Restricted Stock Units.

(a) Vested Options.

(i) Subject to Sections 1.5(d) and 1.8(h), at the Effective Time, each Company Option or portion thereof that is vested, outstanding and unexercised immediately prior to the Effective Time (after giving effect to any vesting that is contingent upon the completion of the Merger) (each, a “Vested Option”) shall be cancelled and the holder thereof shall be entitled to receive pursuant to this Section 1.6(a), for such holder’s Company Common Stock subject to such Vested Options, an amount in cash equal to: (A) the Per Share Amount *minus* the purchase price for the exercise of a share of Company Common Stock subject to such Vested Option; *multiplied by* the total number of shares of Company Common Stock subject to such Vested Option held by such holder; *minus* (B) the Escrow Contribution Amount; *minus* (C) the Securityholders’ Agent Expense Fund Contribution Amount; *plus* (D) any cash disbursements required to be made from the Escrow Fund and the Securityholders’ Agent Expense Fund with respect to such Vested Options in accordance with the terms of this Agreement and the Escrow Agreement, if, as and when such disbursements are required to be made. If the exercise price payable in respect of a share of Company Common Stock subject to a Vested Option equals or exceeds the Per Share Amount (an “Underwater Vested Option”), then the amount payable hereunder with respect to such Vested Option shall be zero. Each Vested Option, other than any Underwater Vested Option, is referred to in this Agreement as an “Outstanding In-the-Money Vested Option”.

(ii) Prior to the Effective Time, the Company shall take all action that may be necessary (under the Company Stock Plan or otherwise) to effectuate the provisions of Section 1.6(a)(i) and to ensure that, from and after the Effective Time, each holder of a Vested Option cancelled as provided in Section 1.6(a)(i) shall cease to have any rights with respect thereto, except the right to receive the consideration specified in Section 1.6(a)(i), if any, without interest (other than interest that may be accrued on the Escrow Fund).

(b) Unvested Options.

(i) At the Effective Time, each Company Option or portion thereof: (x) that is unvested, outstanding and unexercised immediately prior to the Effective Time (after giving effect to any vesting that is contingent upon the completion of the Merger) (each, an “Unvested Option”); (y) held by a Continuing Employee and (z) that has an exercise price per share of Company Common Stock subject to such Company Option that is less than the Per Share Amount (an “Outstanding In-the-Money Unvested Option”) shall be converted into and become an option to purchase Parent Common Stock, and Parent shall assume such Outstanding In-the-Money Unvested Option subject to the remainder of this Section 1.6(b)(i) (all Outstanding In-the-Money Unvested Options that are assumed pursuant to this Section 1.6(b)(i) are hereafter referred to as “Assumed Options”). All rights to purchase shares of Company Common Stock under Assumed Options shall thereupon be converted into rights to purchase Parent Common Stock. Accordingly, from and after the Effective Time: (A) each Assumed Option may be exercised solely for shares of Parent Common Stock; (B) the number of shares of Parent Common Stock subject to each Assumed Option shall be determined by multiplying the number of shares of Company Common Stock that were subject to such Assumed Option immediately prior to the Effective Time by the Exchange Ratio, and rounding the resulting number down to the nearest whole number of shares of Parent Common Stock; (C) the per share exercise price for a share of Parent Common Stock issuable upon exercise of each Assumed Option shall be determined by dividing the per share exercise price of a share of Company Common Stock subject to such Assumed Option, as in effect immediately prior to the Effective Time, by the Exchange Ratio, and rounding the resulting exercise price up to the nearest whole cent; (D) any restriction on the exercise of any Assumed Option shall continue in full force and effect and the term, exercisability and vesting schedule of such Assumed Option shall otherwise remain unchanged as a result of the assumption or replacement of such Assumed Option; provided, however, that no Assumed Options or portion thereof shall be (1) exercisable prior to vesting or (2) an “incentive stock option” within the meaning of Section 422 of the Code; and (E) the Parent’s board of directors and/or a committee thereof shall succeed to the authority and responsibility of the Company’s board of directors or any committee thereof with respect to the administration of the Company Stock Plan.

(ii) Each Unvested Option that is held by a Non-Continuing Employee shall be cancelled and extinguished at the Effective Time without any present or future right to receive any portion of the Merger Consideration therefor.

(iii) Prior to the Effective Time, the Company shall take all actions that may be necessary (under the Company Stock Plan and otherwise) to: (A) effectuate the provisions of Sections 1.6(b)(i) and 1.6(b)(ii); and (B) to ensure that, from and after the Effective Time, holders of Unvested Options have no rights with respect thereto other than those specifically provided in Sections 1.6(b)(i) and 1.6(b)(ii), if any.

For the avoidance of doubt, the Assumed Options shall not be adjusted as a result of Section 1.8(h).

(c) New Restricted Stock Units.

(i) At the Effective Time, each New Restricted Stock Unit award held by a Continuing Employee that is unexpired and outstanding as of the Effective Time shall, on the terms and subject to the conditions set forth in this Agreement, be assumed by Parent. Each such New Restricted Stock Unit award so assumed by Parent under this Agreement shall continue to have, and be subject to, the same terms and conditions (including, if applicable, the vesting arrangements and other terms and conditions set forth in the plan under which such New Restricted Stock Unit award was issued and the applicable notice of grant of stock unit or other applicable agreement) as are in effect immediately prior to the Effective Time, except that such New Restricted Stock Unit award shall be settled by the issuance of that number of whole shares of Parent Common Stock equal to the product (rounded down to the next whole number of shares of Parent Common Stock, with no cash being payable for any fractional share eliminated by such rounding) of the number of shares of Company Common Stock that were issuable pursuant to such New Restricted Stock Unit award immediately prior to the Effective Time multiplied by the Exchange Ratio. The Merger shall not terminate any of the outstanding New Restricted Stock Units held by Continuing Employees or accelerate the vesting or settlement of such New Restricted Stock Units. Each New Restricted Stock Unit that is not assumed by Parent pursuant to this Section 1.6(c) shall be cancelled for no consideration as of the Effective Time.

(ii) Each New Restricted Stock Unit that is held by a Non-Continuing Employee shall be cancelled and extinguished at the Effective Time without any present or future right to receive any portion of the Merger Consideration therefor.

(iii) Prior to the Effective Time, the Company shall take all actions that may be necessary (under the New Stock Plan and otherwise) to: (A) effectuate the provisions of Sections 1.6(c)(i) and 1.6(c)(ii); and (B) to ensure that, from and after the Effective Time, holders of New Restricted Stock Units have no rights with respect thereto other than those specifically provided in Section 1.6(c)(i).

(d) Warrants. Prior to the Closing, each warrant to purchase shares of Company Capital Stock (a “Company Warrant”) that is outstanding and unexercised immediately prior to the Effective Time (each such Company Warrant being referred to herein as an “Outstanding Warrant”) shall, pursuant to a Warrant Surrender Agreement and contingent on and effective immediately prior to the Effective Time, be cancelled, terminated and extinguished as of the Effective Time, and upon the cancellation thereof be converted into the right to receive, in respect of each share of Company Capital Stock then vested and subject to such Company Warrant immediately prior to such cancellation, termination and extinguishment: (A) an amount in cash equal to: (1) the Per Share Amount; minus (2) the Escrow Contribution Amount and the Securityholders’ Agent Expense Fund Contribution Amount for such share; minus (3) the exercise price per share of Company Capital Stock subject to such Company Warrant (it being understood that, if the exercise price payable in respect of such share of Company Capital Stock issuable under any Company Warrant equals or exceeds the Per Share Amount, the amount payable hereunder with respect to such Company Warrant shall be zero); plus (B) any cash disbursements required to be made from the Escrow Fund and the Securityholders’ Agent Expense Fund with respect to such share to the former holder of such Company Warrant in accordance with the terms of this Agreement and of the Escrow Agreement, if, as and when such disbursements are required to be made. Each Warrant Surrender Agreement shall be in the form attached hereto as Exhibit G. The Company shall take all actions that may be necessary to ensure each holder of an Outstanding Warrant cancelled as provided in this Section 1.6(d) shall cease to have any rights with respect thereto, except the right to receive the consideration specified in this Section 1.6(d), without interest.

(e) Payment. Following the Effective Time, Parent: (i) shall cause to be paid, no later than the second payroll date following the Closing Date, through the payroll services of the applicable Acquired Entity or Parent to each holder of an Employee Option that has delivered an Option Conversion Agreement, in the form attached hereto as Exhibit E, to Parent, the consideration, if any, specified in Section 1.6(a), without interest, *less* applicable withholding Taxes; and (ii) shall cause to be paid promptly by the Payment Agent: (A) to each holder of a Non-Employee Option entitled to a portion of the Merger Consideration that has delivered an Option Conversion Agreement to Parent and a Letter of Transmittal to the Payment Agent, the consideration, if any, specified in Section 1.6(a), without interest; and (B) to each holder of an Outstanding Warrant that has delivered a duly executed Warrant Surrender Agreement to Parent and a Letter of Transmittal to the Payment Agent, the consideration specified in Section 1.6(d), without interest.

(f) Discretionary Assumption of Company Stock Option Plan. At the Effective Time, Parent may (but shall not be obligated to) assume the Company Stock Plan or merge the Company Stock Plan into any equity compensation plan of Parent. If Parent elects to so assume or merge the Company Stock Plan, then, under the Company Stock Plan, Parent shall be entitled to grant stock awards, to the extent permissible under applicable Legal Requirements, using the share reserves of the Company Stock Plan as of the Effective Time (including any shares subsequently returned to such share reserves as a result of the termination of Assumed Options), except that: (i) shares covered by such

awards shall be shares of Parent Common Stock; (ii) all references in the Company Stock Plan to a number of shares of Company Common Stock shall be deemed amended to refer instead to a number of shares of Parent Common Stock determined by multiplying the number of referenced shares of Company Common Stock by the Exchange Ratio, and rounding the resulting number down to the nearest whole number of shares of Parent Common Stock; (iii) Parent's board of directors and/or a committee thereof shall succeed to the authority and responsibility of the Company's board of directors or any committee thereof with respect to the administration of the Company Stock Plan; and (iv) the Company Stock Plan shall be subject to administrative procedures consistent with those in effect under Parent's equity compensation plan.

1.7 Dissenting Shares.

(a) Effect on Dissenting Shares. Notwithstanding any provisions of this Agreement to the contrary, shares of Company Capital Stock held by a holder who has demanded and perfected a demand for appraisal of such holder's shares of Company Capital Stock in accordance with Section 262 of the DGCL and as of the Closing has neither effectively withdrawn nor lost such holder's right to such appraisal (the "Dissenting Shares") shall not be converted into the applicable Merger Consideration, but shall be entitled to only such rights as are granted by the DGCL. Parent shall be entitled to retain any Merger Consideration not paid on account of such Dissenting Shares pending resolution of the claims of such holders, and no other Person shall be entitled to any portion of such retained Merger Consideration.

(b) Loss of Dissenting Share Status. Notwithstanding the provisions of Section 1.7(a), if any holder of shares of Company Capital Stock who demands appraisal of such holder's shares under the DGCL shall effectively withdraw or lose (through the failure to perfect or otherwise) such holder's right to appraisal under the DGCL, then as of the Closing or the occurrence of such event, whichever occurs later, such holder's shares of Company Capital Stock shall automatically be converted into the right to receive the applicable Merger Consideration, without interest thereon, promptly following the surrender of the certificate or certificates representing such shares of Company Capital Stock, if any, or electronic transfer of Company Book Entry Shares.

(c) Notice of Dissenting Shares. The Company shall give Parent: (i) prompt notice of any demands for appraisal of shares of Company Capital Stock received by the Company, withdrawals of any demands, and any other instruments or notices served or otherwise delivered pursuant to the DGCL and received by the Company; and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands for appraisal and the Company shall not enter into any settlement in respect of any such demands for appraisal without the consent of Parent (which consent shall not be unduly conditioned, withheld or delayed). Following Closing, Parent shall, at its discretion, take control of and direct all negotiations and proceedings with respect to such demands for appraisal that are still outstanding at such time.

1.8 Exchange of Certificates and Payment.

(a) Payment Agent. Acquiom Financial LLC, a Colorado limited liability company, in its capacity as payments administrator, or another nationally recognized bank or trust company selected by Parent shall act as payment administrator in the Merger (the “Payment Agent”). On or promptly after the Effective Time, Parent shall deposit with the Payment Agent cash sufficient to pay the cash consideration payable pursuant to Sections 1.5(a)(ii), 1.6(a)(i) (in respect of Non-Employee Options) and 1.6(d), excluding (i) the Escrow Amount which shall be deposited with the Escrow Agent and (ii) the Securityholders’ Agent Expense Fund Amount which shall be deposited with the Securityholders’ Agent. The cash amount so deposited with the Payment Agent is referred to as the “Payment Fund.” The Payment Fund will be non-interest bearing.

(b) Letter of Transmittal. Promptly following the Effective Time, Parent shall instruct the Payment Agent to deliver (including by means of electronic delivery) to each Person who is a record holder of Outstanding Capital Stock, Outstanding Warrants and Non-Employee Options immediately prior to the Effective Time: (i) a letter of transmittal substantially in the form attached hereto as Exhibit H (including, but not limited to the following provisions: (A) with respect to the Outstanding Capital Stock, a provision confirming that delivery of Company Capital Stock or electronic transfer of Company Book Entry Shares shall be effected, and risk of loss and title to Company Capital Stock shall pass, only upon delivery of applicable Company Stock Certificates, if any, or electronic transfer of Company Book Entry Shares to the Payment Agent and (B) a general release and a provision whereby such holder agrees to be bound by the provisions of Sections 1.5, 1.6, 1.8, 10, 11.1 and the other applicable provisions of this Agreement, a “Letter of Transmittal”); and (ii) with respect to the Outstanding Capital Stock, instructions for use in effecting the delivery of Company Stock Certificates, if any, or electronic transfer of Company Book Entry Shares in exchange for the Merger Consideration payable with respect to shares of Company Capital Stock; *provided, that*, the Company shall not be required to issue Company Stock Certificates for any shares of Outstanding Capital Stock that have previously been represented as Company Book Entry Shares. Upon the delivery to the Payment Agent of a duly completed and validly executed Letter of Transmittal and, (i) in the case of the holders of the Outstanding Warrants, subject also to the delivery of the Warrant Surrender Agreement, (ii) in the case of the holders of Non-Employee Options entitled to a portion of the Merger Consideration, subject also to the delivery of the Option Conversion Agreement and (iii) in the case of the holders of the Outstanding Capital Stock, subject also to the surrender to the Payment Agent of a Company Stock Certificate, if any (or an affidavit of lost stock certificate as described in Section 1.8(e)) or confirmation of electronic transfer of Company Book Entry Share by the Payment Agent, together with a duly executed Letter of Transmittal and such other documents as Parent or the Payment Agent may reasonably request (including a properly completed and duly executed IRS Form W-9, or appropriate version of IRS Form W-8, as applicable), each holder of such Outstanding Capital Stock, Outstanding Warrants and/or Non-Employee Options entitled to a portion of the Merger Consideration, as applicable, shall, subject to Section 1.8(h), if applicable, be entitled to receive in exchange therefor cash in an amount equal to the Merger Consideration, if any, that such holder has the right to receive pursuant to Sections 1.5 and 1.6 at the time of such surrender, and the Company Stock Certificate or Company Book Entry Shares, as applicable, so surrendered shall forthwith be cancelled. From and after the Effective

Time, each Company Stock Certificate, Company Book Entry Share, Company Warrant or Non-Employee Option shall be deemed to represent only the right to receive the Merger Consideration payable with respect to each such Company Stock Certificate, Company Book Entry Share, Company Warrant or Non-Employee Option, and the holder of each such Company Stock Certificate, Company Book Entry Share, Company Warrant or Non-Employee Option shall cease to have any rights with respect to the shares of Company Capital Stock formerly represented thereby, purchasable thereunder or into which such security was convertible.

(c) Payments to Others. If payment of Merger Consideration in respect of shares of Company Capital Stock converted pursuant to Section 1.5 is to be made to a Person other than the Person in whose name such shares of Company Capital Stock are registered, it shall be a condition to such payment that any Company Stock Certificate surrendered in respect thereof, if any (or an affidavit of lost stock certificate as described in Section 1.8(e)), or confirmation of electronic transfer of Company Book Entry Share by the Payment Agent, shall be properly endorsed or shall be otherwise in proper form for transfer and that the Person requesting such payment shall have paid any transfer and other Taxes required by reason of such payment in a name other than that of the registered holder thereof or shall have established to the satisfaction of Parent that such Tax either has been paid or is not payable.

(d) Stock Transfer Books. As of the Effective Time, the stock transfer books of the Company shall be closed and there shall not be any further registration of transfers of shares of Company Capital Stock thereafter on the records of the Company. If, after the Effective Time, certificates for shares of Outstanding Capital Stock ("Company Stock Certificates"), if any (or an affidavit of lost stock certificate as described in Section 1.8(e)), or confirmation of electronic transfer Company Book Entry Share by the Payment Agent, are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration, if any, payable with respect to such shares as provided for in Section 1.5. No interest shall accrue or be paid on any Merger Consideration payable upon the surrender of a Company Stock Certificate or confirmation of electronic transfer of Company Book Entry Share by the Payment Agent, as applicable.

(e) Lost Certificates. In the event any Company Stock Certificate, if any (and not an electronic Company Book Entry Share) representing shares of Outstanding Capital Stock shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the payment of any Merger Consideration with respect to the shares of Company Capital Stock previously represented by such Company Stock Certificate, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit as indemnity against any claim that may be made against the Payment Agent, Parent, the Surviving Corporation or any affiliated party with respect to such Company Stock Certificate.

(f) Undistributed Payment Funds. Any portion of the Payment Fund that remains undistributed as of the date that is 180 days after the date of this Agreement shall be delivered to Parent upon demand, and the Effective Time Holders who have not

provided a Letter of Transmittal in accordance with this Section 1.8, shall thereafter look only to Parent for satisfaction of their claims for the Merger Consideration payable with respect to the shares of Company Capital Stock without any interest thereon.

(g) Escheat. Notwithstanding anything in this Agreement to the contrary, neither Parent nor any other Person shall be liable to any Effective Time Holder or to any other Person for any amount paid to a public official pursuant to applicable abandoned property law, escheat law or similar applicable Legal Requirement. Any Merger Consideration or other amounts remaining unclaimed three (3) years after the Effective Time (or such earlier date immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Body) shall, to the extent permitted by applicable Legal Requirements, become the property of Parent free and clear of any Encumbrance.

(h) Withholding. Each of the Payment Agent, the Escrow Agent, Parent, the Company, Merger Sub, the Surviving Corporation and their respective agents shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement or any Holdback Agreement (including all amounts to be contributed to the Escrow Fund in accordance with Section 1.5(c)) such amounts as any such Person determines in good faith are required to be deducted or withheld therefrom or in connection therewith under the Code or any provision of state, local or foreign Tax law or under any other applicable Legal Requirement. To the extent such amounts are so deducted or withheld, and remitted to the appropriate Governmental Body, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

1.9 Further Action. If, at any time after the Effective Time, any further action is reasonably determined by Parent to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation or Parent with full right, title and possession of and to all rights and property of Merger Sub and the Company, the officers and directors of the Surviving Corporation and Parent shall be fully authorized (in the name of Merger Sub, in the name of the Company and otherwise) to take such action.

1.10 Closing Adjustment.

(a) The Company shall deliver to Parent no later than three (3) Business Days prior to the Closing Date a statement (the “Estimated Statement”) that sets forth the Company’s good faith estimates of (i) the Net Working Capital (“Estimated Net Working Capital Amount”) and, based thereon, the Net Working Capital Adjustment Amount (the “Estimated Net Working Capital Adjustment Amount”), (ii) the Closing Cash (“Estimated Closing Cash”), (iii) the Closing Indebtedness Amount (“Estimated Closing Indebtedness Amount”), (iv) the Closing Company Transaction Expenses (the “Estimated Closing Company Transaction Expenses”) and, based thereon, (v) the Purchase Price (the “Estimated Purchase Price”), together with reasonably detailed supporting calculations demonstrating each component thereof.

(b) No later than ninety (90) days after the Closing Date, Parent shall prepare and deliver to the Securityholders' Agent a statement that sets forth Parent's calculation of (i) the Net Working Capital and, based thereon, the Net Working Capital Adjustment Amount, (ii) the Closing Cash, (iii) the Closing Indebtedness Amount, (iv) the Closing Company Transaction Expenses and, based thereon, (v) the Purchase Price, together with reasonably detailed supporting calculations demonstrating each component thereof (the "Closing Date Statement").

(c) The Securityholders' Agent shall have thirty (30) days (the "Review Period") after delivery of the Closing Date Statement in which to notify Parent in writing (such notice, a "Closing Date Dispute Notice") of any discrepancy in, or disagreement with, the items reflected on the Closing Date Statement (and specifying the amount in dispute and setting forth in reasonable detail the basis for such discrepancy or disagreement). During the Review Period, the Securityholders' Agent and the Representatives of the Securityholders' Agent shall have reasonable access, during normal business hours, to all records and work papers of the Acquired Entities reasonably requested by the Securityholders' Agent and related to the preparation of the Closing Date Statement. If the Securityholders' Agent does not deliver a Closing Date Dispute Notice to Parent during the Review Period, the Closing Date Statement shall be deemed to be accepted in the form presented to the Securityholders' Agent for the purposes of this Section 1.10. If the Securityholders' Agent delivers a Closing Date Dispute Notice prior to expiration of the Review Period, Parent and the Securityholders' Agent shall negotiate in good faith to try and reach an agreement within thirty (30) days after delivery of the Closing Date Dispute Notice (the "Negotiation Period") as to any items identified in the Closing Date Dispute Notice as being in dispute. To the extent that Parent and the Securityholders' Agent reach agreement on any such disputed items during the Negotiation Period, then the Final Closing Date Statement (as defined herein) shall incorporate any such agreement.

(d) If, during the Negotiation Period, Parent and the Securityholders' Agent fail to resolve all disputed items identified in the Closing Date Dispute Notice (the "Final Dispute Items"), then all remaining disputed items shall be submitted for final and conclusive determination by the Independent Accounting Firm (it being understood that in making such determination, the Independent Accounting Firm shall function as an expert and not an arbitrator). Each of Parent and the Securityholders' Agent shall execute and deliver a customary engagement letter as may be reasonably requested by the Independent Accounting Firm. The Independent Accounting Firm's determination shall be (i) limited solely to the items identified in the written submissions of Parent and the Securityholders' Agent, (ii) based solely on the written submissions of Parent and the Securityholders' Agent and the supporting documents submitted therewith, and not by independent review, and (iii) made in accordance with the Specified Accounting Principles. In resolving any disputed item, the Independent Accounting Firm may not assign a value greater than the greatest value for such item claimed by Parent or the Securityholders' Agent, or less than the smallest value for such item claimed by Parent or the Securityholders' Agent. As promptly as possible (but in no event later than thirty (30) days after acceptance of its appointment), the Independent Accounting Firm shall render a written report setting forth its determination as to the disputed items. The

Independent Accounting Firm's determination shall be final and binding upon, and non-appealable by, the parties hereto and their respective successors and assigns with respect to the Net Working Capital, the Net Working Capital Adjustment Amount and any other Final Dispute Items, and not subject to collateral attack for any reason absent manifest mathematical error or fraud. The fees, costs and expenses of the Independent Accounting Firm shall be allocated to and borne by Parent and the Securityholders' Agent (on behalf of the Effective Time Holders) based on the inverse of the percentage that the Independent Accounting Firm's determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Independent Accounting Firm. For example, if the aggregate value of the items in dispute equals \$1,000, and the Independent Accounting Firm awards \$600 in favor of the Securityholders' Agent (on behalf of the Effective Time Holders) and \$400 in favor of Parent, then sixty percent (60%) of the fees, costs and expenses of the Independent Accounting Firm would be borne by Parent and forty percent (40%) of such fees, costs and expenses would be borne by the Securityholders' Agent (on behalf of the Effective Time Holders). Within five (5) Business Days of the resolution of all disputed items identified in the Closing Date Dispute Notice, whether by mutual agreement of Parent and the Securityholders' Agent or a determination by the Independent Accounting Firm, Parent shall prepare a revised version of the Closing Date Statement including an updated Purchase Price (the "Final Purchase Price") reflecting such resolution and shall deliver copies thereof to the Securityholders' Agent, and such revised version (and all amounts set forth therein), if so properly reflected, shall be considered final with respect to the Net Working Capital, the Net Working Capital Adjustment Amount and any other Final Dispute Items (the "Final Closing Date Statement"). For the avoidance of doubt, with respect to the Closing Indebtedness Amount and the Closing Company Transaction Expenses, no matter will be deemed to be a Final Dispute Item to the extent that a third party claim arises with respect to the subject matter thereof.

(e) If the Final Purchase Price exceeds the Estimated Purchase Price (such amount by which the Final Purchase Price exceeds the Estimated Purchase Price, the "Purchase Price Excess Amount"), Parent shall, in accordance with the Merger Consideration Certificate, (i) pay to the Payment Agent by wire transfer of immediately available funds the applicable portion of the Purchase Price Excess Amount for further distribution to the holders of Outstanding Capital Stock, Non-Employee Options and Outstanding Warrants and (ii) cause to be paid through the payroll services of the applicable Acquired Entity or Parent the applicable portion of the Purchase Price Excess Amount due to each holder of an Employee Option.

(f) If the Estimated Purchase Price exceeds the Final Purchase Price, then Parent shall have the right to recover all or any portion of such difference directly from the Escrow Fund (in which case the Securityholders' Agent (on behalf of each Effective Time Holder) and Parent shall jointly instruct the Escrow Agent to pay such difference to Parent out of the Escrow Fund, it being understood that any remaining portion shall be paid directly by the Effective Time Holders, based on their respective Aggregate Pro Rata Share. All payments by the Effective Time Holders shall be made within ten (10) Business Days following receipt of notice informing them that payment is due.

- (g) If the Final Purchase Price is equal to the Estimated Purchase Price, there shall not be any adjustment.
- (h) Nothing in this Section 1.10 shall limit any rights of any Parent Indemnitee as set forth in Section 10.

2. Representations and Warranties About the Acquired Entities

Except as specifically set forth in the Disclosure Schedule prepared by the Company and delivered to Parent prior to the execution of this Agreement setting forth specific exceptions to the Company's representations and warranties set forth in this Section 2 in accordance with Section 11.19, the Company represents and warrants to Parent and Merger Sub, to and for the benefit of the Parent Indemnitees (with the understanding and acknowledgement that Parent and Merger Sub would not have entered into this Agreement without being provided with the representations and warranties set forth herein, that Parent and Merger Sub are relying on these representations and warranties, and that these representations and warranties constitute an essential and determining element of this Agreement), as follows:

2.1 Organizational Matters.

(a) Organization. Each Acquired Entity has been duly organized, and is validly existing and in good standing (or its equivalent), under the laws of its jurisdiction of formation, as set forth in Part 2.1(a) of the Disclosure Schedule. Each Acquired Entity has full corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted and (ii) to own and use its assets in the manner in which its assets are currently owned and used.

(b) Qualification. Each Acquired Entity is qualified, licensed or admitted to do business as a foreign corporation, and is in good standing (or its equivalent), under the laws of all jurisdictions where the property owned, leased or operated by it or the nature of its business requires such qualification, license or admission, except where the failure to qualify would not reasonably be expected to be material to the Company. Part 2.1(b) of the Disclosure Schedule completely and accurately sets forth each jurisdiction where each Acquired Entity is qualified, licensed and admitted to do business.

2.2 Organizational Documents; Management.

(a) Charter Documents and Minutes. The Company has made available to Parent accurate and complete copies of (i) the certificate of incorporation or certificate of formation, as applicable, and bylaws or operating agreement, as applicable, including all amendments thereto or equivalent governing documents of each Acquired Entity (collectively, the "Charter Documents") and (ii) the minutes and other records of the meetings and other proceedings (including any actions taken by written consent or otherwise without a meeting) of the stockholders and board of directors (or similar body) of each Acquired Entity. There has been no material violation of any of the provisions of the Charter Documents and none of the Acquired Entities has taken any action that is

inconsistent with any resolution adopted by such Acquired Entity's stockholders or board of directors (or similar body).

(b) Directors and Officers. Part 2.2.(b) of the Disclosure Schedule completely and accurately sets forth: (i) the names of the members of the board of directors or managers (or similar body) of each Acquired Entity; (ii) the names of the members of each committee of the board of directors (or similar body) of each Acquired Entity; and (iii) the names and titles of the officers of each Acquired Entity.

(c) Subsidiaries. Part 2.2(c) of the Disclosure Schedule completely and accurately sets forth the name and jurisdiction of formation of each Subsidiary of the Company. The Company owns, of record and beneficially, 100% of the issued and outstanding membership interests of each of its Subsidiaries, and none of the Acquired Entities otherwise owns any share capital of, or any equity interest of any nature in, any Entity. All of the equity interests of each of the Subsidiaries of the Company are owned by the Company free and clear of any Encumbrance (except for Permitted Encumbrances). None of the Acquired Entities has guaranteed any obligations of any Entity. The outstanding equity interests of the Subsidiaries of the Company have been duly authorized and validly issued and are fully paid and nonassessable, have been issued in compliance with all applicable securities laws and other applicable Legal Requirements.

(d) Predecessors. There are no Entities that have been merged into or that otherwise are predecessors to any of the Acquired Entities.

(e) Powers of Attorney. There are no outstanding powers of attorney executed by or on behalf of any of the Acquired Entities.

(f) Dissolution. No Acquired Entity nor any of their stockholders has ever approved, or commenced any proceeding or made any election contemplating, the dissolution or liquidation of any Acquired Entity or the winding up or cessation of its business or affairs.

2.3 Capital Structure.

(a) Capital Stock. The authorized capital stock of the Company consists of: (i) 66,000,000 shares of Company Common Stock, of which 19,780,611 shares are issued and outstanding as of the date of this Agreement; and (ii) 29,950,209 shares of Company Preferred Stock, of which: (A) 7,752,278 shares are designated as Series A Preferred Stock, and 7,752,718 of which are issued and outstanding as of the date of this Agreement; (B) 10,359,826 shares are designated as Series B Preferred Stock, and 10,359,826 of which are issued and outstanding as of the date of this Agreement and (C) 11,818,105 shares are designated as Series C Preferred Stock, and 11,818,105 of which are issued and outstanding as of the date of this Agreement. There are no shares of capital stock held in the Company's treasury. The Company has never declared or paid any dividends on any shares of Company Capital Stock. Part 2.3(a) of the Disclosure Schedule sets forth, as of the date of this Agreement, the names of the Company's

stockholders, the email addresses of each of the Company's stockholders, the class, series and number of shares of Company Capital Stock owned of record by each of such stockholders. All of the outstanding shares of Company Capital Stock have been duly authorized and validly issued, and are fully paid and nonassessable, and none of such shares (other than shares of the Company Restricted Stock), is subject to any repurchase option, forfeiture provision or restriction on transfer (other than restrictions on transfer imposed by virtue of applicable federal and state securities laws). Each issued and outstanding share of Company Preferred Stock is convertible into shares of Company Common Stock on a one-for-one basis.

(b) Stock Options. The Company has reserved 12,791,518 shares of Company Common Stock for issuance under the Company Stock Plan of which options with respect to 7,996,132 shares of Company Common Stock are outstanding as of the date of this Agreement, 3,507,577 of which are fully vested and exercisable as of the date of this Agreement. Part 2.3(b) of the Disclosure Schedule accurately sets forth, with respect to each Company Option that is outstanding as of the date of this Agreement: (i) the name of the holder of such Company Option; (ii) the total number of shares of Company Common Stock that are or were subject to such Company Option; (iii) the date on which such Company Option was granted and the term of such Company Option; (iv) the vesting schedule and vesting commencement date of such Company Option (including the number of shares of Company Common Stock subject to such Company Option that are vested and unvested as of the date of this Agreement) and whether the vesting of such Company Option is subject to any acceleration in connection with the Merger, any termination of employment or separation from service, or any of the other transactions contemplated by this Agreement or otherwise; (v) the exercise price per share of Company Common Stock purchasable under such Company Option; (vi) whether such Company Option is intended to qualify as an "incentive stock option" as defined in Section 422 of the Code; and (vii) whether such Company Option may be early-exercised; and (viii) the extent to which such Company Option has been early exercised. Each grant of a Company Option was duly authorized no later than the date on which the grant of such Company Option was by its terms to be effective (the "Grant Date") by all necessary corporate action, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and is in full force and effect, each such grant was made in accordance with the terms of the Company Stock Plan and all other applicable Legal Requirements, the per share exercise price of each Company Option was more than or equal to the fair market value of a share of Company Common Stock on the applicable Grant Date as determined under Section 409A of the Code and each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company. All options with respect to shares of Company Common Stock that were ever issued by the Company ceased to vest on the date on which the holder thereof ceased to be an employee, consultant or director of an Acquired Entity. As of the Effective Time, no former holder of a Company Option will have any rights with respect to any Company Option other than the rights contemplated by Section 1.6. The Company has delivered to Parent an accurate and complete copy of the Company Stock Plan, each form of agreement used thereunder and each Contract pursuant to which any Company Option is outstanding.

There are no options to purchase shares of Company Common Stock that were not granted under the Company Stock Plan.

(c) Company Restricted Stock. As of the date of this Agreement, 440,000 shares of Company Restricted Stock are issued and outstanding. Part 2.3(c) of the Disclosure Schedule accurately sets forth as of the date of this Agreement, with respect to each award of shares of the Company Restricted Stock that is outstanding: (i) the name of the holder of record of such award; (ii) the total number of shares of Company Common Stock subject to such award; (iii) the date on which such award was granted; and (iv) the vesting schedule for such award. The Company has made available to Parent accurate and complete copies of each form of agreement pursuant to which any shares of the Company Restricted Stock are outstanding.

(d) Warrants. Part 2.3(d) of the Disclosure Schedule completely and accurately sets forth, with respect to each Company Warrant that is outstanding as of the date of this Agreement: (i) the name of the holder of such Company Warrant; (ii) the class, series and total number of shares of Company Capital Stock that are subject to such Company Warrant; (iii) the class, series and number of shares of Company Capital Stock with respect to which such Company Warrant is immediately exercisable and, as applicable, the number of shares of Company Common Stock into which such Company Warrant will ultimately convert; (iv) the date on which such Company Warrant was issued and the term of such Company Warrant; (v) the vesting schedule for such Company Warrant (including the number of shares of Company Capital Stock subject to such Company Warrant that are vested and unvested as of the date of this Agreement) and whether the vesting of such Company Warrant shall be subject to any acceleration in connection with the Merger or any of the other transactions contemplated by this Agreement; and (vi) the exercise price per share of Company Capital Stock purchasable under such Company Warrant. The Company has delivered to Parent accurate and complete copies of each Contract pursuant to which any Company Warrant is outstanding. Each Company Warrant will have either been exercised by the holder thereof prior to the Effective Time or the holder of such Company Warrant shall have agreed that such Company Warrant shall be terminated at the time of Closing in exchange for the cash payment contemplated by Section 1.6(d). As of the Effective Time, no former holder of a Company Warrant will have any rights with respect to such Company Warrant, other than the right to receive cash in respect thereof (if any) as contemplated by Section 1.6(d).

(e) No Other Securities. Except for the conversion privileges of the Company Preferred Stock and except as set forth in Part 2.3(a)-2.3(d) of the Disclosure Schedule, there is no: (i) outstanding subscription, option, call, convertible note, warrant or right (whether or not currently exercisable) to acquire any shares of or interest in Company Capital Stock or other securities of the Company or any derivative of any of the foregoing; (ii) outstanding security, note, instrument or obligation (including any share or award of restricted stock, restricted stock unit, deferred stock or deferred stock unit or other equity or equity-based award) that is or may become convertible into or exchangeable for any shares of Company Capital Stock (or cash based on the value of such shares) or other securities of the Company or any derivative of any of the foregoing;

(iii) Contract under which the Company is or may become obligated to sell or otherwise issue any shares of or interests in Company Capital Stock or other securities, including any promise or commitment to grant Company Options or any other securities of the Company to an employee of or other service provider to any Acquired Entity; or (iv) condition that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of or interests in Company Capital Stock or any other securities of the Company. As of the Effective Time, there will be no outstanding options, warrants, convertible notes or other rights to purchase or otherwise acquire shares of Company Capital Stock or other securities of the Company.

(f) Legal Issuance. Part 2.3(f) of the Disclosure Schedule completely and accurately identifies each Acquired Entity Contract relating to any securities of the Company that contains any information rights, rights of first refusal, registration rights, financial statement requirements or other terms that would survive the Closing unless terminated or amended prior to the Closing. All outstanding shares of Company Capital Stock, outstanding Company Options, Company Warrants, New Restricted Stock Units, and all other securities (if any) that have ever been issued or granted by the Company, have been issued and granted in compliance in all material respects with: (i) all applicable securities laws and other applicable Legal Requirements; (ii) all requirements set forth in all applicable Contracts and (iii) the Company Stock Plan and the New Stock Plan, as applicable. None of the outstanding shares of Company Capital Stock was issued in violation of any preemptive rights or other rights to subscribe for or purchase securities of any Acquired Entity.

(g) Repurchased Shares. Part 2.3(g) of the Disclosure Schedule completely and accurately sets forth with respect to any shares of capital stock ever repurchased or redeemed by the Company: (i) the name of the seller of such shares; (ii) the number, class and series of shares repurchased or redeemed; (iii) the date of such repurchase or redemption; and (iv) the price paid by the Company for such shares. All shares of capital stock of the Company ever repurchased, redeemed, converted or cancelled by the Company were repurchased, redeemed, converted or cancelled in compliance with: (A) all applicable securities laws and other applicable Legal Requirements; and (B) all requirements set forth in all applicable Contracts.

(h) Merger Consideration. No Person will be entitled to receive any payment or consideration as a result of the Merger or the other transactions contemplated by this Agreement or any other agreement entered into in connection with this Agreement, other than the Persons and in the amounts shown in the Merger Consideration Certificate.

(i) Ungranted Awards. Part 2.3(i) of the Disclosure Schedule identifies each Acquired Entity Service Provider or other Person with an offer letter, other employment Contract, consulting or independent contractor Contract, or other arrangement or Contract that contemplates a grant of options to purchase shares of Company Common Stock or other equity or equity-based awards with respect to Company Capital Stock, or who has otherwise been promised options to purchase shares of Company Common Stock or other securities of the Company or other equity or equity-based awards with respect to

Company Capital Stock or other securities of the Company, which options or other awards have not been granted as of the date of this Agreement, together with the number of such options or other awards and any promised terms thereof.

2.4 Financial Statements and Related Information.

(a) Delivery of Financial Statements. The Company has made available to Parent the following financial statements and notes (collectively, the “Company Financial Statements”): (i) the unaudited consolidated balance sheets of the Acquired Entities as of January 31, 2019 and January 31, 2020, and the related unaudited consolidated statements of operations, and unaudited consolidated statements of cash flows for the years ended January 31, 2019 and January 31, 2020 and (ii) the unaudited consolidated balance sheet of the Acquired Entities as of July 31, 2020 (the “Unaudited Interim Balance Sheet”), and the related unaudited consolidated income statement and unaudited consolidated statement of cash flows for the six months ended July 31, 2020.

(b) Fair Presentation. The Company Financial Statements present fairly the financial position of the Acquired Entities as of the respective dates thereof and the results of operations and cash flows of the Company and its Subsidiaries for the periods covered thereby. The Company Financial Statements have been prepared in accordance with GAAP in all material respects and applied on a consistent basis throughout the periods covered.

(c) Internal Controls. The books, records and accounts of each Acquired Entity completely and accurately and fairly reflect, in reasonable detail, the transactions in and dispositions of the assets of such Acquired Entity. Each Acquired Entity has internal controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements and to maintain accountability for assets.

(d) Accounts Receivable. Part 2.4(d) of the Disclosure Schedule provides an accurate and complete breakdown and aging of all accounts receivable, notes receivable and other receivables of the Acquired Entities as of the date of this Agreement. All existing accounts receivable of each Acquired Entity (including those accounts receivable reflected on the Company Financial Statements that have not yet been collected and those accounts receivable that have arisen since the date of the Unaudited Interim Balance Sheet and have not yet been collected) represent valid obligations arising from bona fide transactions entered into in the ordinary course of business and not in violation of applicable Legal Requirements. There is no Encumbrance on any of such accounts receivable, all such accounts receivable are good and collectible and no request or agreement for deduction or discount has been made with respect to any of such accounts receivable, except as fully and adequately reflected in reserves for doubtful accounts set forth in the Company Financial Statements. Since the date of the Company Financial Statements, there have not been any write-offs as uncollectible of any accounts receivable of the Acquired Entities, except for write-offs in the ordinary course of business consistent with past practice.

(e) Insider Receivables and Insider Payables. Part 2.4(e) of the Disclosure Schedule provides an accurate and complete breakdown of: (i) all amounts (including any Indebtedness) owed to any Acquired Entity by any stockholder, officer or member of the board of directors (or similar body) of any Acquired Entity ("Insider Receivables") as of the date of this Agreement; and (ii) all amounts owed by any Acquired Entity to any stockholder, officer or member of the board of directors (or similar body) of any Acquired Entity ("Insider Payables"). There will be no outstanding Insider Receivables or Insider Payables as of the Effective Time.

2.5 No Liabilities.

(a) Absence of Liabilities. None of the Acquired Entities has any liabilities, whether or not required to be reflected in financial statements prepared in accordance with GAAP, other than: (i) Liabilities identified as such in the "liabilities" column of the Unaudited Interim Balance Sheet; (ii) accounts payable or accrued salaries and other employee compensation that have been incurred by each of the Acquired Entities since the date of the Unaudited Interim Balance Sheet in the ordinary course of business consistent with such Acquired Entity's past practices; or (iii) Liabilities under Acquired Entity Contracts (other than the Liabilities arising out of or resulting from a breach by an Acquired Entity thereunder) arising in the ordinary course of business consistent with such Acquired Entity's past practices.

(b) Indebtedness. Part 2.5(b) of the Disclosure Schedule sets forth a complete and correct list of each item of Indebtedness (except as set forth in subsections (b), (h) and (i) of the definition thereof) as of the date of this Agreement, identifying the creditor to which such Indebtedness is owed and the title of the instrument under which such Indebtedness is owed.

(c) No "Off-Balance Sheet" Arrangements. None of the Acquired Entities has ever effected or otherwise been involved in any "off-balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Securities Exchange Act of 1934, as amended).

2.6 Absence of Changes. Since the date of the Unaudited Interim Balance Sheet:

(a) there has not been any Material Adverse Effect and, as of the date of this Agreement, no event(s) has occurred or circumstance has arisen that will or would reasonably be expected to have or result in a Material Adverse Effect;

(b) there has not been any material loss, damage or destruction to any of Acquired Entity's assets (whether or not covered by insurance); and

(c) none of the Acquired Entities has taken any action that would have been prohibited or otherwise restricted under Section 4.2 hereof, had such action been taken during the Pre-Closing Period.

2.7 Title to Assets.

(a) Good Title. Each Acquired Entity owns, and has good and valid title to, all tangible assets owned or purported to be owned by it. All of such assets are owned by the Acquired Entities free and clear of any Encumbrances, except for: (i) any lien for current Taxes not yet due and payable; and (ii) Permitted Encumbrances.

(b) Leased Assets. Part 2.7(b) of the Disclosure Schedule identifies all assets that are being leased to any Acquired Entity.

(c) Sufficiency of Assets. The assets owned, leased and licensed by the Acquired Entities collectively constitute all of the tangible assets used by the Acquired Entities in the conduct of their respective businesses in the manner in which such businesses are currently being conducted.

2.8 Bank Accounts. The Company has made available to Parent the following information with respect to each account maintained by or for the benefit of any of the Acquired Entities at any bank or other financial institution: (a) the name of the bank or other financial institution at which such account is maintained; (b) the account number; (c) the type and primary use of account; (d) the names of all Persons who are authorized to: (i) sign checks or other documents with respect to such account; (ii) access such account, view the account balance and view the transactions with respect to such account, including all Persons with online and remote access; and (iii) input or release payments from such account; and (e) the approximate amount held in such account as of the date of this Agreement. There are no safe deposit boxes or similar arrangements maintained by or for the benefit of the Acquired Entities.

2.9 Equipment; Real Property.

(a) Equipment. All material items of equipment, fixtures and other tangible assets owned by or leased to any of the Acquired Entities are reasonably adequate for the uses to which they are being put, are in good condition and repair (ordinary wear and tear excepted) and are adequate for the conduct of each of the Acquired Entities' respective businesses in the manner in which such businesses are currently being conducted.

(b) Real Property. None of the Acquired Entities has ever owned any real property or is obligated or bound by any options, obligations or rights of first refusal or contractual rights to sell, lease or acquire any real property. None of the Acquired Entities owns any interest in real property or other licensed space, except for the leaseholds or licenses created under the real property leases, subleases, licenses or other agreements for the use of space identified in Part 2.9(b) of the Disclosure Schedule. None of the Acquired Entities has assigned, transferred or pledged any interest in any of the real property leases pertaining to the Properties. Neither the whole nor any part of the Properties is subject to any pending suit for condemnation or other taking by any public authority, and no such condemnation or other taking is threatened or contemplated. There are no leases, subleases, licenses or other agreements granting to any Person the right of use or occupancy of any portion of the Properties (except under the real property

leases, subleases, licenses or other agreements for the use of space identified in Part 2.9(b) of the Disclosure Schedule).

2.10 Intellectual Property.

(a) Products. Part 2.10(a) of the Disclosure Schedule completely and accurately identifies each Acquired Entity Product.

(b) Registered IP. Part 2.10(b) of the Disclosure Schedule completely and accurately identifies each item of Registered IP in which any Acquired Entity has or purports to have an ownership interest of any nature (whether exclusively, jointly with another Person or otherwise), or that is exclusively licensed to any Acquired Entity ("Acquired Entity Registered IP"), including:

- (i) all Patents, including the country of filing, owner, filing number, date of issue or filing, expiration date and title;
- (ii) all registered trademarks and applications for registration of trademarks, including country of filing, registration or application number and date of issue;
- (iii) all registered copyrights and applications for registration of copyrights, including description of the work, country of filing, owner, filing number, date of issue and expiration date; and
- (iv) all Domain Names, including registrant name, registrant organization, date of issue or filing and expiration date.

Part 2.10(b) of the Disclosure Schedule also completely and accurately: (i) identifies any other Person that has or purports to have an ownership interest in any item of Registered IP identified thereon and the nature of such ownership interest; and (ii) provides a brief description of the prosecution status of any item of Registered IP identified thereon. The Company has made available to Parent complete and accurate copies of all applications, correspondence with any Governmental Body and other material documents related to each item of Registered IP identified in Part 2.10(b) of the Disclosure Schedule.

(c) Inbound Licenses. Part 2.10(c) of the Disclosure Schedule completely and accurately identifies each Contract pursuant to which any Intellectual Property or Intellectual Property Right is or has been licensed, granted, sold, assigned or otherwise conveyed or provided to any Acquired Entity (whether or not currently exercisable and including a right to receive a license), other than: (i) Contracts between any Acquired Entity and any Acquired Entity Service Provider in the relevant Acquired Entity's standard form that has been made available to Parent as required under Section 2.10(f) and that does not deviate from that standard form; and (ii) Contracts for Shrink-Wrap Code ("Excluded Inbound Licenses"). None of the licenses or rights granted to any Acquired Entity in any such Contract is exclusive. For purposes of this Agreement, a

covenant or promise not to sue or not to assert claims regarding Intellectual Property Rights or similar releases shall be deemed to be a license.

(d) Outbound Licenses. Part 2.10(d) of the Disclosure Schedule completely and accurately identifies each Contract (other than Contracts between any Acquired Entity and its customer in the relevant Acquired Entity's standard form that has been made available to Parent as required under Section 2.10(f) and that does not materially deviate from that standard form ("Excluded Outbound Licenses") pursuant to which any Person has been granted any license under or any access to (as part of service bureau, time-sharing, application service or similar arrangement or otherwise), or otherwise has received or acquired any right (whether or not currently exercisable and including a right to receive a license) or interest in, any Acquired Entity IP or any Acquired Entity Product. The Acquired Entities have the exclusive right to bring Legal Proceedings with respect to any infringement, misappropriation or other violation of the Acquired Entity IP. None of the Acquired Entities is bound by, and no Acquired Entity IP or Acquired Entity Product is subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of any Acquired Entity to use, exploit, make available, assert or enforce any Acquired Entity IP or any Acquired Entity Product anywhere in the world. In each Acquired Entity IP Contract pursuant to which the counterparty to such Acquired Entity IP Contract has been permitted to provide, distribute, disclose, provide access to or transfer to any third party any Acquired Entity IP (including without limitation the confidential information of any Acquired Entity), the relevant Acquired Entity has required such counterparty to require such third party to protect and use such Acquired Entity IP in a manner at least as restrictive as the terms of such Acquired Entity IP Contract. No Acquired Entity is in default under or in violation or breach, in any material respect, of any Acquired Entity IP Contract, and, to the Company's Knowledge, no event has occurred and no circumstance or condition exists that, with notice, the passage of time or both, could reasonably be expected to: (i) constitute a default under, or result in a violation or breach by any Acquired Entity of, any Acquired Entity IP Contract; or (ii) give any Person the right to declare a default or breach under any Acquired Entity IP Contract. None of the Acquired Entities has received any written, or to the Company's Knowledge, any other, notice of a default, alleged failure to perform or any offset or counterclaim with respect to any Acquired Entity IP Contract.

(e) Royalty Obligations. Part 2.10(e) of the Disclosure Schedule contains: (i) a complete and accurate list as of the date hereof of each Contract pursuant to which any Acquired Entity is obligated to pay any royalties, fees, commissions and other amounts to any other Person upon or for the use of any Acquired Entity IP or any Acquired Entity Product; and (ii) a complete and accurate summary of the royalties, fees, commissions and other amounts payable to any Acquired Entity under each such Contract upon or for such use.

(f) Standard Form Acquired Entity IP Contracts. The Company has made available to Parent a complete and accurate copy of each standard form of Acquired Entity IP Contract and any standard form of Contract under which a third party acquires access to or a right to use any Acquired Entity Product, in each case used by any

Acquired Entity at any time, including, to the extent they exist, each standard form of: (i) end user license agreement, subscription agreement, or terms of use or service (each a “EULA”); (ii) software license, software-as-a-service or cloud-based services agreement; (iii) software development kit or application programming interface (“API”) license agreement; (iv) development or maintenance agreement; (v) employee agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; (vi) consulting or independent contractor agreement containing any assignment or license of Intellectual Property or Intellectual Property Rights or any confidentiality provision; (vii) confidentiality or nondisclosure agreement; (viii) agreement to provide customer or maintenance; (ix) data license agreement; (x) agreement for providing technology licensing, distribution rights and/or managed services to customers; (xi) vendor agreement; (xii) credit agreement; (xiii) sales agreement; and (xiv) pre-production license and services customer agreement. Each user of any Acquired Entity Website is subject to valid and enforceable website terms of use in the form made available to Parent pursuant to this Section 2.10(f).

(g) Ownership. The Acquired Entities collectively are the sole and exclusive owner of all right, title and interest to and in the applicable Acquired Entity IP (other than Intellectual Property Rights exclusively licensed to any of the Acquired Entities, as identified in Part 2.10(d) of the Disclosure Schedule), free and clear of any Encumbrances (other than nonexclusive licenses granted pursuant to the Contracts listed in Part 2.10(e) of the Disclosure Schedule; and Permitted Encumbrances). All modifications and derivative works of any Acquired Entity IP made by any Person are exclusively owned by the Acquired Entities. Without limiting the generality of the foregoing:

(i) all documents and instruments necessary to establish, perfect and maintain the rights of the Acquired Entities in the Acquired Entity IP have been validly executed, delivered and filed in a timely manner with the appropriate Governmental Body (or validly registered with the appropriate registrar in the case of Domain Names);

(ii) each Acquired Entity Service Provider who is or was involved in the creation or development of any Acquired Entity Product or any Intellectual Property or Intellectual Property Rights for or on behalf of any Acquired Entity has signed a written, valid and enforceable agreement containing: (A) an irrevocable assignment to such Acquired Entity of all Intellectual Property and Intellectual Property Rights created or developed by such Acquired Entity Service Provider in the course of that Acquired Entity Service Provider’s work for the such Acquired Entity, without further payment being owed to any Acquired Entity Service Provider and without any restrictions or obligations on such Acquired Entity’s ownership and use of such Intellectual Property and Intellectual Property Rights or Acquired Entity Product; (B) irrevocable and perpetual waivers of Moral Rights with respect to such Intellectual Property, Intellectual Property Rights and Acquired Entity Product to the extent permitted under applicable law; and (C) confidentiality provisions protecting such Intellectual Property, Intellectual Property Rights, and Acquired Entity Product, and no such Acquired Entity Service Provider has any obligation to any other Person with respect to

such Intellectual Property, Intellectual Property Rights or Acquired Entity Product;

(iii) each Acquired Entity has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all Trade Secrets and other proprietary or confidential information pertaining to such Acquired Entity, the Acquired Entity IP, the Acquired Entity Products, or the business of such Acquired Entity and no Trade Secret or proprietary or confidential information of any Acquired Entity has been disclosed to any third party except pursuant to a valid and binding confidentiality agreement;

(iv) no funding, facilities or personnel of any Governmental Body or any university or educational institution or research center were used, directly or indirectly, to develop or create, in whole or in part, any Acquired Entity IP and no Governmental Body or any university or educational institution or research center has any ownership in or rights to any Acquired Entity IP;

(v) no Acquired Entity Service Provider is subject to any Contract with any other Person which requires such Acquired Entity Service Provider to assign to any Person, other than any Acquired Entity, any interest in or to any Acquired Entity IP created or developed by such Acquired Entity Service Provider in the course of that Acquired Entity Service Provider's work for the such Acquired Entity;

(vi) none of the Acquired Entities has performed, or is under obligation under any Contract to perform, any development services for any Person where the deliverables or other results of such development services would be owned by such Person, exclusively licensed to such Person or where any Acquired Entity has otherwise granted any ownership interest of any nature (whether exclusively, jointly with another Person or otherwise) to such Person. Without limiting the foregoing, none of the Acquired Entities has created or developed any Intellectual Property by or on behalf any Acquired Entity Customer listed on Part 2.10(g)(vi) of the Disclosure Schedule, and as of the date of this Agreement, no such Intellectual Property is currently planned to be created or developed or promised to be created or developed;

(vii) none of the Acquired Entities has incorporated into or used in the development of any Acquired Entity Products any suggestions or feedback of any Person where the Acquired Entities did not own or have valid rights to use such suggestions or feedback;

(viii) no Acquired Entity Service Provider has any basis for claiming that any Acquired Entity has breached provisions of its Contracts with such Acquired Entity Service Provider that could result in the loss of such Acquired Entity's ownership rights in any Intellectual Property or Intellectual Property Rights under such Contracts; and

(ix) none of the Acquired Entities is now or has ever been a member or promoter of, or a contributor to, any industry standards body or any similar organization that requires or obligates any of the Acquired Entities to grant or offer to any other Person any license or right to any Acquired Entity IP.

(h) Valid and Enforceable. All applications for Acquired Entity Registered IP are validly applied for and all other Acquired Entity Registered IP is subsisting and enforceable, and to the Acquired Entity's knowledge with respect to all Acquired Entity Registered IP that are registered patents and trademarks, valid. Without limiting the generality of the foregoing:

(i) Part 2.10(h)(i) of the Disclosure Schedule completely and accurately identifies and describes each action, filing, and payment that must be taken or made on or before the date that is 120 days after the date of this Agreement in order to maintain an item of Acquired Entity Registered IP in full force and effect;

(ii) no interference, opposition, cancellation, reissue, reexamination or other Legal Proceeding is or has been pending or threatened, in which the scope, validity or enforceability of any Acquired Entity Registered IP is being, has been, or would reasonably be expected to be contested or challenged, and to the Company's Knowledge, there is no basis for a claim that any Acquired Entity IP is invalid or unenforceable;

(iii) with respect to each item of Acquired Entity Registered IP that is Registered IP, except where such Registered IP was intentionally abandoned or allowed to lapse by an Acquired Entity as part of its reasonable business judgment: (A) all necessary registration, maintenance and renewal fees have been paid and all necessary documents and certificates have been filed with the relevant Governmental Body for the purpose of maintaining such Acquired Entity Registered IP; (B) each Acquired Entity is currently in compliance with all formal Legal Requirements (including payment of filing, examination and maintenance fees and proofs of use); and (C) such Registered IP is not subject to any unpaid maintenance fees or taxes;

(iv) No Acquired Entity is subject to any order, writ, injunction, judgment or decree of any Governmental Body that restricts or impairs the use, transfer or licensing of any Acquired Entity IP.

(i) No Third Party Infringement of Acquired Entity IP. To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated, and no Person is currently infringing, misappropriating or otherwise violating, any Acquired Entity IP. The Company has made available to Parent all documents regarding: (i) any actual, alleged or suspected infringement or misappropriation of any Acquired Entity IP or Acquired Entity Product; and (ii) any third party allegations of any Acquired Entity infringing or misappropriating any third party's Intellectual Property Rights, in each case,

for Parent to fully understand the history and analysis thereof (including any admission made by any Acquired Entity).

(j) Effects of This Transaction. Neither the execution, delivery or performance of this Agreement or any other agreements referred to in this Agreement nor the consummation of any of the transactions contemplated by this Agreement or any such other agreement entered into in connection herewith or therewith will, with or without notice or lapse of time, result in, or give any other Person the right or option to cause or declare under any Contract under which Acquired Entities are a party: (i) a loss of, or Encumbrance on, any Acquired Entity IP, any Acquired Entity Product or any other Intellectual Property or Intellectual Property Rights incorporated into or used in the development, testing, distribution, provision, maintenance or support of any Acquired Entity Product or Acquired Entity Software; (ii) a breach of or default under, or right to terminate or suspend performance of, any Acquired Entity IP Contract or other Contract relating to any Intellectual Property or Intellectual Property Rights incorporated into or used in the development, testing, distribution, provision, maintenance or support of any Acquired Entity Product or Acquired Entity Software; (iii) a payment or increased royalty or an obligation to offer any discount or be bound by any “most favored pricing” terms under any Acquired Entity IP Contract or other Contract relating to any Intellectual Property or Intellectual Property Rights incorporated into or used in the development, testing, marketing, distribution, provision, maintenance or support of any Acquired Entity Product or Acquired Entity Software; (iv) the release, disclosure or delivery of any Acquired Entity IP or Acquired Entity Product by or to any escrow agent or other Person; (v) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Acquired Entity IP or any other Intellectual Property or the Intellectual Property Rights of Parent; or (vi) by the terms of any Acquired Entity Contract, a reduction of any royalties, revenue sharing, or other payments any Acquired Entity would otherwise be entitled to with respect to any Acquired Entity IP.

(k) No Infringement of Third Party IP Rights. With respect to Patents only, none of the Acquired Entities has ever infringed (directly, secondarily, contributorily, by inducement or otherwise), misappropriated or otherwise violated or made unlawful use of any Intellectual Property Right of any other Person. With respect to Patents only, the operation of the business of the Acquired Entities as conducted and proposed to be conducted in each case by or on behalf of the Acquired Entities, including the use, development, marketing, distribution, provision, maintenance, and support of any Acquired Entity Software and Acquired Entity Product, does not infringe, violate, or make unlawful use of any Intellectual Property Right of, or contains any Intellectual Property misappropriated from, any other Person. Without limiting the generality of the foregoing:

(i) as of the date of this Agreement, no infringement, misappropriation or similar claim or Legal Proceeding is pending or threatened against any Acquired Entity or, to the Company’s Knowledge, against any other Person who is or may be entitled to be indemnified, defended, held harmless or reimbursed by any Acquired Entity with respect to any such claim or Legal Proceeding, and none of the Acquired Entities has ever received any notice or other communication (in writing or otherwise) requesting, claiming, or

demanding any of the foregoing with respect to any such claim or Legal Proceeding;

(ii) as of the date of this Agreement, none of the Acquired Entities has ever received any notice or other communication (in writing or otherwise) relating to any actual, alleged or suspected infringement, misappropriation or violation by any Acquired Entity, any Acquired Entity Service Provider or other Representative of any Acquired Entity of any Intellectual Property Rights of another Person, including any letter or other communication suggesting or offering that any Acquired Entity obtain a license to any Intellectual Property Rights of another Person;

(iii) none of the Acquired Entities is bound by any Contract to indemnify, defend, hold harmless or reimburse any other Person with respect to, or otherwise assumed or agreed to discharge or otherwise take responsibility for, any existing or potential Intellectual Property Rights infringement, misappropriation or similar claim (other than indemnification provisions in the Acquired Entities' standard forms of Acquired Entity IP Contracts made available pursuant to Section 2.10(f)); and

(iv) the Acquired Entities own or otherwise have, and after the Closing, the Surviving Corporation and other Acquired Entities will continue to have, all Intellectual Property and Intellectual Property Rights needed to, and that would be infringed or otherwise violated by, conduct the businesses of the Acquired Entities as currently conducted and currently proposed by the Acquired Entities to be conducted.

(l) No Harmful Code. None of the Acquired Entity Software contains any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user's consent.

(m) Bugs. None of the Acquired Entity Products contains any bug, defect, or error (including any bug, defect, or error relating to or resulting from the display, manipulation, processing, storage, transmission, or use of any data) that materially and adversely affects the use, functionality, or performance of such Acquired Entity Products or any product or system containing or used in conjunction with such Acquired Entity Products. As of the Closing Date, the Company has made available to Parent a complete and accurate list, as of the date of this Agreement, of all known material bugs, defects, and errors of the Acquired Entity Software that have not been remediated in all material respects.

(n) Source Code. Except as described on Part 2.10(n) of the Disclosure Schedule, no Source Code for any Acquired Entity Software has been delivered, licensed or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an Acquired Entity Service Provider. Except as described on Part 2.10(n) of the Disclosure Schedule, none of the Acquired Entities has any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the Source Code for any Acquired Entity Software to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would reasonably be expected to, result in the delivery, license or disclosure of the Source Code for any Acquired Entity Software to any other Person. To the extent that any Person on Part 2.10(n) of the Disclosure Schedule has rights as a beneficiary under an escrow agreement to receive Source Code for any Acquired Entity Software upon the occurrence of certain release conditions: (w) such Person would be entitled only to a one-time delivery of the Source Code for the relevant Acquired Entity Software at that time and would not be entitled to any Source Code versions of updates, upgrades or maintenance or support from any Acquired Entity thereafter; (x) such Person would not obtain any rights to modify the released Source Code or create any derivative works of the released Source Code; (y) any modifications of the released Source Code or derivative works created therein by such Person would be owned by the Acquired Entities; and (z) such Person would only be licensed to access and use the released Source Code until the termination or expiration of the term of the underlying agreement that is referenced in Part 2.10(n) of the Disclosure Schedule.

(o) Use of Open Source Code.

(i) Part 2.10(o)(i) of the Disclosure Schedule completely and accurately identifies and describes: (A) each item of Open Source Code that is contained in or distributed with or from which any part of any Acquired Entity Products is derived; (B) the version or versions of, and the applicable license terms for, each such item of Open Source Code; (C) the Acquired Entity Software to which each such item of Open Source Code relates; (D) to the Knowledge of the Company, the copyright holder(s) of such Open Source Code; and (E) whether each such item of Open Source Code has been distributed or modified by or for any Acquired Entity.

(ii) Each Acquired Entity's use, marketing, distribution, licensing, and sale of Acquired Entity Software does not violate any license terms applicable to any item of Open Source Code, and each Acquired Entity has all rights in each item of Open Source Code disclosed, or required to be disclosed, in Part 2.10(o)(i) of the Disclosure Schedule as needed for the Acquired Entities to conduct the businesses of the Acquired Entities as currently conducted and currently proposed by such Acquired Entity to be conducted, without violation of any license terms pertaining to such Open Source Code or infringement of third-party Intellectual Property Rights. Each Acquired Entity has complied with all licensing terms pertaining to each item of Open Source Code disclosed, or required to be disclosed, in Part 2.10(o)(i) of the Disclosure Schedule.

(iii) No Acquired Entity Software contains, is combined with, is derived from, is distributed with or is being or was developed using Open Source Code in a manner that, or using Open Source Code that is licensed under any terms that imposes or could impose a requirement or condition that any Acquired Entity grant a license under its Patent rights or that any Acquired Entity Software or part thereof: (1) be disclosed or distributed in Source Code form; (2) be licensed for the purpose of making modifications or derivative works; or (3) be redistributable at no charge;.

(iv) Part 2.10(o)(iv) of the Disclosure Schedule sets forth a list as of the date hereof of Computer Software or other technology that any Acquired Entity has contributed to an open source project or made available under an open source license.

(p) Privacy and Information Security.

(i) Each Acquired Entity has adopted written policies and procedures that apply to the Acquired Entity with respect to privacy, data protection, security and the Processing of Acquired Entity Data, and those policies and procedures are commercially reasonable and comply in material respects with the Information Privacy and Security Laws.

(ii) Part 2.10(p)(ii) of the Disclosure Schedule contains each Acquired Entity Privacy Policy in effect at any time and identifies, with respect to each Acquired Entity Privacy Policy: (i) the period of time during which such privacy policy was or has been in effect; and (ii) if applicable, the mechanism (such as opt-in, opt-out or notice only) used to apply a later Acquired Entity Privacy Policy to data or information previously collected under such privacy policy. Each current Acquired Entity Privacy Policy: (A) is displayed on the applicable Acquired Entity Website and is referred to in the Acquired Entity EULA; (B) states that User Data may be transferred in a corporate sale, merger, reorganization, dissolution or similar event; and (C) states that User Data may be transferred to the United States for Processing. The Acquired Entities make available and have made available the applicable Acquired Entity Privacy Policy to each user of any Acquired Entity Website and Acquired Entity Software and have obtained user consents to applicable Acquired Entity Privacy Policy as required by Information Privacy and Security Laws. No disclosures made or contained in any Acquired Entity Privacy Policy to any Person have been materially inaccurate, misleading, or deceptive (in any case, including by omission), or in material violation of any Information Privacy and Security Laws.

(iii) Each Acquired Entity has collected, used, shared, and Processed User Data and Personal Data only in compliance with the Information Privacy and Security Laws, applicable Acquired Entity Contracts, standards to which any Acquired Entity is legally bound, and self-governing rules and policies to which any Acquired Entity is legally bound.

(iv) Each Acquired Entity has complied at all times in all material respects with all of the Acquired Entity Privacy Policies, Information Privacy and Security Laws and with each applicable Acquired Entity Contract that governs Acquired Entity Data. Without limiting the foregoing, each Acquired Entity has acquired, collected, used shared and Processed all Acquired Entity Data pursuant to, and in accordance with the terms of, Acquired Entity Privacy Policies, Information Privacy and Security Laws, and all Acquired Entity Contracts that govern or relate to Acquired Entity Data.

(v) None of the Acquired Entities is aware of any information or claim indicating or alleging that any Acquired Entity is not or has not been in compliance with any material term of any agreement, contractual clause, representation, warranty or covenant it has agreed to with any third party regarding compliance by such Acquired Entity with any obligations to protect privacy, data protection or data security of Personal Data or comply with Information Privacy and Security Laws with respect to User Data or Personal Data. None of the Acquired Entities has pending, current, or prior letters, complaints, subpoenas, court orders, consent decrees, citations, administrative actions, notifications or other claims from a state, federal, national or multi-national governmental entity, or another person alleging breach with respect any Acquired Entity of any of the Information Privacy and Security Laws, and it is not aware of any information that would provide a reasonable basis for any party to assert any such claim or breach, whether or not such Acquired Entity would have grounds to contest any such assertion, claim or alleged breach. None of the Acquired Entities has been fined, penalized, sanctioned, or otherwise required to pay a monetary judgment by any Governmental Body, or entered into any voluntary settlement with any party, under the Information Privacy and Security Laws, no claim for such monetary judgments is outstanding, and none of the Acquired Entities is aware of any information that could reasonably support a claim for such compensation being made.

(q) Ownership and Use of Data. The Acquired Entities own or otherwise have all rights necessary to Process the Acquired Entity Data as such Acquired Entity Data are Processed by each Acquired Entity.

(r) Information Security. Each Acquired Entity has established, maintained, and is and has, at all times, been in material compliance with a written information security program that: (i) includes administrative, technical and physical safeguards designed to safeguard the security, confidentiality, and integrity of Personal Data and Acquired Entity Data; (ii) is designed to protect against unauthorized use, access, interruption, modification or corruption of the Acquired Entity IT Systems, Acquired Entity Data; (iii) uses reasonable encryption methods for transmission of User Data across wireless and wired networks and storage of User Data according to its sensitivity and proportional to the risk that the inappropriate use or disclosure of that information could cause financial, physical, or reputational harm to an individual or any Acquired Entity customer or client; and all applicable Information Privacy and Security Laws. None of the Acquired Entities has either provided, or been required to provide, notice to

an individual, business entity, or Governmental Body relating to a cybersecurity incident or the unauthorized access to or acquisition of User Data or Personal Data under any Information Privacy and Security Laws, and each Acquired Entity is aware of no information that could reasonably support a requirement that any such notice must be provided. There has been no unauthorized or illegal use, modification, or disclosure of, access to or acquisition of any of the Acquired Entity Data or the data or information in any of the electronic or other database containing (in whole or in part) Acquired Entity Data maintained by or for any Acquired Entity at any time (the “Acquired Entity Databases”).

(s) Information Technology. All Acquired Entity IT Systems have been properly maintained by technically competent personnel, in accordance with standards set by the manufacturers or otherwise in accordance with standards prudent in the industry to ensure proper operation, monitoring and use. The Acquired Entity IT Systems are in good working condition and do not contain any viruses, bugs, or vulnerabilities identified in the U.S. National Vulnerability Database maintained by the Department of Homeland Security and the National Institute of Standards and Technology. None of the Acquired Entities has experienced within the past five years any material disruption to, or material interruption in, the conduct of business attributable to a defect, bug, breakdown or other failure or deficiency of the Acquired Entity IT Systems. Each Acquired Entity has taken commercially reasonable measures to provide for the back-up and recovery of the Acquired Entity Data (including such data and information that is stored on magnetic or optical media in the ordinary course) without material disruption to, or material interruption in, the conduct of the business of such Acquired Entity. To the Knowledge of the Company, none of the Acquired Entities is in material breach of any Contract related to any Acquired Entity IT System.

2.11 Contracts.

(a) List of Contracts. Part 2.11(a) of the Disclosure Schedule completely and accurately identifies as of the date of this Agreement:

(i) each Acquired Entity Contract for (i) the employment of any individual on a full-time or part-time basis, other than those that are immediately terminable at-will without notice, severance, or other cost or Liability; or (ii) the engagement of any individual on a consulting, independent contractor or other basis, other than those that are terminable on less than thirty (30) days’ notice without penalty or other cost or Liability;

(ii) other than any Acquired Entity Employee Plan listed in Part 2.15 of the Disclosure Schedule, each Acquired Entity Contract between any Acquired Entity and any Acquired Entity Service Provider pursuant to which: (i) benefits would vest, amounts would become payable or the terms of which would otherwise be altered by virtue of the consummation of the transactions contemplated by this Agreement (whether alone or upon the occurrence of any additional or subsequent events); or (ii) any Acquired Entity is or may become obligated to make any severance, termination, termination indemnity or

redundancy, retention, change of control, gross-up or similar payment to any Acquired Entity Service Provider;

(iii) any Acquired Entity Contract with any labor union or association representing any Acquired Entity Service Provider;

(iv) each Acquired Entity Contract which provides for indemnification of any officer or director of the Company;

(v) each Acquired Entity Contract relating to the voting rights of a stockholder or equity interest holder of any of the Acquired Entities;

(vi) each Acquired Entity Contract relating to the merger, consolidation, reorganization or any similar transaction involving or with respect to any Acquired Entity;

(vii) each Acquired Entity Contract (including each Acquired Entity IP Contract) relating to the acquisition, transfer, development, distribution, licensing, sharing, granting rights to or sharing of any Intellectual Property or Intellectual Property Rights (including any joint development agreement, technical collaboration agreement or similar agreement entered into by any Acquired Entity), other than Excluded Inbound Licenses and Excluded Outbound Licenses;

(viii) each Acquired Entity Contract relating to the hosting of any Acquired Entity Product;

(ix) each Acquired Entity Contract with Key Business Partner;

(x) each Acquired Entity Contract relating to the advertising or promotion of the business, including telemarketing and database marketing, of any Acquired Entity or pursuant to which any third parties advertise or have links to their branding or their websites displayed on any Acquired Entity Website;

(xi) each Acquired Entity Contract relating to the acquisition, sale, spin-off or outsourcing of any business unit or operation of any Acquired Entity;

(xii) each Acquired Entity Contract creating or relating to any partnership, joint venture, strategic alliance or any sharing of revenues, profits, losses, costs or liabilities or similar arrangement;

(xiii) each Acquired Entity Contract imposing any restriction on any Acquired Entity: (A) to compete with any other Person; (B) to acquire any product or other asset or any services from or to associate with the branding of any other Person, to sell, market or promote any product or other asset to or perform any services for any other Person, or to transact business or deal in any other manner with any other Person; (C) involving the grant of “most favored nation” status to any Person or any exclusive or preferential rights to acquire,

provide, sell or distribute any product or other asset or any services of any Acquired Entity to any Person; (D) to develop or distribute any technology or other Intellectual Property; or (E) disparage any Person other than any Acquired Entity;

(xiv) each Acquired Entity Contract: (A) granting exclusive rights to license, market, sell, support, make available or deliver any product or other asset or service of any Acquired Entity, or of users of any marketplace, Computer Software, website, or service of any Acquired Entity; (B) otherwise contemplating an exclusive relationship between any Acquired Entity and any other Person, including with respect to advertising; or (C) contemplating the release of Source Code to any Person other than any Acquired Entity;

(xv) each Acquired Entity Contract creating or involving any referral relationship, sales representative, channel partner distribution or reseller arrangement or franchise relationship;

(xvi) each Acquired Entity Contract for the sale of any of the assets of any Acquired Entity, other than in the ordinary course of business, or for the grant to any Person of any preferential rights to purchase any of the assets of any Acquired Entity;

(xvii) each Acquired Entity Contract involving any loan, guaranty, pledge, performance or completion bond or indemnity or surety arrangement or otherwise relating to the incurrence, assumption or guarantee of any Indebtedness by any Acquired Entity or imposing an Encumbrance on any of the assets of any Acquired Entity (other than a Permitted Encumbrance);

(xviii) each lease, lease guaranty, sublease, license or other Acquired Entity Contract for the leasing, use or occupancy of the Properties;

(xix) each Acquired Entity Contract relating to the purchase or sale of any asset by or to, or the performance of any services by or for, any Related Party (other than offer letters and option agreements entered into in the ordinary course of business);

(xx) each Acquired Entity Contract relating to any liquidation or dissolution of any Acquired Entity;

(xxi) each Acquired Entity Contract pursuant to which any broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with any of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Acquired Entity;

(xxii) any Acquired Entity Contract with a bank, financial institution or lender other than customer agreements in the ordinary course of business;

(xxiii) any Acquired Entity Contract: providing any right of first negotiation, right of first refusal or similar right to any Person;

(xxiv) any Acquired Entity Contract under which the Merger would give rise to or expand any rights in favor of, or any obligations on the part of, the Company or any other Person;

(xxv) all material Contracts with any Governmental Body;

(xxvi) other than Contracts listed on Part 2.11(a)(i) of the Disclosure Schedule, any Acquired Entity Contract that contemplates or involves: (A) the payment or delivery of cash or other consideration by any Acquired Entity in an amount or having a value in excess of \$250,000 individually, or \$500,000 in the aggregate when taken together with all other Acquired Entity Contracts involving such Person or such Person's Affiliates; or (B) the performance of services having a value in excess of 250,000 individually, or \$500,000 in the aggregate when taken together with all other Acquired Entity Contracts involving such Person or such Person's Affiliates; and

(xxvii) each Acquired Entity Contract and each Contract entered into by any Affiliate of any Acquired Entity in settlement of any Legal Proceeding or other dispute.

Contracts in the respective categories described in clauses "(i)" through "(xxvii)" above, all Contracts identified, or required to be identified, in Part 2.11(a) of the Disclosure Schedule, and all Contracts identified, or required to be identified, in Parts 2.10(c), 2.10(d) and 2.15(a) of the Disclosure Schedule are collectively referred to in this Agreement as "Material Contracts."

(b) Delivery of Contracts. The Company has made available to Parent accurate and complete copies of all written Material Contracts, including all amendments thereto. Part 2.11(b) of the Disclosure Schedule provides an accurate and complete description of the material terms of each Material Contract that is not in written form. Each Material Contract is valid and in full force and effect, and is enforceable by each Acquired Entity in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(c) No Breach. None of the Acquired Entities has violated or breached in any material respect, or committed any default under, any Material Contract, which remains uncured, and, to the Company's Knowledge, no other Person has violated or breached, or committed any default under, any Material Contract which remains uncured. To the Company's Knowledge, no event has occurred that will, or would reasonably be expected to (for purposes of this sentence, references to "Material Contract" shall include any Contract that would be a Material Contract had such Contract been entered into on or prior to the date of this Agreement): (i) result in a violation or breach in any material

respect of any of the provisions of any Material Contract; (ii) give any Person the right to declare a default or exercise any remedy under any Material Contract; (iii) give any Person the right to accelerate the maturity or performance of any Material Contract; or (iv) give any Person the right to cancel, terminate or modify any Material Contract.

2.12 Compliance with Legal Requirements.

(a) Compliance. Each of the Acquired Entities is, and has, in the past five (5) years, been, in compliance, in all material respects, with each Legal Requirement that is applicable to it. No event has occurred, and no condition or circumstance exists, that will (with or without notice or lapse of time) constitute or result in a violation by any Acquired Entity of, or a failure on the part of any Acquired Entity to comply with, any Legal Requirement. Since incorporation or formation, as applicable, of each Acquired Entity, such Acquired Entity has not received any written notice or other written communication from any Person regarding any actual or possible violation of, or failure to comply with, any Legal Requirement.

(b) Foreign Corrupt Practices and Anti-Bribery. In the past five (5) years, none of the Acquired Entities nor any Representative of any Acquired Entity with respect to any matter relating to any Acquired Entity, has: (i) used any funds for unlawful contributions, loans, donations, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made or agreed to make any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns; (iii) taken any action that would constitute a violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd 1 et seq. or its equivalent in any jurisdiction where any Acquired Entity conducts business, if the Acquired Entities were subject thereto; or (iv) made or agreed to make any other unlawful payment.

2.13 Governmental Authorizations; No Subsidies.

(a) Governmental Authorizations. Part 2.13(a) of the Disclosure Schedule identifies each Governmental Authorization held by the Acquired Entities, and the Company has made available to Parent accurate and complete copies of all Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule. The Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule are valid and in full force and effect, and collectively constitute all Governmental Authorizations necessary to enable the respective Acquired Entity to conduct its business in the manner in which its business is currently being conducted in accordance with all applicable Legal Requirements. Each Acquired Entity is, and has at all times been, in material compliance with the terms and requirements of the respective Governmental Authorizations identified in Part 2.13(a) of the Disclosure Schedule.

(b) No Subsidies. None of the Acquired Entities possesses (or has ever possessed) or has any rights or interests with respect to (or has ever had any rights or interests with respect to) any grants, incentives or subsidies from any Governmental Body.

2.14 Tax Matters.

(a) Tax Returns and Payments. All income and other material Tax Returns required to have been filed by, on behalf of, or with respect to, any Acquired Entity (the “Acquired Entity Returns”) have been timely and properly filed and are accurate and complete in all material respects and disclose all Taxes required to be paid by, or with respect to, any Acquired Entity for the periods covered thereby. Other than the extensions listed on Part 2.14(a) of the Disclosure Schedule, no extension of time within which to file any Acquired Entity Return is currently in effect. All Taxes (whether or not shown on any Tax Return) for which any Acquired Entity may be liable have been timely and properly paid. The copies of Tax Returns made available to Parent are accurate and complete, and include all income, franchise, sales, use, VAT and other material Tax Returns filed by, on behalf of, or with respect to, any Acquired Entity for taxable periods ending after December 31, 2016. The Company has made available to Parent complete and accurate copies of all audit or examination reports and statements of deficiencies assessed against any Acquired Entity. Part 2.14(a) of the Disclosure Schedule sets forth each jurisdiction where each Acquired Entity will be required to file a Tax Return following the Closing with respect to any Pre-Closing Tax Period, including the type of Tax Return and the type of Tax required to be paid. No written claim has ever been made by a Governmental Body in a jurisdiction where no Acquired Entity pays Taxes or files Tax Returns asserting that an Acquired Entity is or may be subject to Taxes assessed by such jurisdiction. The unpaid Taxes of the Acquired Entities (i) did not, as of date of the Unaudited Interim Balance Sheet, exceed the amount of any reserves or accruals specifically identified for Tax liability (not including any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Unaudited Interim Balance Sheet, and (ii) do not exceed the amount of those reserves or accruals as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Acquired Entities in filing the Tax Returns and in accordance with applicable Legal Requirements. No Acquired Entity has incurred any liability for Taxes since the Unaudited Interim Balance Sheet outside of the ordinary course of business.

(b) Audits; Claims. No Acquired Entity Return has ever been examined or audited by any Governmental Body. No Acquired Entity has ever received from any Governmental Body any written: (i) notice indicating an intent to open an audit or other review with respect to any Tax or any Acquired Entity Return; (ii) request for information relating to Tax matters; or (iii) notice of deficiency or proposed Tax adjustment. No extension or waiver of the limitation period applicable to any claim for, or the period for the collection or assessment of any Tax has been granted by or requested from any Acquired Entity. No assessment, claim or Legal Proceeding is pending, proposed or threatened against any Acquired Entity in respect of any Tax, and there are no matters relating to Taxes under discussion between any taxing authority and an Acquired Entity. There are no liens for Taxes upon any of the assets of any Acquired Entity except liens for current Taxes not yet due and payable (and for which there are adequate accruals). No power of attorney has been granted with respect to any matter related to Taxes of any Acquired Entity that on the Closing Date will be in effect.

(c) Withholding. Each of the Acquired Entities has withheld or collected and paid all Taxes required to have been withheld or collected and paid in connection with any amounts paid or owing to any employee, independent contractor, customer, creditor, shareholder, or other third party, timely paid over any such Taxes and other amounts to the appropriate Governmental Body in accordance with applicable Legal Requirements, and filed information Tax Returns to the extent required to be filed by the Acquired Entity with respect thereto, and such information Tax Returns are accurate and complete in all material respects.

(d) Tax Classification & Ownership. The Company is and always has been a domestic corporation taxable under subchapter C of the Code, and the Foreign Subsidiary is and always has been a foreign corporation, in each case for U.S. federal income Tax purposes. Except for the Company's interest in the Foreign Subsidiary, no Acquired Entity has or ever has had any direct or indirect ownership interest in any trust, corporation, partnership, limited liability company, joint venture or other business entity for U.S. federal income Tax purposes. No Acquired Entity is or ever has been a partner for Tax purposes with respect to any joint venture, partnership, or other arrangement or Contract that is treated as a partnership for Tax purposes.

(e) Post-Closing Tax Matters. No Acquired Entity (nor Parent or its Affiliates as a result of its acquisition of the Acquired Entities) will be required to include any income or gain or exclude any deduction or loss from taxable income for any Tax period or portion thereof ending after the Closing as a result of (i) any adjustment under Section 481 of the Code (or any corresponding provision of state, local or non-U.S. Tax law) by reason of a change in a method of accounting, or use of an improper method of accounting, in each case for a taxable period that ends on or prior to the Closing Date, (ii) any "closing agreement" within the meaning of Section 7121 of the Code (or any similar provision of applicable state, local or non-U.S. law) entered into prior to Closing, (iii) any intercompany transaction (including any intercompany transaction subject to Section 367 or 482 of the Code) or excess loss account described in the Treasury Regulations promulgated pursuant to Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. law) with respect to a transaction occurring before the Closing, (iv) any installment sale or open transaction disposition made on or prior to the Closing Date, (v) any deferred revenue or prepaid amount received on or prior to the Closing Date, or (vi) forgiveness of a loan entered into on or prior to the Closing Date pursuant to the Paycheck Protection Program under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)). Neither the Company nor any Subsidiary has made an election under Section 965(h) or Section 108(i) of the Code (or any corresponding or similar provision of state, local or non-U.S. law). Each of the Acquired Entities uses the accrual method of accounting for income Tax purposes.

(f) Tax Sharing Agreements, Affiliated Groups, Etc. No Acquired Entity is a party to, or bound by, any Tax allocation, Tax indemnity or Tax sharing agreement, and no Acquired Entity will have any liability pursuant to, or as a result of, any Tax allocation, Tax indemnity or Tax sharing agreement after the date of this Agreement. No Acquired Entity has any contractual obligation to pay the amount of any Tax benefits or

Tax refunds realized or received by any Acquired Entity (or an amount in reference to any such Tax benefits or Tax refunds realized or received) to any former shareholder(s) or other Person(s). No Acquired Entity has been a member of any Affiliated Group. No Acquired Entity has any potential Liability for the Taxes of any other Person under United States Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by Contract, or otherwise. Notwithstanding the foregoing, ancillary provisions in customary commercial Contracts entered into in the ordinary course of business and no principal purpose of which is related to Taxes (“Ordinary Commercial Agreements”) shall be excluded from the provisions of this Section 2.14(f).

(g) Distributed Stock. No Acquired Entity has been a party to a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code (or any similar provision of state, local or foreign law).

(h) Tax Holidays. Part 2.14(h) of the Disclosure Schedule sets forth all Tax exemptions, Tax holidays, Tax concessions or other Tax reduction agreements or arrangements applicable to any Acquired Entity. The Company has made available to Parent all documentation relating to such Tax exemptions, Tax holidays, Tax concessions or other Tax reduction agreements or arrangements. Each Acquired Entity is in compliance with the requirements for any such Tax exemption, Tax holiday, Tax concession or other Tax reduction agreement or arrangement and none of the Tax exemptions, Tax holidays, Tax concessions or other Tax reduction agreements or arrangements will be jeopardized or altered by, or could be subject to clawback or recapture as a result of, (i) the transactions contemplated by this Agreement or (ii) a failure by any Acquired Entity to satisfy one or more requirements on which such Tax exemption, Tax holiday, Tax concession or other Tax reduction agreement or arrangement is, or was, conditioned.

(i) Tax Shelters, Etc. Each Acquired Entity has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return which could result in the imposition of penalties under Section 6662 of the Code (or any comparable provisions of state, local or foreign law). No Acquired Entity has (i) consummated or participated in any transaction which was or is a “tax shelter” transaction, as defined in Section 6662 or Section 6111 of the Code or the United States Treasury Regulations promulgated thereunder, (ii) participated in any “reportable transaction” as defined in Section 6707A(c) of the Code or the Treasury Regulations promulgated thereunder, (iii) engaged in any transaction that would reasonably be likely to require the filing of an IRS Schedule UTP (determined without regard to any asset threshold that may avoid the requirement of filing such schedule), or (iv) participated or engaged in any other transaction that is subject to disclosure requirements pursuant to a corresponding or similar provision of state, local or foreign Tax law.

(j) Foreign Tax. Each Acquired Entity has in its possession official foreign government receipts for any Taxes paid by it, or paid on its behalf, to any foreign Governmental Body. No Acquired Entity has, or has had, a permanent establishment (as defined in any applicable Tax treaty or convention), an office or fixed place of business,

or otherwise is or has been subject to Tax, in any country other than the country in which it is organized.

(k) FIRPTA. No Acquired Entity is or has been a “United States real property holding corporation” within the meaning of Section 897 or Section 1445 of the Code, and each Acquired Entity has filed with the Internal Revenue Service all statements, if any, which are required under United States Treasury Regulations Section 1.897-2(h)(2).

(l) Parachute Payments. No payment or benefit that could be made or provided by or on behalf of any Acquired Entity in connection with the Merger or any other transactions contemplated by this Agreement (either alone or in connection with any other event) could constitute an “excess parachute payment” within the meaning of Section 280G of the Code (or any corresponding provisions of state, local, or foreign Tax law). No Acquired Entity has any obligation to make any “gross-up” or similar payment in respect of any Taxes that may become payable under Section 4999 of the Code.

(m) Section 409A. No Acquired Entity Employee Plan or any grants, awards, compensation or benefits provided to an Acquired Entity Service Provider by or on behalf of any Acquired Entity are subject to Section 409A of the Code or, if subject to Section 409A of the Code, have materially failed or will fail, in form or operation, to meet the requirements of Section 409A of the Code. The Company has no obligation to make any “gross-up” or similar payment in respect of any Taxes that may become payable under Section 409A of the Code.

(n) CFC and PFIC. The Foreign Subsidiary is and has been at all times since acquired by the Company a “controlled foreign corporation” as defined in Section 957 of the Code. The Foreign Subsidiary does not own any “United States property” as defined in Section 956 of the Code. The Company would not be required to include any amount as income under Sections 951 or 951A of the Code if the taxable year of the Foreign Subsidiary were deemed to close on the Closing Date.

(o) Tax Rulings. No Tax ruling, clearance or consent has been issued to any of the Acquired Entities, and none of them has applied for any Tax ruling, clearance or consent. No Acquired Entity has entered into any Contract or arrangement with any Governmental Body that requires it to take any action or to refrain from taking any action relating to Taxes.

(p) U.S. International Tax Filings. To the extent required by applicable Legal Requirements, each of the Acquired Entities have timely filed all reports and have created and/or retained all records required under Sections 6038, 6038A, 6038B, 6038C, 6046 and 6046A of the Code (and any comparable provisions of any foreign Tax law). None of the Acquired Entities has transferred intangible property the transfer of which would be subject to the rules of Section 367(d) of the Code. None of the Acquired Entities is subject to any gain recognition agreement under Section 367 of the Code. No Acquired Entity has incurred a dual consolidated loss within the meaning of Section 1503 of the Code.

(q) International Boycott. No Acquired Entity has participated in, or cooperated with, an international boycott, within the meaning of Section 999 of the Code. No Acquired Entity has had operations which are or may hereafter become reportable under Section 999 of the Code.

(r) Transfer Pricing. All transactions and agreements entered into between the Acquired Entities have been made on arm's length terms. Each Acquired Entity is in material compliance with applicable transfer pricing Legal Requirements, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology.

(s) Foreign Subsidiary. The shares of the Company do not derive, directly or indirectly, their value substantially from assets located in India. The fair market value of assets of the Company (held directly or indirectly) located or deemed to be located in India as determined under Section 9(1)(i) of the Indian Income Tax Act read with Rule 11UB(3) of the Indian income Tax rules represents less than fifty percent (50%) of the fair market value of all the assets owned by the Company (directly or indirectly), as determined under Rule 11UB(6) of the Indian income Tax rules as of the Specified Date (as defined under section 9(1)(i) of Indian Income Tax Act). The Effective Time Holders are not and will not be subject to Tax in India on their income or capital gains arising from the transactions contemplated under this Agreement and accordingly, Indian withholding Tax provisions shall not apply to Parent. All information supplied to the valuation firm in connection with the preparation of the Indian Exemption Documentation is true, accurate, complete and not misleading. The Company and its Subsidiaries provided all the relevant information and documents required to be provided to the valuation firm in connection with the Indian Exemption Documentation and neither the Company nor its Subsidiaries failed to disclose any material information or documents that may have a bearing on the Indian Exemption Documentation obtained or to be obtained by the Company.

(t) Covered Securities; Section 83(b). None of the shares of Company Capital Stock, Company Warrants or Company Options is a "covered security" within the meaning of Section 6045(g) of the Code. Except as provided in Part 2.14(h) of the Disclosure Schedule, there are no shares of Company Capital Stock that were issued in connection with the performance of services and subject to vesting for which no valid and timely election was filed pursuant to Section 83(b) of the Code. In the case of any shares identified in Part 2.14(h) of the Disclosure Schedule, from and after the grant of such shares the service provider has never been a United States person within the meaning of Section 7701(a)(3) of the Code, and has never performed any services for any Acquired Entity within the United States within the meaning of Section 861(a)(3) of the Code. The Company has delivered to Parent correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statements with the appropriate Internal Revenue Service center with respect to any shares of Company Capital Stock or other property that was initially subject to a vesting arrangement issued by any Acquired Entity to any of its employees, non-employee directors, consultants or other service providers.

(u) Sales Tax. Each of the Acquired Entities has collected, remitted and reported to the appropriate taxing authority all sales, use, value added, excise and similar Taxes required to be so collected, remitted or reported pursuant to all applicable Tax laws. Each of the Acquired Entities has complied in all material respects with all applicable Legal Requirements relating to record retention (including to the extent necessary to claim any exemption from Tax collection and maintaining adequate and current resale certificates to support any such claimed exemption).

(v) CARES Act. None of the Acquired Entities has availed itself of relief pursuant to Sections 2301 or 2302 of the CARES Act or any similar federal, state, local or foreign Law.

2.15 Employment Matters; Benefit Plans.

(a) Service Provider List. Part 2.15(a) of the Disclosure Schedule contains a list, as of the date of this Agreement, of all current employees, independent contractors, consultants, and advisors of the Acquired Entities, as of the date of this Agreement, and correctly reflects, as applicable: (i) employee identification number; (ii) status as an employee, independent contractor, consultant, or advisor (iii) their dates of employment or engagement (or service credited, if different from commencement date of employment or engagement); (iv) with respect to employees, their job titles, and with respect to independent contractors and other non-employees, a description of services provided; (v) their rate of pay, whether hourly, salaried, contract rate, or calculated by some other measure; (vi) any other compensation payable to them (including housing allowances, compensation payable pursuant to bonus, incentive compensation opportunity, target variable compensation, deferred compensation, perquisites, allowances or commission arrangements or other compensation); (vii) with respect to employees, whether part-time or full-time, and with respect to independent contractors and other non-employees, the number of estimated hours of work per week performed for the Acquired Entities; (viii) with respect to employees, whether exempt or non-exempt; (ix) their visa status or work permit status; (x) any promises or commitments made to them with respect to changes or additions to their compensation or benefits or other work conditions; (xi) their paid time off and/or their sick leave and vacation balances; (xii) notice requirements for termination; (xiii) leave of absence status and, if applicable, expected return to work date; and (xiv) work location (both prior to any required remote location due to the impact of COVID-19 and following any such required remote location due to the impact of COVID-19).

(b) Labor Matters. None of the Acquired Entities is and none of the Acquired Entities has been, bound by or a party to, any collective bargaining agreement or other Contract with a labor organization, works council or similar Entity representing any Acquired Entity Service Providers. None of the Acquired Entities has a duty to bargain with or recognize any labor union or labor organization or other Person purporting to act as the exclusive bargaining representative of any Acquired Entity Service Provider or to engage in effects bargaining or other bargaining relating to or in connection with, or to provide advance notice of, the Merger or any of the transactions contemplated in this Agreement. There are no labor organizations representing, purporting to represent or, to

the Knowledge of the Company, seeking to represent any current Acquired Entity Service Providers. No Acquired Entity has received a request by any labor union or labor organization to negotiate or enter into any such collective bargaining agreement. There is no union, works council, employee representative or other labor organization, which, pursuant to applicable Law, must be notified, consulted or with which negotiations need to be conducted in connection with the transactions contemplated by this Agreement. None of the Acquired Entities is engaged, or has ever been engaged, in any unfair labor practice of any nature. There are no unfair labor practice complaints pending or, to the Knowledge of the Company, threatened against any Acquired Entity before the U.S. National Labor Relations Board or any similar body in the United States or any other country in which any Acquired Entity Service Providers perform services. To the Knowledge of the Company, no petition has been filed with the National Labor Relations Board or any similar type of agency requesting certification of a collective bargaining representative and no other union organizing efforts are pending or threatened. None of the Acquired Entities has had any strike, slowdown, work stoppage, lockout, job action or threat thereof, or question concerning representation, by or with respect to any of the Acquired Entity Service Providers.

(c) At Will Employment. The employment or engagement of each of the Acquired Entity Employees is terminable by each Acquired Entity at will and without advance notice, severance, penalty, or other Liability, other than any amounts earned as of the date of such termination. With respect to any Acquired Entity Employee in a jurisdiction that does not recognize at-will employment, the employment or engagement of such individual is terminable in accordance with the applicable terms of such Acquired Entity Employee's contract of employment and the applicable Legal Requirements and there is no further entitlement to severance pay or compensation on the part of any such individual, except to the extent that such termination may breach any of the applicable Legal Requirements. The Company has delivered to Parent accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements, employee acknowledgments, and other materials relating to the employment of the Acquired Entity Service Providers.

(d) Employee Departures/Restrictions. No Acquired Entity Service Provider has provided written notice to the Company or any Acquired Entity of their intent to terminate such Acquired Entity Service Providers' employment with such Acquired Entity. To the Knowledge of the Company, no Acquired Entity Service Provider is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract (with any Person) that may have an adverse effect on: (i) the performance by such Acquired Entity Service Provider of any of his or her duties or responsibilities as an Acquired Entity Service Provider; or (ii) such Acquired Entity's business or operations. Part 2.15(d) of the Disclosure Schedule contains an accurate and complete list as of the date hereof of each Acquired Entity Contract (and each Acquired Entity Service Provider who has executed any Acquired Entity Contract) containing provisions restricting any Acquired Entity Service Provider from competing with any Acquired Entity, soliciting or hiring Acquired Entity Service Providers, interfering with customers or business partners of any Acquired Entity and similar provisions.

(e) Acquired Entity Employee Plans. Part 2.15(e) of the Disclosure Schedule contains an accurate and complete list as of the date hereof of each material Acquired Entity Employee Plan. None of the Acquired Entities intends, or has committed, to establish or enter into any new Acquired Entity Employee Plan, or to modify any Acquired Entity Employee Plan (except to conform any such Acquired Entity Employee Plan to the requirements of any applicable Legal Requirements, as previously disclosed to Parent in writing or as required by this Agreement).

(f) Delivery of Documents. As applicable, with respect to each material Acquired Entity Employee Plan, the Company has made available to Parent true, current and complete copies of: (i) all documents setting forth the terms of each Acquired Entity Employee Plan, including all amendments thereto and all related trust documents or, with respect to any unwritten Acquired Entity Employee Plan, a written summary thereof; (ii) the most recent summary plan description together with the summaries of material modifications thereto, if any; (iii) all material written Contracts, including administrative service agreements and group insurance contracts; (iv) the annual report (Form 5500 series) for the last three complete years; (v) the most recent determination, advisory or opinion letter from the U.S. Internal Revenue Service relating to the tax-qualified status of the Acquired Entity Employee Plan; (vi) all written materials provided to any Acquired Entity Service Provider relating to any Acquired Entity Employee Plan and any proposed Acquired Entity Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events that would result in any Liability to any Acquired Entity; (vii) all written correspondence to or from any Governmental Body relating to any Acquired Entity Employee Plan; and (viii) nondiscrimination and coverage results for the three most recent plan years; and (ix) all written agreements and Contracts relating to each Acquired Entity Employee Plan, including administrative service agreements, trust agreements, loan policies, and insurance Contracts. The Company has delivered to Parent accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of Acquired Entity Service Provider. On or before the Closing Date, the Company shall provide Parent with a true, correct and complete list of all employees whose employment has been terminated by the Company within 90 calendar days preceding the Closing Date, whose work hours have been reduced within six (6) months preceding the Closing Date, or has been relocated at least 100 miles away; such list will indicate the employee's name, site of employment, position or job title, starting date of employment, and date of employment loss, termination or layoff, and, if applicable, the amount of hour reduction for each calendar month during the six month period preceding the Closing Date.

(g) Absence of Certain Retiree Liabilities. No Acquired Entity has any obligation or liability to provide, under any Acquired Entity Employee Plan or otherwise, any life insurance, health benefits or other employee welfare benefits to any Person for any reason after such Person terminates employment or services, except as may be required by applicable Legal Requirements and at the sole expense of the participant or the participant's dependent or beneficiary. None of the Acquired Entities has ever represented, promised or contracted (whether in oral or written form) to any Acquired Entity Service Provider (either individually or to Acquired Entity Service Providers as a

group) or any other Person that such Acquired Entity Service Provider(s) or other Person would be provided with post-termination welfare benefits (including life insurance, health benefit or retiree employee welfare benefits), except to the extent required by applicable Legal Requirements and at the sole expense of the participant or the participant's dependent or beneficiary.

(h) Absence of Certain Plans and Related Liabilities. No Acquired Entity, nor any ERISA Affiliate, has ever maintained, been a participating employer, contributed to, or has had any liability (contingent or otherwise) with respect to: (i) any multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code; (ii) any multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Code; (iii) any other employee benefit plan, fund, program, Contract or arrangement that is subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA; (iv) any multiple employer welfare arrangement as defined under Section 3(40)(A) of ERISA; (v) any self-insured plan (including any such plan pursuant to which a stop loss policy or Contract applies); or (vi) any plan maintained or sponsored by a professional employer organization. No Acquired Entity Employee Plan provides, or is obligated to provide, welfare benefits to any person who is not a current or former employee of an Acquired Entity (or dependent thereof). No Acquired Entity has terminated an employee benefit plan for which any Acquired Entity could have any existing or continuing liability or obligation (contingent or otherwise) relating thereto.

(i) No Defaults. Each Acquired Entity has performed all obligations required to be performed by it under each Acquired Entity Employee Plan and is not in material default or violation of, and none of the Acquired Entities has Knowledge of any default or violation by any other party to, the terms of any Acquired Entity Employee Plan. Each of the Acquired Entity Employee Plans (and each related trust, insurance contract or fund) has been operated and administered in all material respects in accordance with its terms and all applicable Legal Requirements, including the applicable requirements under the Code, ERISA, and the ACA. All required contributions to, and payments from or in connection with, any Acquired Entity Employee Plan have been timely made in accordance with the terms of such Acquired Entity Employee Plan, applicable Contracts and applicable Legal Requirements, and all contributions for any period ending on or before the Closing Date which are not yet due are reflected as an accrued Liability on the Unaudited Interim Balance Sheet. No "prohibited transaction," within the meaning of Section 4975 of the Code or Section 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred in connection with which any Acquired Entity could have any liability (including on account of an indemnification obligation). Each Acquired Entity Employee Plan can be amended, terminated or otherwise discontinued after the date of this Agreement, without Liability to any Acquired Entity or Parent.

(j) No Conflict. Except as set forth in Part 2.15(j) of the Disclosure Schedule, neither the execution, delivery or performance of this Agreement, nor the consummation of the Merger or any of the other transactions contemplated by this Agreement, will or may (either alone or upon the occurrence of any additional or subsequent events): (i) constitute an event under any Acquired Entity Employee Plan, trust or loan that will or may result (either alone or in connection with any other event) in any payment (whether

of severance pay or otherwise), acceleration (including acceleration of vesting), forgiveness of indebtedness, golden parachute, vesting, distribution, increase in benefits or obligation to fund benefits (through a trust or otherwise) with respect to any Acquired Entity Service Provider; or (ii) create or otherwise result in any Liability with respect to any Acquired Entity Employee Plan.

(k) **Compliance.** Each Acquired Entity: (i) is, and for the past five (5) years has been, in material compliance with all applicable Legal Requirements, Contracts and Orders respecting labor and employment, including, but not limited to, hiring practices, employment practices, terms and conditions of employment, payment of wages, hours of work, payment of overtime, expense reimbursements, labor relations, leaves of absence, including sick leave laws, work breaks, classification of employees (including as exempt or non-exempt and as an employee or independent contractor), occupational health and safety, privacy, harassment, discrimination, retaliation, disability rights and benefits, reasonable accommodation, equal employment, fair employment practices, immigration, wrongful discharge or violation of the personal rights of Acquired Entity Service Providers (or prospective employees or other service providers), the Worker Adjustment and Retraining Notification Act (and any similar foreign, provincial, state or local statute or regulation) (collectively “WARN Act”), and all applicable Legal Requirements by all Governmental Bodies related to COVID-19 and the COVID-19 pandemic, including (A) the Families First Coronavirus Response Act, including provisions thereof relating to leaves of absence, (B) the CARES Act, (C) guidance by the U.S. Department of Labor, including the Occupational Safety and Health Administration and Wage and Hour Division, (D) guidance by the Equal Employment Opportunity Commission, (E) guidance from the Centers for Disease Control and Prevention and (F) all Orders concerning the continued operation and/or closure of businesses. Without limiting the generality of the foregoing, to the extent that the Company and any of its Subsidiaries are currently engaging in operations at their physical sites of operation, such continued operation is permitted by all applicable Orders and directives of Governmental Bodies; (ii) has never effectuated a “plant closing,” “termination,” “relocation,” or “mass layoff” as those terms are used in the WARN Act, nor has or will any Acquired Entity become subject to any obligation under applicable Legal Requirements or otherwise to notify or consult with any Acquired Entity Service Provider, Governmental Body, or other Person with respect to the impact of the transactions contemplated by this Agreement on the employment of any of the Acquired Entity Service Provider or the compensation or benefits provided to any of the Company Associates; (iii) is not a party to any Contract or arrangement or is subject to any requirement that in any manner restricts any Acquired Entity from relocating, consolidating, merging or closing any portion of the business of any of the Acquired Entities; (iv) has correctly withheld and reported all amounts required by any Legal Requirement or Contract to be withheld and reported with respect to wages, salaries and other payments or compensation to any Acquired Entity Service Provider; (v) has properly accrued in the ordinary course of business and is not delinquent in payments to any of its current or former Acquired Entity Service Provider for any wages, overtime, salaries, commissions, bonuses, fees or other compensation for any services performed, directly or indirectly, for any Acquired Entity as of the date of this Agreement or amounts required to be reimbursed to such current or former Acquired Entity Service Provider and has no Liability for any arrears of wages, salaries, overtime pay, premium pay,

commissions, bonuses, benefits, severance pay or other amounts due to any Acquired Entity Service Provider, including pursuant to any Contract, policy, practice or applicable Legal Requirement, or any Taxes or any penalty for failure to comply with any of the foregoing; (vi) has no Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body with respect to unemployment compensation benefits, worker's compensation, social security or other benefits or obligations for any Acquired Entity Service Provider (other than routine payments to be made in the ordinary course of business consistent with past practice); and (vii) none of the Acquired Entity's policies or practices with respect to Acquired Entity Service Providers is currently being audited or investigated by any Governmental Body. All Acquired Entity Service Providers essential to the operations of the Acquired Entities who are performing their duties remotely and from their homes have been provided with all equipment necessary, and are able, to perform such duties remotely and from their homes. All Acquired Entity Service Providers are and have been in compliance with all Orders arising from, relating to, or connected with COVID-19. Except as disclosed on Part 2.15(k) of the Disclosure Schedule, no Acquired Entity Service Providers of any of the Acquired Entities were furloughed, terminated, laid off, had their hours reduced or had their compensation reduced as a direct or indirect result of COVID-19.

(l) ERISA and Other Matters. Each Acquired Entity Employee Plan intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and no circumstances exist: (i) which could result in loss of such qualification under Section 401(a) of the Code; or (ii) which could result in a penalty under the Internal Revenue Service Closing Agreement Program if discovered during an Internal Revenue Service audit or investigation. Each such Acquired Entity Employee Plan has received a favorable determination, opinion or advisory letter from the Internal Revenue Service with respect to its qualification and the Tax-exempt status of its related trust, and no circumstances exist which could result in Liability to any Acquired Entity in respect of such qualified status or loss of such qualified status. No fiduciary (within the meaning of Section 3(21) of ERISA) of any Acquired Entity Employee Plan subject to Part 4 of Subtitle B of Title I of ERISA has committed a breach of fiduciary duty with respect to that Acquired Entity Employee Plan that could subject any Acquired Entity or an Acquired Entity Service Provider to any Liability (including Liability on account of an indemnification obligation). None of the Acquired Entities has incurred any excise Taxes under Chapter 43 of the Code with respect to any Acquired Entity Employee Plan and nothing has occurred with respect to any Acquired Entity Employee Plan that could reasonably be expected to subject any Acquired Entity to any such Taxes.

(m) Labor Relations and Claims. There have never been any, and there is no Legal Proceeding, claim, arbitration, labor dispute, or grievance pending or, to the Knowledge of the Company, threatened or reasonably anticipated relating to any applicant, Acquired Entity Service Provider, employment Contract, or any other employment or labor matter. Each Acquired Entity is not and has not been, subject to any Order or private settlement contract in respect of any labor or employment matters. There are no pending or threatened or reasonably anticipated claims or Legal Proceedings against the Acquired Entities under any workers' compensation policy or long-term disability policy.

(n) Immigration. Each Acquired Entity is, and at all times has been, in compliance with the requirements of the Immigration Reform Control Act of 1986 and all other Legal Requirements pertaining to immigration and work authorization applicable to the Acquired Entity Service Providers.

(o) Claims Against Plans. There are no pending or, to the Knowledge of the Company, threatened or reasonably anticipated claims or Legal Proceedings against any of the Acquired Entity Employee Plans, the assets of any of the Acquired Entity Employee Plans, or the Acquired Entity Employee Plan administrator or any fiduciary of the Acquired Entity Employee Plans with respect to the operation of such Acquired Entity Employee Plans (other than routine, uncontested benefit claims) or asserting any rights or claims to benefits under such Acquired Entity Employee Plan.

(p) No Misclassification. (i) No Acquired Entity Service Provider who is an independent contractor, consultant, advisor, or other non-employee should have been classified as an “employee” under applicable United States Internal Revenue Service guidance and/or pursuant to applicable Legal Requirements; (ii) the Acquired Entities have never had any temporary or leased employees that were not treated and accounted for in all respects as employees; (iii) no current or former independent contractor, consultant, or advisor of any Acquired Entity is eligible to participate in any Acquired Entity Employee Plan; (iv) all Acquired Entity Service Providers who are employees have been correctly classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar Legal Requirements, and overtime has been properly recorded and paid for all such employees classified as non-exempt; and (v) no Acquired Entity has any Liability for any misclassification of any employee as an independent contractor or any non-exempt employee as an exempt employee.

(q) No Harassment. No allegations of harassment, sexual harassment, retaliation, discrimination, or similar conduct have been made, to the Knowledge of the Company, against (i) any Founder, officer, or director of any Acquired Entity or (ii) any Acquired Entity Service Provider who, directly or indirectly, supervises other Acquired Entity Service Providers, and no Acquired Entity has entered into any settlement agreement or conducted any investigation related to such by or against any Acquired Entity Service Provider. The Acquired Entities do provide and have provided sexual harassment training in accordance with applicable Legal Requirements.

2.16 Environmental Matters. Each of the Acquired Entities has at all times been and is in material compliance with all applicable Environmental Laws. To the Company’s Knowledge, none of the Acquired Entities has ever received any notice or other communication from any Person that alleges that any Acquired Entity is not in material compliance with any Environmental Law. All Environmental Licenses and other Governmental Authorizations currently held by any Acquired Entity pursuant to Environmental Laws are identified in Part 2.16 of the Disclosure Schedule. The Company has made available to Parent accurate and complete copies of all internal and external environmental audits and studies in its possession or control, if any, relating to each Acquired Entity or its operations.

2.17 Insurance. Part 2.17 of the Disclosure Schedule identifies each insurance policy maintained by, at the expense of or for the benefit of each Acquired Entity as of the date of this Agreement and identifies any material claims made thereunder as of the date of this Agreement. The Company has made available to Parent accurate and complete copies of the insurance policies identified on Part 2.17 of the Disclosure Schedule. Each of the insurance policies identified in Part 2.17 of the Disclosure Schedule is in full force and effect. Since incorporation or formation, as applicable, of each Acquired Entity, such Acquired Entity has not received any notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy; (ii) refusal of any coverage or rejection of any claim under any insurance policy; or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy. There are no self-insurance arrangements affecting any Acquired Entity.

2.18 Transactions with Related Parties. No current or former officer or director (including its Affiliates) of the Company, or, to the Knowledge of the Company, any stockholder who holds more than 1% of an Acquired Entity or any immediate family member of any of the foregoing Persons, or any trust, partnership or corporation in which any of such Persons has or has had an interest): (a) has, or has had, any interest in any material asset used in or otherwise relating to the business of any Acquired Entity; (b) is, or has been, indebted to any Acquired Entity (other than for ordinary travel advances or other reimbursable expenses in the ordinary course of business); or (c) has entered into, or has had any financial interest in, any Material Contract, material transaction or material business dealing with or involving any Acquired Entity for which the consideration paid by or services received by the Company was at or greater than the fair market value.

2.19 Legal Proceedings; Orders.

(a) Legal Proceedings. There is no pending Legal Proceeding and to the Knowledge of the Company, no Person has threatened to commence any Legal Proceeding: (i) that involves any Acquired Entity, or in which any Acquired Entity is a plaintiff, complainant or defendant with respect to any of the assets owned or used or any products or services provided by any Acquired Entity or, to the Knowledge of the Company, any Person whose Liability for such Legal Proceeding any Acquired Entity has or may have retained or assumed, either contractually or by operation of law; (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement; or (iii) that relates to the ownership of any capital stock of any Acquired Entity, or any option or other right to the capital stock or other securities of any Acquired Entity, or right to receive consideration as a result of this Agreement. Since the incorporation or formation, as applicable, of each Acquired Entity, no Legal Proceeding has been commenced by or against, or threatened against, any Acquired Entity.

(b) Orders. There is no Order to which any Acquired Entity, or any of the assets owned or used or any products or services provided by any Acquired Entity, is subject. No Acquired Entity Service Provider is subject to any Order that prohibits such Acquired Entity Service Provider from engaging in or continuing any conduct, activity or practice relating to the respective Acquired Entity's business.

2.20 Authority; Binding Nature of Agreement.

(a) Authority; Binding Nature. The Company has the right, corporate power and authority to enter into and to perform its obligations under this Agreement and under each other agreement, document or instrument referred to in or contemplated by this Agreement to which the Company is or will be a party at or prior to the Closing; and the execution, delivery and performance by the Company of this Agreement and of each such other agreement, document and instrument have been duly authorized by all necessary action on the part of the Company and its board of directors and, prior to the Effective Time, its stockholders. This Agreement and each other agreement, document and instrument referred to in or contemplated by this Agreement to which the Company is a party constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) Board Approval. The Company's board of directors has: (i) unanimously determined that the Merger is advisable and fair and in the best interests of the Company and its stockholders; and (ii) unanimously recommended the adoption of this Agreement by the holders of Company Capital Stock and directed that this Agreement and the Merger be submitted for consideration by the Company's stockholders.

2.21 Non-Contravention; Consents. Neither: (1) the execution, delivery or performance of this Agreement or the other agreements, documents or instruments referred to in this Agreement; nor (2) the consummation of the Merger or any of the other transactions contemplated by this Agreement or any such other agreement, document or instrument, will (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of any of the provisions of any Charter Documents of any Acquired Entity;

(b) contravene, conflict with or result in a material violation of any Legal Requirement or violation of any Order to which any Acquired Entity or any of the assets owned or used by any Acquired Entity, is subject;

(c) contravene, conflict with or result in a material violation of any of the terms or requirements of any Governmental Authorization that is held by any Acquired Entity;

(d) contravene, conflict with or result in a material violation or breach of, or result in a default under, any provision of a Material Contract, or give any Person the right to (for purposes of this Section 2.21(d), references to "Material Contract" shall include any Contract that would be a Material Contract had such Contract been entered into on or prior to the date of this Agreement): (i) declare a default or exercise any remedy under any such Material Contract; (ii) accelerate the maturity or performance of any such Material Contract; or (iii) cancel, terminate or modify any such Material Contract; or

(e) result in the imposition or creation of any lien or other Encumbrance upon or with respect to any asset owned by any Acquired Entity (except for minor liens that will not, in any case or in the aggregate, materially detract from the value of the assets subject thereto or materially impair the operations of any Acquired Entity (“Permitted Encumbrances”).

Except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, as amended, none of the Acquired Entities is and none of the Acquired Entities will be required to make any filing with or give any notice to, or to obtain any Consent from, any Governmental Body in connection with the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement or the consummation of the Merger or any of the other transactions contemplated by this Agreement. The Acquired Entity is its own ultimate parent entity (as such term is defined in 16 C.F.R. § 801.1(a)(3)) and is not controlled (as such term is defined in 16 C.F.R. § 801.1(b)) by any other entity (as such term is defined in 16 C.F.R. § 801.1(a)(2)). Neither the Company nor any of its Subsidiaries is engaged in manufacturing (as such term is defined in 16 C.F.R. § 801.1(j)). As of the Closing Date, the Acquired Entity’s total assets (as such term is defined in 16 C.F.R. § 801.11 and interpreted by the Premerger Notification Office of the Federal Trade Commission) as stated on its most recent regularly prepared balance sheet available prior to the Closing Date will be below \$18.8 million.

2.22 Significant Business Relationships. Part 2.22 of the Disclosure Schedule sets forth an accurate and complete list of: (a) the vendors and suppliers used by any Acquired Entity to which the Acquired Entities paid an amount in excess of \$185,000 for the year ended January 31, 2020; and (b) the top ten customers of the Acquired Entities based on the value of customer purchase documents received and accepted for the periods of 12 months ended January 31, 2020 and six months ended July 31, 2020 (each of the foregoing Persons in clauses “(a)” and “(b)”, a “Key Business Partner”). Since January 31, 2020, no Key Business Partner has terminated its relationship with any Acquired Entity or demanded a material reduction or change in terms of its relationship with any Acquired Entity. None of the Acquired Entities is engaged in any material dispute with any Key Business Partner and to the Knowledge of the Company, no Key Business Partner intends to terminate, limit or reduce its business relations with any Acquired Entity, or materially reduce or adversely change the pricing or other terms of its business with any Acquired Entity.

2.23 Export Control Laws. In the past five (5) years, the Acquired Entities have conducted their respective export transactions in material compliance with all applicable provisions of United States export control and sanctions laws and regulations, including the Export Administration Regulations, administered by the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), and the trade and economic sanctions regulations administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). Without limiting the foregoing:

(a) the Acquired Entities have obtained all export licenses and other approvals required for their respective exports of products, software and technologies from the United States (and Part 2.23 of the Disclosure Schedule sets forth the status of all such applications);

(b) the Acquired Entities are in compliance, in all material respects, with the terms of all applicable export licenses or other approvals;

(c) there are no pending or threatened claims or investigations against the Acquired Entities with respect to such export licenses or other approvals;

(d) the Acquired Entities have not done business, directly or indirectly, (i) in Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine and Sudan, each of which countries or territory are presently or were subject to an embargo by the United States or with persons of or ordinarily resident in those countries or territory, nor have any Acquired Entities ever employed or engaged any employees, independent contractors, or other persons in any such country or territory; or (ii) with any person listed on any of the U.S. Government lists of prohibited or restricted persons, including the Specially Designated Nationals and Blocked Persons List and the Foreign Sanctions Evader List administered by OFAC or the Denied Persons or Entity List, administered by BIS, or any person owned or controlled by, or acting on behalf of, a person on any of the aforementioned US government lists;

(e) no director, officer, employee, independent contractor or person otherwise affiliated with the Acquired Entities is listed on any of the U.S. Government lists of prohibited or restricted parties or is owned or controlled, or acting on behalf of, a person on any such list;

(f) there are no actions pertaining to the Acquired Entities' export transactions that would reasonably be expected to give rise to any future claims or investigations; and

(g) no consents or approvals for the transfer of export licenses to Parent are required, except for such consents and approvals that the Acquired Entities will obtain prior to closing.

2.24 No PPP Loans. None of the Acquired Entities has applied for or accepted: (a) any loan pursuant to the Paycheck Protection Program in Section 1102 and Section 1106 of the CARES Act; (b) any funds pursuant to the Economic Injury Disaster Loan program or an advance on an Economic Injury Disaster Loan pursuant to Section 1110 of the CARES Act; or (c) any loan or funds from similar applicable Laws enacted by any Governmental Bodies.

2.25 Vote Required. The affirmative vote of: (a) the holders of a majority of the outstanding shares of Company Capital Stock (voting together as a single class on an as-converted to Company Common Stock basis); (b) the holders of at least 60% of the outstanding shares of Company Preferred Stock (voting together as a single class on an as-converted to Company Common Stock basis) and (c) the holders of a majority of the outstanding shares of

Company Common Stock (voting together as a single class), are the only votes of the holders of any class or series of Company Capital Stock necessary to adopt and approve this Agreement and approve the other transactions contemplated by this Agreement (the votes referred to in clauses “(a)” and “(b)” of this sentence being referred to collectively as the “Required Merger Stockholder Votes”).

2.26 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Acquired Entity.

3. Representations and Warranties of Parent and Merger Sub

Parent and Merger Sub represent and warrant to the Company as follows, to and for the benefit of the Company (with the understanding and acknowledgement that the Company would not have entered into this Agreement without being provided with the representations and warranties set forth herein, that the Company is relying on these representations and warranties, and that these representations and warranties constitute an essential and determining element of this Agreement), as follows:

3.1 Organization and Standing. Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

3.2 Authority; Binding Nature of Agreement. Parent and Merger Sub have the absolute and unrestricted right, power and authority to enter into and perform their obligations under this Agreement and under each other agreement, document and instrument referred to in this Agreement to which Parent or Merger Sub is a party; and the execution, delivery and performance by Parent and Merger Sub of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action on the part of Parent and Merger Sub and their respective boards of directors. No vote of Parent’s stockholders is needed to approve the Merger. This Agreement and each other agreement, document or instrument referred to in this Agreement to which Parent or Merger Sub is a party constitutes the legal, valid and binding obligation of Parent and Merger Sub, as the case may be, enforceable against Parent and Merger Sub in accordance with its terms, subject to: (a) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.3 Non-Contravention; Consents. Neither: (a) the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement; nor (b) the consummation of the Merger or any of the other transactions contemplated by this Agreement or any of such other agreements, documents or instruments, will (with or without notice or lapse of time) contravene, conflict with or result in a: (i) violation of any of the provisions of the certificate of incorporation or bylaws of Parent or Merger Sub; (ii) violation of any resolution adopted by the stockholders, the board of directors or any committee of the board of directors of Parent or Merger Sub; or (iii) material violation of any provision of any material contract by which Parent is bound. Neither Parent nor Merger Sub will be required to make any filing with or give any notice to, or to obtain any Consent from, any

Governmental Body in connection with: (A) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement; or (B) the consummation of the Merger or any of the other transactions contemplated by this Agreement, except for: (1) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware; and (2) any filing, notice or Consent which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Parent or Merger Sub's ability to consummate the Merger or the other transactions contemplated hereby.

3.4 Merger Sub. Merger Sub is wholly-owned by Parent. Merger Sub has been formed solely for the purpose of engaging in the transactions contemplated by this Agreement.

3.5 Merger Consideration. As of the Closing Date, Parent will have sufficient cash or existing available borrowing capacity under committed borrowing facilities in immediately available funds to enable Parent to timely pay in full all amounts payable by Parent pursuant to Section 1.5(a)(ii), Section 1.6(a) and Section 1.6(d).

3.6 Litigation. There is no Legal Proceeding or investigation pending or, to the knowledge of Parent or Merger Sub, threatened in writing against Parent or Merger Sub, nor is Parent or Merger Sub subject to any outstanding Order that, in any case, would, individually or in the aggregate, challenge or may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement.

4. Certain Covenants of the Company

4.1 Access and Investigation. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to Section 9 or the Effective Time (the "Pre-Closing Period"), the Company shall, and shall cause its Representatives and each of the other Acquired Entities and their respective Representatives to: (a) provide Parent and Parent's Representatives with reasonable access at reasonable times during normal business hours, to the Acquired Entities' Representatives, personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Acquired Entities; and (b) provide Parent and Parent's Representatives with copies of such existing books, records, Tax Returns, work papers and other documents and information relating to the Acquired Entities, and with such additional financial, operating and other data and information regarding the Acquired Entities, as Parent may reasonably request; *provided, however*, that the Company may withhold or restrict access to any information to the extent necessary to preserve the health and safety of employees of the Acquired Entities in respect of risks posed by the COVID-19 pandemic or to the extent disclosure of such information would reasonably be expected to violate applicable Law or result in the waiver of the Company's legal or work product privilege (provided, that the Company and the Parent shall work in good faith to develop an alternative means by which to provide Parent such information in a manner that does not violate applicable Law or result in the loss of legal or work product privilege). During the Pre-Closing Period, Parent may, following written consent by the Company (which shall not be unreasonably withheld), make inquiries of a limited number of Persons having business relationships with any of the Acquired Entities (including Key Business Partners) and the Acquired Entities shall help facilitate (and shall cooperate fully with

Parent in connection with) such inquiries, in each case in compliance with all applicable Legal Requirements (including any applicable antitrust or competition laws or regulations).

4.2 Operation of the Business of the Acquired Entities. During the Pre-Closing Period, the Company shall ensure that:

(1) each of the Acquired Entities shall conduct its business and operations in the ordinary course and in substantially the same manner as such business and operations have been conducted prior to the date of this Agreement and in material conformance with its stated compliance policies (except to the extent expressly provided otherwise in this Agreement or as consented to in writing by Parent);

(2) each of the Acquired Entities shall use reasonable efforts to: preserve its current business organization, keep available the services of its current officers, employees, independent contractors and consultants and maintain its relations and goodwill with all customers, landlords, employees and other Persons having business relationships with the Acquired Entities, including all Key Business Partners (other than terminations of employees for cause following reasonable consultation with Parent);

(3) none of the Acquired Entities shall cancel any of its insurance policies identified in Part 2.17 of the Disclosure Schedule or reduce the amount of any insurance coverage provided by such insurance policies;

(4) none of the Acquired Entities shall declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock or other securities, or repurchase, redeem or otherwise reacquire any shares of capital stock or other securities (other than forfeitures of Company Restricted Stock upon termination of service with any employee pursuant to stock option or restricted stock award agreements in effect on the date hereof);

(5) none of the Acquired Entities shall sell, issue or authorize the issuance of: (i) any capital stock or other security other than the New Restricted Stock Units in accordance with the terms of this Agreement; (ii) any option or right to acquire any capital stock (or cash based on the value of capital stock) or other security; or (iii) any instrument convertible into or exchangeable for any capital stock (or cash based on the value of capital stock) or other security (except that the Company shall be permitted to issue Company Capital Stock: (A) upon the exercise of Company Warrants, (B) upon the exercise of Company Options not later than three Business Days prior to the Closing Date; and (C) upon the conversion of Company Preferred Stock, in each case, outstanding as of the date of this Agreement and in accordance with their respective terms as in effect on the date of this Agreement);

(6) none of the Acquired Entities shall amend or waive any of its rights under, or permit the acceleration of vesting under: (i) any provision of the Company Stock Plan; (ii) any provision of any agreement evidencing any Company Option, except pursuant to arrangements in effect as of the date of this Agreement and set forth on Part 4.2(6) of the

Disclosure Schedule; or (iii) any other compensation obligation, including New Restricted Stock Units;

(7) none of the Acquired Entities shall amend or permit the adoption of any amendment to such Acquired Entity's Charter Documents, or effect or permit such Acquired Entity to become a party to any Acquisition Transaction (other than the transactions contemplated by this Agreement), recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(8) none of the Acquired Entities shall form any Subsidiary or acquire any equity interest or other interest in any other Entity;

(9) none of the Acquired Entities shall make any capital expenditure, except for capital expenditures that, when added to all other capital expenditures made on behalf of the Acquired Entities during the Pre-Closing Period, do not exceed \$75,000;

(10) none of the Acquired Entities shall enter into, or permit any of the assets owned or used by it to become bound by, any Contract that is or would constitute a Material Contract;

(11) other than in the ordinary course of business and consistent with past practice, none of the Acquired Entities shall amend, extend or prematurely terminate, or waive any material right or remedy under, any Acquired Entity Contract that is or would constitute a Material Contract;

(12) none of the Acquired Entities shall: (i) acquire, lease or license any right or other asset from any other Person for an aggregate value in excess of \$75,000; (ii) sell or otherwise dispose of, or lease or license (or grant any other right with respect to), any right or other asset to any other Person; or (iii) waive or relinquish any right, except in the case of each of clauses (i)-(iii), in the ordinary course of business consistent with past practices;

(13) none of the Acquired Entities shall: (i) lend money to any Person (except that the Acquired Entities may make routine travel and business expense advances to current Acquired Entity Service Providers in the ordinary course of business consistent with past practices); or (ii) incur or guarantee any Indebtedness;

(14) none of the Acquired Entities shall: (i) enter into any collective bargaining agreement, except as required by applicable Legal Requirements and following reasonable consultation with Parent; (ii) establish, adopt, amend or terminate (other than as expressly required by Parent pursuant to the terms of this Agreement) any Acquired Entity Employee Plan (or any plan or arrangement that would be an Acquired Entity Employee Plan if in effect as of the date of this Agreement); (iii) pay, or make any commitment to pay, any bonus or make any profit-sharing payment, cash incentive payment or similar payment, other than commissions paid in the ordinary course of business consistent with past practices or pursuant to an existing Contract in effect on the date of this Agreement that was made available to Parent prior to the Closing and is

disclosed on Part 2.15(e) of the Disclosure Schedule; (iv) grant or increase, or make any commitment to grant or increase, the amount of the wages, salary, commissions, fringe benefits, severance, retention payments, change of control payments or other employee benefits or compensation (including equity-based compensation, whether payable in cash or otherwise) or remuneration payable to any Acquired Entity Service Provider;

(15) none of the Acquired Entities shall: (i) promote or change the title of any of its Acquired Entity Service Providers (retroactively or otherwise); (ii) fund, or make any commitment to fund, any compensation obligation (whether by trust or otherwise); or (iii) within ten (10) Business Days from the date hereof, and thereafter, outside the ordinary course of business consistent with past practice, hire or make an offer to hire any new Acquired Entity Service Provider on a full -time, part-time, consulting or other basis; or (iv) terminate the employment or engagement of any Acquired Entity Service Provider other than for cause following reasonable consultation with Parent;

(16) none of the Acquired Entities shall change any of its methods of accounting or accounting practices in any material respect (other than as required by applicable accounting or auditing standards);

(17) none of the Acquired Entities shall prepare or file any income or other material Tax Return materially inconsistent with past practice, except as otherwise required by applicable Legal Requirements, or on any such Tax Return, take any position, make, change or rescind any election, or adopt any method that is inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods, except in each case as otherwise required by applicable Legal Requirements, enter into a Tax allocation agreement, Tax sharing agreement, or Tax indemnity agreement (other than Ordinary Commercial Agreements), amend any Acquired Entity Return, settle or otherwise compromise any claim, notice, audit report or assessment relating to Taxes, enter into any closing agreement or similar agreement relating to Taxes, otherwise settle any dispute relating to Taxes, request any ruling or similar guidance with respect to Taxes, surrender any right to claim a Tax refund, consent to an extension or waiver of the statutory limitation period applicable to a claim or assessment in respect of Taxes, or enter into intercompany transactions giving rise to deferred gain or loss of any kind, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax if such similar action would reasonably be expected to have the effect of increasing the Tax liability of Parent or its Affiliates for any Tax period ending after the Closing Date;

(18) none of the Acquired Entities shall commence or settle any Legal Proceeding;

(19) none of the Acquired Entities shall accelerate the collection of any accounts receivable or delay the payment of any accounts payable;

(20) except as required by applicable accounting or auditing standards consistent with past practices, none of the Acquired Entities shall write off as uncollectible, or establish any extraordinary reserve with respect to, any account

receivable or other Indebtedness in excess of \$15,000 with respect to a single matter, or in excess of \$45,000 in the aggregate;

(21) none of the Acquired Entities shall make any pledge of any of its assets or otherwise permit any of its assets to become subject to any Encumbrance (except for Permitted Encumbrances); and

(22) none of the Acquired Entities shall agree or commit to take any of the actions described in clauses “(3)” through “(21)” above.

Notwithstanding the foregoing, an Acquired Entity may take any action described in: (i) clauses “(2)” through “(21)” above if: (a) consented to by Parent in response to an email request for such consent that is addressed to the representatives of the Parent set forth in Schedule 4.2(a) (“Parent Representatives”) and such consent shall be subject to the requirements set forth on Schedule 4.2(b) and shall be granted or withheld by any such Parent Representative within forty-eight hours of receiving following receipt of such email request; *provided* that such consent shall be deemed to have been provided in the event no Parent Representative responds within such forty-eight hour period; (ii) such action is expressly required to be taken by this Agreement; or (iii) set forth in Part 4.2 of the Disclosure Schedule.

4.3 No Negotiation. During the Pre-Closing Period, the Company shall not, and the Company shall not authorize or permit, any of the Acquired Entities or any Representative of any of the Acquired Entities to: (a) solicit, or encourage or facilitate the initiation or submission of, any expression of interest, inquiry, proposal or offer from any Person (other than Parent) relating to a possible Acquisition Transaction; (b) participate in any discussions or negotiations or enter into any agreement, understanding or arrangement with, or provide any non-public information to, any Person (other than Parent or its Representatives) relating to or in connection with a possible Acquisition Transaction; or (c) entertain, consider or accept any proposal or offer from any Person (other than Parent) relating to a possible Acquisition Transaction. The Company shall promptly (and in any event within 24 hours of receipt thereof) provide Parent with: (i) an oral and a written description of any expression of interest, inquiry, proposal or offer relating to a possible Acquisition Transaction that is received by any Acquired Entity or by any of the Acquired Entities’ Representatives from any Person (other than Parent), including in such description the identity of the Person from which such expression of interest, inquiry, proposal or offer was received; and (ii) a copy of each written communication and a complete summary of each other communication transmitted on behalf of such Person or any of such Person’s Representatives to any Acquired Entity or any of the Acquired Entities’ Representatives.

4.4 Treatment of Certain Benefit Plans. The Company shall take (or cause to be taken) all actions necessary or appropriate to keep in effect and in good standing through the Closing each Acquired Entity Employee Plan that contains a cash or deferred arrangement intended to qualify under Section 401(a) of the Code (each, a “401(k) Plan”).

4.5 Termination/Amendment of Agreements and Release of Encumbrances. The Company shall use commercially reasonable efforts to: (a) cause the agreements identified in Schedule 4.5(a) to be terminated effective as of the Effective Time and (b) take, or cause to be taken, all actions necessary to secure the termination and release of any and all Encumbrances

upon the assets or properties of the Acquired Entities; in each case in form and substance reasonably satisfactory to Parent.

4.6 Communications with Employees. Following the date of this Agreement, the parties shall jointly announce the transactions contemplated by this Agreement to the Acquired Entity Service Providers (the “Joint Announcement”), and the Company shall facilitate the delivery of the Employment Offer Letters provided by Parent pursuant to Section 4.9. Thereafter, the Company shall not communicate (and the Company shall ensure that none of the Acquired Entities and no Representative of any Acquired Entity communicates) with Acquired Entity Service Providers regarding post-Closing employment matters with Parent or any Subsidiary or Affiliate of Parent, including post-Closing employee benefit plans and compensation in a manner that is intentionally inconsistent with the Joint Announcement, the Employment Offer Letters, or any other press release or communication mutually agreed by Parent and the Company.

4.7 Tail Insurance. Prior to the Closing, the Company shall purchase an extended reporting period endorsement under the Company’s existing directors’ and officers’ liability insurance coverage (the “D&O Tail Policy”) for the Acquired Entities’ directors and officers, which shall provide such directors and officers with coverage for six years following the Effective Time of not less than the existing coverage under, and have other terms not materially less favorable to, the insured persons than the directors’ and officers’ liability insurance coverage presently maintained by the Company.

4.8 Payoff Letters and Invoices; Estimated Merger Consideration Certificate.

(a) At least three (3) Business Days prior to the Closing Date, the Company shall, to the extent applicable, deliver to Parent an accurate and complete copy of: (a) one or more payoff letters, each dated no more than five Business Days prior to the Closing Date, with respect to all outstanding Indebtedness of the Acquired Entities, to: (i) satisfy such Indebtedness as of the Closing; and (ii) terminate and release any Encumbrances related thereto and (b) a properly completed and duly executed IRS Form W-9, or appropriate version of IRS Form W-8, as applicable, from each Person entitled to payment of Indebtedness or Company Transaction Expenses in connection with the Closing.

(b) At least three (3) Business Days prior to the Closing Date, the Company shall deliver to Parent an estimated Merger Consideration Certificate, in form and substance reasonably satisfactory to Parent and setting forth the information required by Section 1.3(b)(v) on an accompanying spreadsheet, together with documentation, reasonably satisfactory to Parent, in support of the calculation of the amounts set forth in the estimated Merger Consideration Certificate.

(c) Nothing in this Section 4.8 shall limit any rights of any Parent Indemnitee as set forth in Section 10.

4.9 Employment Agreements and Termination of Non-Continuing Employees. Parent shall provide offer letters of continuing at-will employment, along with other customary employee documents; provided, however, that in the case of certain non-U.S. Acquired Entity Employees, Parent may extend the offer of a new employment contract with Parent's local entity or provide a notice or confirmatory acknowledgment that their employment will continue under the existing terms and conditions of employment (each, an "Employment Offer Letter"), within two (2) Business Days following Parent's public announcement of the transactions contemplated by this Agreement, to certain Acquired Entity Employees as Parent determines (the "Offered Employees"); in any case, Parent may request acknowledgment that such Acquired Entity Employees will be governed by Parent's code of conduct, policies and training requirements. Effective as of immediately prior to the Closing, the Company shall terminate, to the extent that it is able to do so in compliance with applicable Legal Requirements, the employment of each Acquired Entity Employee who is not a Continuing Employee (each such Person, a "Non-Continuing Employee") and shall use commercially reasonable efforts to obtain a separation agreement and general release of claims from such individuals in favor of each Acquired Entity and their Affiliates and Representatives. All contractors shall continue providing services to the applicable Acquired Entity unless Parent requests that the service of any such contractors be terminated, in which case the Company shall terminate the engagement of such contractors prior to the Closing and any costs associated with such terminations shall constitute Company Transaction Expenses. Any non-U.S. Acquired Entity Employee who is provided with an Employment Offer Letter and continues to be an employee of any Acquired Entity, Parent or any Affiliate thereof shall be a "Non-U.S. Continuing Employee" regardless of whether such individual's employment or service to any Acquired Entity is deemed to have been terminated as of the Closing, pursuant to local Legal Requirements or otherwise. The Company shall be responsible for the payment of all final payments, wages, salary and benefits and other remuneration, including, any severance, bonus, accrued vacation, payment in lieu of notice period (including, but not limited to, any payments owed under the WARN Act) and vacation pay or other payments or amounts, due to Non-Continuing Employees, whether under Legal Requirements or Contract (the "Non-Continuing Employee Compensation") with respect to their services as employees of the Acquired Entities and the termination of their employment, and all such payments shall be made to each Non-Continuing Employee prior to the Closing Date and be considered Company Transaction Expenses; *provided*, that no such costs, expenses or payments shall be borne by the Company, and shall instead be Liabilities of Parent, to the extent arising out of the employment of any Non-U.S. Continuing Employee. No later than the Business Day prior to the Closing Date, the Company shall pay to each U.S. Acquired Entity Employee an amount equal to all accrued paid time off of each such Acquired Entity Employee as of the Closing Date, such that, as of the Closing, such Acquired Entity Employees shall have no accrued paid time off (such amount, in the aggregate, the "PTO Balance").

4.10 Retention Pool. Prior to the Effective Time, on the written request of Parent, the Company will grant a number of New Restricted Stock Units to Continuing Employees from the shares remaining available for issuance under the New Stock Plan having an aggregate economic value equal to \$30,000,000 (the "Retention Pool"). Any such New Restricted Stock Units shall be allocated to Continuing Employees as determined by Parent, in its sole discretion, after consultation with the Company. All New Restricted Stock Units shall be issued solely to those Persons who are Offered Employees and in the amounts set forth in such allocation and shall be issued without consideration and shall vest over a four year period. The number of New

Restricted Stock Units subject to any individual grant shall be expressed as a dollar value, which such value shall be converted into a number of shares of Company Common Stock no later than immediately prior to the Effective Time by dividing (a) the specified dollar value of the applicable grant of New Restricted Stock Units by (b) the Per Share Amount. Any New Restricted Stock Units that are outstanding as of the Effective Time shall be treated in accordance with Section 1.6(c). The New Restricted Stock Units shall vest as follows: 25% of the total number of New Restricted Stock Units subject to a given grant shall vest on September 20, 2021 and 1/16th of the total number of New Restricted Stock Units subject to a given grant shall vest quarterly thereafter, subject to the occurrence of the Closing and the grantee's continuous eligible service through and including the applicable vesting date.

4.11 Joinder and Support Agreements; Option Conversion Agreements. Prior to the Closing Date, the Company shall request and use commercially reasonable efforts to obtain (a) Joinder and Support Agreements from all holders of Company Capital Stock and (b) Option Conversion Agreements from all holders of Company Options.

4.12 Foreign Subsidiary Transfer. Prior to the Closing Date, the Company shall use commercially reasonable efforts to execute a duly stamped share transfer form by the individual identified in Schedule 1.3(b)(xx) in respect of his ownership in the Foreign Subsidiary in favor of a nominee of Parent.

5. Certain Covenants of the Parties

5.1 Filings and Consents.

(a) Filings. The Company and Parent shall respond as promptly as practicable to any inquiries or requests received from any state attorney general, antitrust authority or other Governmental Body in connection with antitrust or related matters. Subject to the confidentiality provisions of this Agreement, Parent and the Company each shall promptly supply the other with any information which may be required in order to comply with its obligations set forth in this Section 5.1(a). Except where prohibited by applicable Legal Requirements or any Governmental Body, and subject to the confidentiality provisions of this Agreement, the Company shall: (i) cooperate with Parent with respect to any required filings made by Parent in connection with the Merger; (ii) permit Parent to review (and consider in good faith the views of Parent in connection with) any documents before submitting such documents to any Governmental Body in connection with the Merger; and (iii) promptly provide Parent with copies of all filings, notices and other documents (and a summary of any oral presentations) made or submitted by any Acquired Entity with or to any Governmental Body in connection with the Merger.

(b) Efforts. Subject to Section 5.1(c), Parent and the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions necessary to consummate the Merger and make effective the other transactions contemplated by this Agreement as promptly as practicable. Without limiting the generality of the foregoing, but subject to Section 5.1(c), Parent and the Company: (i) shall make all filings (if any) and give all notices (if any) required to be made and given by such party in connection

with the Merger and the other transactions contemplated by this Agreement; and (ii) shall use commercially reasonable efforts to obtain each Consent (including those set forth on Schedule 7.3(b)(ii)) required to be obtained (pursuant to any applicable Legal Requirement or Contract, or otherwise) by such party in connection with the Merger or any of the other transactions contemplated by this Agreement.

(c) Limitations. Notwithstanding anything to the contrary contained in Section 5.1(b) or elsewhere in this Agreement, neither Parent nor Merger Sub shall have any obligation under this Agreement, and the Company shall not agree or commit (without the prior written consent of Parent): (i) to divest or agree to divest (or cause any of its Subsidiaries or Affiliates to divest or agree to divest) any of its respective businesses, product lines or assets, or to take or agree to take (or cause any of its Subsidiaries or Affiliates to take or agree to take) any other action or to agree (or cause any of its Subsidiaries or Affiliates to agree) to any limitation or restriction on any of its respective businesses, product lines or assets; or (ii) to contest any Legal Proceeding brought against the Company by a Governmental Body relating to the Merger or any of the other transactions contemplated by this Agreement.

5.2 Stockholder Consent.

(a) Information Statement. As promptly as practicable (and in any event within five (5) Business Days) after the execution of this Agreement, the Company shall, in accordance with its Charter Documents and applicable Legal Requirements, provide to its stockholders an Information Statement and other appropriate documents in connection with the obtaining of: (i) written consents of the stockholders of the Company in favor of the adoption and approval of this Agreement and approval of the other transactions contemplated by this Agreement; and (ii) waivers by the stockholders of the Company of their appraisal rights in connection with the Merger. The Company shall use commercially reasonable efforts to obtain such written consents and waivers from holders of all of the outstanding shares of each class and series of Company Capital Stock. The Information Statement shall: (A) include the unanimous recommendation of the board of directors of the Company in favor of the adoption and approval of this Agreement and the approval of the other transactions contemplated by this Agreement; (B) notify the stockholders of the receipt by the Company of the Required Merger Stockholder Votes and their appraisal rights pursuant to Section 262 of the DGCL; and (C) comply with all applicable Legal Requirements. Notwithstanding anything to the contrary contained in this Agreement, the Information Statement and any other materials submitted to the Company's stockholders in connection with the transactions contemplated by this Agreement shall be subject to prior review and reasonable comment by Parent and its advisors.

(b) Parachute Payments. The Company shall: (i) at least three (3) days prior to the Closing Date and at least one day prior to the 280G Vote, use commercially reasonable efforts to secure from each "disqualified individual" (within the meaning of Section 280G(c) of the Code) who has received or has a right to receive any payments and/or benefits as a result of or in connection with the transactions contemplated herein that could be deemed to constitute "parachute payments" (within the meaning of Section

280G of the Code and the regulations promulgated thereunder (“Section 280G”) a waiver of such individual’s rights to retain or receive some or all of such payments and/or benefits (such waived payments and/or benefits, the “Waived Section 280G Payments”) applicable to such individual so that all remaining payments and/or benefits applicable to such individual shall not be deemed to be “excess parachute payments” (within the meaning of Section 280G(b)(1) of the Code); and (ii) at least two days prior to the Closing Date, submit to its stockholders for approval, in accordance with the requirements of Section 280G(b)(5)(B) of the Code and the applicable rulings and regulations thereunder, the Waived Section 280G Payments, such that the deduction of such payments and/or benefits will not be limited by the application of Section 280G and the excise tax under Section 4999 of the Code will not apply to such payments and/or benefits (such request for stockholder approval, the “280G Vote”). Prior to the Closing, the Company shall provide Parent with evidence reasonably satisfactory to Parent that either: (x) the requisite Company stockholder approval was obtained with respect to the Waived Section 280G Payments; or (y) the Company stockholder approval of the Waived Section 280G Payments was not obtained and that, as a consequence, such Waived Section 280G Payments shall not be made or provided. The Company shall provide to Parent for its review and approval (which shall not be unreasonably withheld, conditioned or delayed), at least two days prior to securing the waivers required by clause “(i)” hereof, copies of all documents prepared by the Company in connection with this Section 5.2(b), including the form of waiver agreement, stockholder information statement, stockholder voting materials, and parachute payment calculations prepared by the Company and/or its advisors.

5.3 Reasonable Efforts. Prior to the Closing: (a) the Company shall use reasonable efforts to cause the conditions set forth in Section 7 to be satisfied on a timely basis; and (b) Parent and Merger Sub shall use reasonable efforts to cause the conditions set forth in Section 8 to be satisfied on a timely basis.

5.4 S-8. Parent will cause the Parent Common Stock issuable upon exercise of the Assumed Options and settlement of assumed New Restricted Stock Units for which a Form S-8 registration statement is available to be registered with the SEC on Form S-8 on the Closing Date (assuming timely receipt of the Merger Consideration Certificate, all option and New Restricted Stock Unit documentation relating to the Assumed Options and New Restricted Stock Units outstanding immediately prior to the Effective Time that are assumed by Parent), will maintain the effectiveness of such registration statement for so long as such assumed Company Options and New Restricted Stock Units remain outstanding and will reserve a sufficient number of shares of Parent Common Stock for issuance upon exercise or settlement thereof. The Form S-8 registration statement shall not cover the shares of Parent Common Stock subject to any Company Options or New Restricted Stock Units assumed by Parent that are held by Persons who do not become employees of Parent or a subsidiary of Parent at the Effective Time or do not otherwise have a service relationship with Parent or a subsidiary of Parent at the Effective Time.

5.5 Employee Matters.

(a) Subject to Legal Requirements, nothing in this Agreement shall confer upon any Continuing Employee or other service provider any right to continue in the employment or service of Parent, any Acquired Entity or any of their respective Affiliates, or shall interfere with or restrict in any way the rights of Parent, any Acquired Entity or any of their respective Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of any Continuing Employee or other service provider at any time for any reason whatsoever, with or without cause. In no event shall the terms of this Agreement be deemed to (i) establish, amend, or modify any “employee benefit plan” as defined in Section 3(3) of ERISA, or any other benefit plan, program, agreement or arrangement maintained or sponsored by Parent, any Acquired Entity or any of their respective Affiliates; or (ii) alter or limit the ability of Parent, any Acquired Entity or any of their respective Affiliates to amend, modify or terminate any “employee benefit plan” as defined in Section 3(3) of ERISA or any other compensation or benefit or employment plan, program, agreement or arrangement after the Effective Time. The provisions of this Section 5.5 are for the sole benefit of the parties to this Agreement, and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any Person (including, for the avoidance of doubt, any Continuing Employee or other current or former employee of the Company or any of its Affiliates), other than the parties hereto and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (including with respect to the matters provided for in this Section 5.5 under or by reason of any provision of this Agreement.

(b) Following the Closing, and subject to applicable Legal Requirements, Parent shall use commercially reasonable efforts to treat the service of the Continuing Employees with the Acquired Entities attributable to any period before the Effective Time as service rendered to Parent or any Subsidiary or Affiliate of Parent for purposes of eligibility, vesting and determination of the level of benefits under Parent’s vacation, severance, health and welfare, and defined contribution plans (in each case, to the extent (i) the Continuing Employee is otherwise eligible to participate in such plan and (ii) such treatment is permissible under the Parent’s plans), except where credit would result in duplication of benefits. As a condition to Parent’s obligation under this Section 5.5(b), the Company shall provide Parent or its designee with all information reasonably requested and necessary to allow Parent or its designee to comply with such obligation. With respect to each health or welfare benefit plan maintained by Parent or the Surviving Corporation for the benefit of Continuing Employees, Parent shall, or shall cause the Surviving Corporation to, use commercially reasonable efforts to (A) cause to be waived any eligibility waiting periods, any evidence of insurability requirements and the application of any pre-existing condition limitations under such plan, and (B) cause each Continuing Employee to be given credit under such plan for all amounts paid by such Continuing Employee under any similar Acquired Entity Employee Plan for the plan year that includes the Effective Time for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the plans maintained by Parent or the Surviving Corporation, as applicable, for the plan year in which the Effective Time occurs, in each case only to the extent permitted by applicable Legal Requirements and the applicable plan(s).

(c) As soon as practicable following the Effective Time, subject to applicable Legal Requirements, for a period of not less than 12 months after the Closing Date (or if shorter, during the period of employment), Parent shall, or shall cause the applicable employing Subsidiary of Parent (including the Surviving Corporation or the Foreign Subsidiary) to, use commercially reasonable efforts to permit each Acquired Entity Employee who continues employment with Parent or the Surviving Corporation following the Effective Time (each, a “Continuing Employee”) to enroll in Parent’s employee benefit plans or the employee benefit plans of the applicable employing Subsidiary (together, “Parent Plans”) provided to similarly situated employees of Parent or the applicable employing Subsidiary (taking into account relevant factors including the Continuing Employee’s level of responsibilities and geographic location), to the extent permitted by the terms of, and to the extent the applicable employees are eligible to enroll in, such Parent Plans.

5.6 Company Indemnification Provisions.

(a) If the Merger is consummated, then, until the sixth anniversary of the Effective Time, Parent will cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company to its present and former directors and officers (the “Covered Persons”) pursuant to indemnification agreements with the Company in effect on the date of this Agreement and set forth in Schedule 5.6, and pursuant to the Charter Documents in effect as of the date of this Agreement (the “Company Indemnification Provisions”), with respect to claims arising out of acts or omissions occurring at or prior to the Effective Time that are asserted after the Effective Time. Any claims for indemnification made under this Section 5.6 on or prior to the sixth anniversary of the Effective Time shall survive such anniversary until the final resolution thereof.

(b) This Section 5.6 shall survive the consummation of the Merger, is intended to benefit each Covered Person, shall be binding on all successors and assigns of the Surviving Corporation and Parent, and shall be enforceable by the Covered Persons, who are express third party beneficiaries of this Section 5.6; *provided, however*, that recourse shall first be against the D&O Tail Policy until it is exhausted before recovery against Parent shall take place.

(c) Notwithstanding anything to the contrary herein, the obligations under this Section 5.6 shall not be terminated or modified in a manner as to adversely affect any Covered Person without the consent of such affected Covered Person.

6. Tax Matters

6.1 Transfer Taxes. The liability for all transfer, documentary, sales, use, stamp, registration and other such similar Taxes, and all conveyance fees, recording charges and other similar fees and incurred in connection with consummation of the transactions contemplated hereby (“Transfer Taxes”), shall be borne fifty percent (50%) by the Effective Time Holders and fifty percent (50%) by Parent; *provided, however*, that any non-U.S. Taxes imposed on a deemed

sale of a Subsidiary of the Company (or a deemed sale of the Subsidiary's assets) upon the sale of the Company, shall be borne entirely by the Effective Time Holders. The parties shall cooperate with each other in connection with the filing of any Tax Returns relating to Transfer Taxes, including joining in the execution of any such Tax Return or other documentation where necessary. Parent and Effective Time Holders shall, upon request of the other party, use their commercially reasonable efforts to obtain any certificate or other document from any Person as may be necessary to mitigate, reduce or eliminate any Transfer Taxes. The party required by applicable law to file any Tax Return relating to Transfer Taxes shall be responsible for preparing and timely filing all such Tax Returns.

6.2 Tax Returns.

(a) During the Pre-Closing Period, the Acquired Entities shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Acquired Entities with a due date on or prior to the Closing Date (taking into account all extensions properly obtained), and the Acquired Entities shall remit or cause to be remitted any Taxes due in respect of such Tax Returns; *provided, however*, the Acquired Entities will submit any such Tax Returns that report income Taxes or other material Taxes to Parent for review and comment at least 20 days prior to the due date for filing such Tax Return, and will consider in good faith any reasonable comments received in writing within 10 days of the Acquired Entity's delivery of such Tax Return to Parent.

(b) Parent shall prepare and timely file, or cause to be prepared and timely filed (taking into account all extensions properly obtained) all Tax Returns of the Acquired Entities that are first due after the Closing Date and that relate in whole or in part to a Pre-Closing Tax Period ("Parent Prepared Return"). To the extent any Parent Prepared Return relates in whole or in part to a Pre-Closing Tax Period, each such Parent Prepared Return shall be prepared in a manner consistent with the past practice of the Acquired Entities, except where Parent determines in good faith that preparing such Parent Prepared Returns in such manner could be inconsistent with applicable Legal Requirements. In the event that any Parent Prepared Returns shows any material Pre-Closing Taxes that may form the basis for a claim of indemnification against the Effective Time Holders pursuant to this Agreement, Parent will submit such Parent Prepared Return to the Securityholders' Agent for review and comment at least 20 days prior to the due date (or, if such Parent Prepared Returns are required to be filed within 20 days after the date this Agreement is signed, as soon as practicable after such date) (taking into account all extensions properly obtained) for filing such Parent Prepared Return, and Parent shall consider in good faith any reasonable comments received in writing from the Securityholders' Agent within 10 days of Parent's delivery of such Parent Prepared Return to the Securityholders' Agent; *provided, however*, that any failure to so submit a Parent Prepared Return shall not relieve the Effective Time Holders of any liability for Pre-Closing Taxes with respect to such Parent Prepared Return (except to the extent the Effective Time Holders are materially prejudiced by such failure).

6.3 Post-Closing Tax Actions. Unless required by applicable Legal Requirements, Parent and the Company shall not (x) amend any Tax Return of the Company with respect to a Pre-Closing Tax Period, make any voluntary disclosures with respect to Taxes for Pre-Closing Tax Periods, or make any Tax election that has retroactive effect on any Pre-Closing Tax Period, in each case, without first consulting with the Securityholders' Agent in good faith, or (y) take any action after the Closing on the Closing Date outside the ordinary course of business not contemplated by this Agreement without the prior consent of the Securityholders' Agent (not to be unreasonably withheld, conditioned or delayed), in each case, to the extent any such action would reasonably be expected to increase the Effective Time Holders' liability for Pre-Closing Taxes under Section 10.2(a).

6.4 Assistance and Cooperation. After the Closing Date, each of Securityholders' Agent and Parent shall (and shall cause their respective Affiliates to):

- (a) timely sign and deliver such certificates or forms as may be reasonably requested and necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes;
- (b) reasonably assist the other party in preparing any Tax Returns of the Acquired Entities;
- (c) cooperate fully in preparing for and defending any audits of, or disputes with taxing authorities regarding, any Taxes or Tax Returns of any Acquired Entity;
- (d) make available to the other party and to any taxing authority as reasonably requested all information, records and documents relating to Taxes of any Acquired Entity; and
- (e) furnish the other party with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period; *provided, that*, Parent shall only be obliged to furnish copies of such correspondence to Securityholders' Agent to the extent such audit or information request relates to Taxes for which the Effective Time Holders may be liable under the terms of this Agreement, and in no event shall the Securityholders' Agent be entitled to review or otherwise have access to any income Tax Return, or information related thereto, of Parent or its Affiliates.

6.5 Termination of Tax Allocation Arrangements. Any Tax allocation, Tax indemnity or Tax sharing agreement between an Acquired Entity, on the one hand, and any Person (other than another Acquired Entity), on the other hand, shall be terminated as to the applicable Acquired Entity on or prior to the Closing, and after the Closing no Acquired Entity shall have any liability thereunder.

6.6 Ownership Changes. Prior to the Closing, the Company, and, after the Closing, the Securityholders' Agent and the Effective Time Holders, agree to cooperate with Parent and provide any factual information in their possession or that can be obtained using commercially reasonable efforts and is reasonably requested by Parent to determine the limitations, if any, on

the Company's Tax attribute carryforwards under Sections 382, 383 and 384 of the Code. Without limiting the generality of the foregoing, such information may include: (a) information regarding the ownership of the equity of the Company from the time the Company was formed through the Closing Date (including any capitalization tables, option tables or redemption tables with respect to the equity of the Company showing the ownership of Company stock and/or options, the dates any such stock and/or options were issued or transferred, and the prices and (if applicable) strike prices at which any such stock and/or options were issued), (b) information regarding any relationships between and/or among the holders of stock and/or options in the Company, (c) any valuation-type spreadsheets, memoranda, offering documents, board's resolutions or similar materials of the Company that have been prepared by or for the Company in connection with any stock offerings, option issuances, changes in option pricing or redemptions, if any, and (d) any written analysis that has been conducted regarding whether there is any limitation on its carryforwards under the foregoing Code sections.

6.7 Straddle Period. In the case of any Straddle Period, the amount of any Taxes (a) based on or measured by income, receipts or payroll of the Acquired Entities, (b) imposed in connection with any sale, transfer or assignment or any deemed sale, transfer or assignment of property or (c) sales and use taxes, value-added taxes, employment taxes, withholding taxes or similar Taxes for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and in the case of any Taxes attributable to the ownership of any equity interest in any partnership or other "flowthrough" entity or "controlled foreign corporation" (within the meaning of Section 957(a) of the Code or any comparable state, local or non-U.S. Law), as if the taxable period of such partnership or other "flowthrough" entity or "controlled foreign corporation" ended as of the end of the Closing Date) (*provided, however*, that any exemptions or allowances that are calculated on an annual or other periodic basis shall be allocated between the Pre-Closing Tax Period and the Post-Closing Tax Period in proportion to the number of days in each such period), and the amount of other Taxes of the Acquired Entities that relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such taxable period. For the avoidance of doubt, for purposes of allocating Taxes imposed under Section 951A of the Code in respect of the Foreign Subsidiary, the "qualified business asset investment" (as such term is used in Section 951A(d) of the Code) in respect of the Pre-Closing Tax Period shall equal the product of (i) the Foreign Subsidiary's "qualified business asset investment" (as defined in Section 951A(d)(1) of the Code) for the taxable year of the Foreign Subsidiary that includes the Closing Date (determined as though such taxable year ended on the Closing Date), and (ii) a fraction, the numerator of which is the number of days in the portion of such taxable year ending on the Closing Date and the denominator of which is the total number of days in such taxable year.

7. Conditions Precedent to Obligations of Parent and Merger Sub

The obligations of Parent and Merger Sub to cause the transactions contemplated by this Agreement to be consummated are subject to the satisfaction (or waiver by Parent), at or prior to the Closing, of each of the following conditions:

7.1 Accuracy of Representations. Each of the: (a) Fundamental Representations (other than the representations and warranties set forth in Section 2.3) shall have been accurate in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their nature are made as of a specific earlier date); (b) representations and warranties set forth in Section 2.3 shall have been accurate in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their nature are made as of a specific earlier date), other than *de minimis* inaccuracies; and (c) other representations and warranties made by the Company in this Agreement (i) that are not qualified by materiality, Material Adverse Effect or similar qualifications shall have been accurate in all material respects as of the date of this Agreement and the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their nature are made as of a specific earlier date) and (ii) that are qualified by materiality, Material Adverse Effect or similar qualifications shall have been accurate in all respects as of the date of this Agreement and the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their nature are made as of a specific earlier date).

7.2 Performance of Covenants. Each of the covenants and obligations that the Company is required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

7.3 Governmental and Other Consents.

(a) Governmental Consents. All filings with and Consents of any Governmental Body required to be made or obtained in connection with the transactions contemplated by this Agreement shall have been made or obtained and shall be in full force and effect, any waiting period under any applicable antitrust or competition law, regulation or other Legal Requirement shall have expired or been terminated.

(b) Other Consents. Parent shall have received evidence satisfactory to Parent that all Consents identified in Schedule 7.3(b) shall have been obtained, in form and substance reasonably satisfactory to Parent, and such Consents shall be in full force and effect.

7.4 No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect that is continuing.

7.5 Stockholder Approval. This Agreement shall have been duly adopted and approved by at least 92% of the Company's Capital Stock, and such adoption and approval shall not have been withdrawn, rescinded or otherwise revoked. Not more than 8% of the outstanding shares of Company Capital Stock shall constitute (or be or be eligible to become) Dissenting Shares.

7.6 Officer's Certificate. Parent shall have received a certificate duly executed on behalf of the Company by the chief executive officer of the Company and containing the representation and warranty of the Company that the conditions set forth in Sections 7.1, 7.2, 7.4 and 7.5 have been duly satisfied (the "Company Closing Certificate").

7.7 Closing Documents. Parent shall have received the deliverables contemplated by Section 1.3 to be delivered by the Company at Closing. The Non-Competition Agreements, the Key Employee Offer Letters and the Holdback Agreements, each of which was delivered to Parent concurrently with the execution of this Agreement, shall remain in full force and effect.

7.8 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing or otherwise impeding the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Body and remain in effect; and there shall not be any applicable Legal Requirement enacted or deemed applicable to the Merger that makes the Merger illegal.

7.9 No Legal Proceedings. No Governmental Body and no other Person shall have commenced or threatened to commence any Legal Proceeding: (a) challenging the Merger or any of the other transactions contemplated by this Agreement or seeking the recovery of damages in connection with the Merger or any of the other transactions contemplated by this Agreement; (b) seeking to prohibit or limit the exercise by Parent of any material right pertaining to its ownership of stock of Merger Sub or any of the Acquired Entities; (c) that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger or any of the other transactions contemplated by this Agreement; or (d) seeking to compel any of the Acquired Entities, Parent or any Affiliate of Parent to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.

7.10 Section 280G Stockholder Approval. Any agreements, contracts or arrangements that may result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that may not be deductible by reason of Section 280G or that could be subject to an excise tax under Section 4999 of the Code shall have been approved by stockholders of the Company holding the number of shares of Company Capital Stock required by the terms of Section 280G in order for such payments and benefits not to be deemed parachute payments under Section 280G, with such approval to be obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and all applicable regulations (whether proposed or final) relating to Section 280G, or, in the absence of such stockholder approval, each Person who would otherwise have been entitled to any such payments or benefits shall have duly executed and delivered to Parent the waiver referred to in Section 5.2(b).

7.11 Termination of Employee Plans. The Company shall have provided Parent with evidence reasonably satisfactory to Parent as to the termination of the Acquired Entity Employee Plans required to be terminated pursuant to Section 4.4.

7.12 Tail Insurance. The Company shall have provided Parent with evidence reasonably satisfactory to Parent of the purchase of the D&O Tail Policy in accordance with Section 4.7.

8. Conditions Precedent to Obligations of the Company

The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver), at or prior to the Closing, of the following conditions:

8.1 Accuracy of Representations. The representations and warranties made by Parent and Merger Sub in this Agreement shall have been accurate in all material respects as of the date of this Agreement and the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their nature are made as of a specific earlier date), except where the failure of the representations and warranties of Parent and Merger Sub to be accurate in all material respects would not reasonably be expected to have a material adverse effect on the ability of Parent to consummate the Merger; *provided, however*, that, for purposes of determining the accuracy of such representations and warranties, all materiality and similar qualifications limiting the scope of such representations and warranties shall be disregarded.

8.2 Performance of Covenants. The covenants and obligations that Parent and Merger Sub are required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

8.3 Governmental Consents. All filings with and Consents of any Governmental Body required to be made or obtained in connection with the transactions contemplated by this Agreement shall have been made or obtained and shall be in full force and effect, any waiting period under any applicable antitrust or competition law, regulation or other Legal Requirement shall have expired or been terminated.

8.4 Officer's Certificate. The Company shall have received a certificate duly executed on behalf of Parent by an officer of Parent and containing the representation and warranty of Parent that the conditions set forth in Sections 8.1 and 8.2 have been satisfied.

8.5 Stockholder Approval. This Agreement shall have been duly adopted and approved by the Required Merger Stockholder Votes.

8.6 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing or otherwise impeding the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Body and remain in effect; and there shall not be any applicable Legal Requirement enacted or deemed applicable to the Merger by any Governmental Body that makes consummation of the Merger illegal.

9. Termination

9.1 Termination Events. This Agreement may be terminated prior to the Closing (whether before or after the adoption and approval of this Agreement by the Company's stockholders):

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

(b) by either Parent or the Company, if the Closing has not taken place on or before 5:00 p.m. (Pacific time) on the date that is 60 days after the date of this Agreement (the “End Date”); *provided, however*, that neither Parent nor the Company shall be permitted to terminate this Agreement pursuant to this Section 9.1(b) if the failure to consummate the Merger by the End Date results from, or is caused by, a material breach by such party of any of its representations, warranties, covenants or agreements contained herein;

(c) by Parent or the Company if: (i) a court of competent jurisdiction or other Governmental Body shall have issued a final and non-appealable Order, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger; or (ii) there shall be any applicable Legal Requirement enacted, promulgated, issued or deemed applicable to the Merger by any Governmental Body that would make consummation of the Merger illegal;

(d) by Parent if (i) the Company has breached any representations or warranties of the Company contained in this Agreement such that any representations or warranties of the Company are inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in Section 7.1 would not be satisfied; (ii) the Company has breached any of the covenants of the Company contained in this Agreement such that the condition set forth in Section 7.2 would not be satisfied or (iii) any Material Adverse Effect shall have occurred; *provided, however*, that if an inaccuracy in any of the representations and warranties of the Company as of a date subsequent to the date of this Agreement or a breach of a covenant by the Company, or occurrence of a Material Adverse Effect, is curable by the Company through the use of reasonable efforts prior to the End Date and within twenty (20) Business Days after Parent notifies the Company in writing of the existence of such inaccuracy, breach or occurrence (the “Company Cure Period”), then Parent may not terminate this Agreement under this Section 9.1(d) as a result of such inaccuracy, breach or occurrence prior to the expiration of the Company Cure Period, provided the Company, during the Company Cure Period, continues to exercise reasonable efforts to cure such inaccuracy or breach (it being understood that Parent may not terminate this Agreement pursuant to this Section 9.1(d) with respect to such inaccuracy, breach or occurrence if such inaccuracy, breach or occurrence is cured prior to the expiration of the Company Cure Period);

(e) General. It is expressly acknowledged and agreed that the 20 year statute of limitations contemplated by Section 8106(c) of Title 10 of the Delaware Code shall not apply to this Agreement or any of the Transactions.

(f) by the Company if: (i) the Parent has breached any representations or warranties of the Company contained in this Agreement such that any representations or warranties of the Parent are inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in Section 8.1 would not be satisfied; or (ii) if the Parent has breached any of Parent’s covenants contained in this Agreement such that the condition set forth in Section 8.2 would not be satisfied; *provided, however*, that if an inaccuracy in any of Parent’s representations and warranties as of a date subsequent to the date of this Agreement or a breach of a covenant by Parent is curable by Parent through the use of reasonable efforts prior to the End Date and within

twenty (20) Business Days after the Company notifies Parent in writing of the existence of such inaccuracy, breach or occurrence (the “Parent Cure Period”), then the Company may not terminate this Agreement under this Section 9.1(e) as a result of such inaccuracy or breach prior to the expiration of the Parent Cure Period, provided Parent, during the Parent Cure Period, continues to exercise reasonable efforts to cure such inaccuracy, breach or occurrence (it being understood that the Company may not terminate this Agreement pursuant to this Section 9.1(e) with respect to such inaccuracy, breach or occurrence if such inaccuracy or breach is cured prior to the expiration of the Parent Cure Period); or

(g) by Parent if any of the Required Merger Stockholder Votes are not obtained within twenty-four (24) hours after the execution of this Agreement.

9.2 Termination Procedures. If Parent wishes to terminate this Agreement pursuant to Section 9.1, Parent shall deliver to the Company a written notice stating that Parent is terminating this Agreement and setting forth a brief description of the basis on which Parent is terminating this Agreement. If the Company wishes to terminate this Agreement pursuant to Section 9.1, the Company shall deliver to Parent a written notice stating that the Company is terminating this Agreement and setting forth a brief description of the basis on which the Company is terminating this Agreement.

9.3 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement shall terminate; *provided, however*, that: (a) neither the Company nor Parent shall be relieved of any obligation or other liability arising from any knowing and willful breach by such party of any provision contained in this Agreement; and (b) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Section 11.

10. Indemnification, Etc.

10.1 Survival of Representations, Etc.

(a) General Survival. Subject to Section 10.1(b) and Section 10.1(d), the representations and warranties made by the Company in this Agreement and the representations and warranties set forth in the Company Closing Certificate and the Merger Consideration Certificate (in each case other than the Fundamental Representations) shall survive the Effective Time until 11:59 pm (Pacific time) on the date that is 15 months following the Closing Date (the “Expiration Date”); provided, however, that if, at any time on or prior to the Expiration Date, any Parent Indemnitee delivers to the Securityholders’ Agent a Claim Notice in accordance with Section 10.5 alleging the existence of an inaccuracy in or a breach of any of such representations and warranties and asserting a claim for recovery under Section 10.2 based on such alleged inaccuracy or breach, then the claim asserted in such notice shall survive the Expiration Date until such time as such claim is fully and finally resolved.

(b) Fundamental Representations. Notwithstanding anything to the contrary contained in Section 10.1(a), but subject to Section 10.1(d), the Fundamental Representations shall survive until 30 days after the earlier of (i) six (6) years following the Closing Date and (ii) the expiration of the applicable statute of limitations; *provided, however*, that if, at any time on or prior to the such expiration date, any Parent Indemnitee delivers to the Securityholders' Agent a Claim Notice in accordance with Section 10.5 alleging the existence of an inaccuracy in or a breach of any Fundamental Representations and asserting a claim for recovery under Section 10.2 based on such alleged inaccuracy or breach, then the claim asserted in such notice shall survive the such expiration date until such time as such claim is fully and finally resolved.

(c) Parent Representations. All representations and warranties made by Parent and Merger Sub shall terminate and expire as of the Effective Time, and any liability of Parent or Merger Sub with respect to such representations and warranties shall thereupon cease.

(d) Fraud or Intentional Misrepresentation. Notwithstanding anything to the contrary contained in Sections 10.1(a) and 10.1(b), the limitations set forth in Sections 10.1(a) and 10.1(b) shall not apply in the event of any fraud or intentional misrepresentation.

(e) Representations Not Limited. The Company and the Effective Time Holders have agreed that the Parent Indemnitees' rights to indemnification, compensation and reimbursement contained in this Section 10 relating to the representations, warranties, covenants and obligations of the Company shall not be waived, limited or otherwise affected by or as a result of (and the Parent Indemnitees shall be deemed to have relied upon such representations, warranties, covenants or obligations notwithstanding) any knowledge on the part of any of the Parent Indemnitees (regardless of whether obtained through any investigation by any Parent Indemnitee or through disclosure by the Company or any other Person, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement) or by reason of the fact that a Parent Indemnitee knew or should have known that any representation or warranty is or might be inaccurate or untrue.

(f) Disclosure Schedule. For purposes of this Agreement, each statement or other item of information set forth in the Disclosure Schedule shall be deemed to be a representation and warranty made by the Company in this Agreement.

10.2 Indemnification.

(a) Indemnification. From and after the Effective Time (but subject to Section 10.1), each Effective Time Holder shall, severally and not jointly, hold harmless and indemnify each of the Parent Indemnitees from and against, and shall compensate and reimburse each of the Parent Indemnitees for, such Effective Time Holder's Aggregate Pro Rata Share of any Damages that are suffered or incurred by any of the Parent Indemnitees (regardless of whether or not such Damages relate to any third party claim) to the extent arising out of or resulting from:

- (i) any inaccuracy in or breach of any representation or warranty made by the Company in Section 2 of this Agreement or in the Company Closing Certificate;

(ii) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any Pre-Closing Taxes (except to the extent such Pre-Closing Taxes reduced the Purchase Price by reason of inclusion in the Closing Indebtedness Amount or Company Transaction Expenses);

(iii) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any inaccuracy in any information, or breach of any representation or warranty, set forth in the Merger Consideration Certificate or in the Estimated Statement, including any failure to properly calculate the Company Transaction Expenses, the Closing Indebtedness Amount, the Purchase Price, the Aggregate Exercise Price, the Holdback Amount, the Pro Rata Portion and the Per Share Amount (but excluding the calculation of Net Working Capital and any other Final Dispute Items, which shall be finally resolved pursuant to Section 1.10(f));

(iv) (A) any breach of any covenant or obligation of the Company in this Agreement required to be performed prior to the Effective Time or (B) any breach of any covenant of the Securityholders' Agent in this Agreement;

(v) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any claim asserted or held by any current, former or alleged securityholder of any Acquired Entity: (A) relating to this Agreement, any other agreement entered into in connection with this Agreement, the Merger or any of the other transactions contemplated hereby or thereby; or (B) alleging that such Person is owed or entitled to any consideration other than as set forth in the Merger Consideration Certificate;

(vi) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any claim or right asserted or held by any person who is or at any time was an officer, agent, employee or member of the board of directors or managers (or similar body) of any Acquired Entity (against the Surviving Corporation, against Parent, against any Affiliate of Parent or against any other Person) involving a right or entitlement or an alleged right or entitlement to indemnification, reimbursement of expenses or any other relief or remedy (under the Charter Documents, under any indemnification agreement or similar Contract, under any applicable Legal Requirement or otherwise) with respect to any act or omission (including any alleged breach of fiduciary duties) on the part of such person or any event or other circumstance that arose, occurred or existed at or prior to the Effective Time, including any amount payable by a Parent Indemnitee pursuant to the Company Indemnification Provisions;

(vii) the exercise by any stockholder of the Company of such stockholder's appraisal rights under the DGCL, including all costs and expenses incurred by the Company or Parent in connection with any Legal Proceeding or settlement in connection therewith (it being understood that if a final determination of the fair value of any Dissenting Shares is made by a court of competent jurisdiction in connection with any such exercise of appraisal rights,

then the only portion of such fair value to be included in calculation of the Damages incurred as a result of such exercise is the amount, if any, by which such fair value exceeds what otherwise would have been payable by Parent with respect to such Dissenting Shares in accordance with Section 1.5 hereof had they not been Dissenting Shares);

(viii) regardless of the disclosure of any matter set forth in the Disclosure Schedule, any fraud or intentional misrepresentation on the part of any Acquired Entity, any Effective Time Holder or any Representative of any of the foregoing in connection with this Agreement or the Merger; *provided, however*, that no Effective Time Holder shall be subject to the indemnification obligations under this Section 10.2(a)(viii) with respect to any fraud or intentional misrepresentation on the part of any other Effective Time Holder or his, her or its Representatives; and

(ix) any claim or Legal Proceeding alleging a breach that if true, would otherwise entitle a Parent Indemnitee to indemnification for Damages pursuant to clauses “(i)” through “(viii)” above, inclusive (including any Legal Proceeding commenced by any Parent Indemnitee for the purpose of enforcing any of its rights under this Section 10).

(b) Damage to Parent. The parties acknowledge and agree that, if the Surviving Corporation or any of the Acquired Entities suffers, incurs or otherwise becomes subject to any Damages as a result of or in connection with any inaccuracy in or breach of any representation, warranty, covenant or obligation, then (without limiting any of the rights of the Surviving Corporation or any of the Acquired Entities as a Parent Indemnitee) Parent shall also be deemed, by virtue of its ownership of the stock of the Surviving Corporation or any Acquired Entity, to have incurred Damages as a result of and in connection with such inaccuracy or breach.

10.3 Limitations.

(a) Baskets.

(i) Subject to Section 10.3(b), the Effective Time Holders shall not be required to make any indemnification payment pursuant to Section 10.2(a)(i) or Section 10.2(a)(ix) (to the extent pertaining to a matter pursuant to Section 10.2(a)(i)) until such time as the total amount of all indemnifiable Damages (including the Damages arising from such inaccuracy or breach and all other Damages arising from any other inaccuracies or breaches of any representations or warranties) that have been suffered or incurred by any one or more of the Parent Indemnitees exceeds \$1,000,000 in the aggregate (the “Basket Amount”). If the total amount of such Damages exceeds the Basket Amount, then the Parent Indemnitees shall be entitled to be indemnified against and compensated and reimbursed for the entire amount of such Damages (subject to the other limitations herein), and not merely the portion of such Damages exceeding the Basket Amount.

(ii) Subject to Section 10.3(b), a Parent Indemnitee may not recover pursuant to Section 10.2(a) for any individual claim for which the Damages relating thereto are less than \$25,000 (the “De Minimis Amount”); *provided, however*, that the foregoing shall not prohibit a Parent Indemnitee from recovering for any series of claims, arising out of the same facts, with respect to which the aggregate underlying Damages exceed the De Minimis Amount.

(b) Applicability of Certain Limitations. The limitations set forth in Section 10.3(a)(i) shall not apply (and shall not limit the indemnification or other obligations of any Effective Time Holder): (i) in the event of fraud or intentional misrepresentation or (ii) to inaccuracies in or breaches of any of the Fundamental Representations. The limitations in Section 10.3(a)(ii) shall not apply (and shall not limit the indemnification or other obligations of any Effective Time Holder): (i) to inaccuracies in or breaches of any of the representations and warranties made by the Company set forth in Section 2.14 (Taxes), or (ii) to Pre-Closing Taxes.

(c) Recourse to Escrow Fund. Subject to Section 10.3(d), recourse by the Parent Indemnities to the Escrow Fund shall be the Parent Indemnities’ sole and exclusive remedy under this Agreement for Damages resulting from the matters referred to in Section 10.2(a)(i) and Section 10.2(a)(ix) (to the extent pertaining to a matter set forth in Section 10.2(a)(i)). The Escrow Fund shall be first recourse for Damages for all other matters referred to in Section 10.2(a) to the extent that the Escrow Fund is then available;

(d) Indemnification Cap. Subject to Section 11.3, the total amount of indemnification payments that each Effective Time Holder can be required to make to the Parent Indemnities pursuant to Section 10.2 (including the amount, if any, that was withheld from such Effective Time Holder as a contribution to the Escrow Fund pursuant to the terms of Section 1.5(c), and paid to Parent or any other Parent Indemnitee out of the Escrow Fund) shall (a) be limited to such Effective Time Holder’s Aggregate Pro Rata Share of such Damages and (b) not exceed the portion of the aggregate Merger Consideration actually received by such Effective Time Holder pursuant to Sections 1.5(a), 1.6(a) and 1.6(d) (without regard to any Taxes deducted or to be deducted); *provided, however*, that for the avoidance of doubt, the foregoing shall not limit or otherwise restrict the right of any Parent Indemnitee to pursue remedies under any other agreement entered into in connection with the Merger or the transactions contemplated by this Agreement against the parties thereto.

(e) Exclusion of Materiality Qualifiers. For purposes of determining (i) whether there has been an inaccuracy in or breach of any representation or warranty (*provided, that*, for purposes of this subsection (i), references to “Material Adverse Effect” shall not be disregarded in Section 2.6(a)) and (ii) the amount of any Damages resulting from the breach or inaccuracy of any representation or warranty, the parties agree that all references to “material,” “materially,” “in all material respects” or “materiality,” or to whether a breach would have a Material Adverse Effect, will be disregarded, in all cases, except for references to “Material Contract”.

(f) Pre-Closing Taxes and Tax Attributes. Notwithstanding anything in this Agreement to the contrary, (i) indemnification hereunder for Damages with respect to breaches of a representation or warranty contained in Section 2.14 (other than with respect to a breach of any representation or warranty set forth in Sections 2.14(d), (e), (f), (g), (h), (i) (solely in respect of clauses (i) and (ii) of the second sentence therein), (k), (l), (n), (o), (p), (s), (t), and (v)) shall be limited to Taxes attributable to Pre-Closing Tax Periods, and (ii) no Acquired Entity makes any representations or warranties regarding the ability of Parent or any of its Affiliates (including the Surviving Corporation) to utilize any Tax asset or attribute of the Acquired Entities (e.g., net operating losses) in a Tax period (or portion thereof) beginning after the Closing Date.

(g) No Double Recovery. No Parent indemnitee shall be entitled to double recovery for any indemnifiable Damages even though such Damages may (i) be recoverable under more than one provision of Section 10.2 or under Section 1.10 or (ii) have resulted from the breach of more than one of the representations, warranties, agreements and covenants in this Agreement; *provided, however*, that the foregoing limitation shall not prevent a Parent Indemnitee from recovering all Damages to which it is entitled hereunder directly arising out of the same set of facts and circumstances notwithstanding the fact that an indemnification claim for such Damage is based upon more than one representation, warranty, agreement or covenant.

(h) Mitigation. The Parent Indemnitees shall mitigate Damages to the extent required by applicable Legal Requirements, it being understood that any out-of-pocket costs incurred by a Parent Indemnitee in connection with any mitigation undertaken pursuant to this Section 10.3(h) shall constitute Damages to the extent that the underlying Damages are indemnifiable hereunder. Notwithstanding the foregoing, this Section 10.3(h) shall not apply to indemnifiable Damages relating to Taxes, and the Parent Indemnitees shall have no obligations under this Section 10.3(h) with respect thereto.

(i) Insurance Proceeds. For purposes of calculating or determining the amount of Damages, there shall be deducted from any Damages an amount equal to the amount of any proceeds actually received by any Parent Indemnitee from any third-party insurer or from any other third parties in connection with such Damages (net of any costs and reasonable, out-of-pocket expenses of recovery or collection thereof and any deductible or premium associated therewith to the extent paid or payable); *provided, however*, that none of the Parent Indemnitee shall have any obligation to (i) seek recovery against any insurance policies (other than the D&O Tail Policy), or (ii) obtain insurance coverage or other third party protection with respect to any particular matter.

10.4 No Contribution. Each Effective Time Holder waives, and acknowledges and agrees that such Effective Time Holder shall not have and shall not exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or advancement of expenses or other right or remedy against the Surviving Corporation or any Acquired Entity in connection with any indemnification obligation of such Effective Time Holder pursuant to Section 10.

10.5 Claim Procedures. Any claim for indemnification, compensation or reimbursement pursuant to Section 10 (and, at the option of any Parent Indemnitee, any claim based upon fraud or intentional misrepresentation committed by an Effective Time Holder) shall be brought and resolved exclusively as follows:

(a) If any Parent Indemnitee has or claims in good faith to have incurred or suffered, or reasonably believes in good faith that it may incur or suffer, Damages for which it is or may be entitled to indemnification, compensation or reimbursement under this Section 10, such Parent Indemnitee may deliver a written claim notice (a “Claim Notice”) to the Securityholders’ Agent (subject at all times to the applicable survival periods and indemnification limitations under this Section 10). Each Claim Notice shall: (i) contain a brief description in reasonable detail of the facts and circumstances supporting the Parent Indemnitee’s claim; and (ii) contain a non-binding, preliminary, good faith estimate of the amount to which the Parent Indemnitee might be entitled (the aggregate amount of such estimate, as it may be modified by the Parent Indemnitee in good faith from time to time, being referred to as the “Claimed Amount”).

(b) During the 30-day period commencing upon receipt by the Securityholders’ Agent of a Claim Notice from a Parent Indemnitee (the “Dispute Period”), the Securityholders’ Agent may deliver to the Parent Indemnitee a written response (the “Response Notice”) in which the Securityholders’ Agent: (i) agrees that the full Claimed Amount is owed to the Parent Indemnitee; (ii) agrees that part, but not all, of the Claimed Amount is owed to the Parent Indemnitee; or (iii) indicates that no part of the Claimed Amount is owed to the Parent Indemnitee. If the Response Notice is delivered in accordance with clause “(ii)” or clause “(iii)” of the preceding sentence, the Response Notice shall also contain a brief description of the facts and circumstances supporting the Securityholders’ Agent’s claim that only a portion or no part of the Claimed Amount is owed to the Parent Indemnitee, as the case may be. After delivery of a Claim Notice, the Securityholder’s Agent shall have reasonable and timely access to all records and materials of Parent, the Surviving Corporation or any Parent Indemnitee reasonably requested by Securityholder’s Agent in writing in order to review and assess such Claim Notice. Any part of the Claimed Amount that is not agreed to be owed to the Parent Indemnitee pursuant to the Response Notice (or the entire Claimed Amount, if the Securityholders’ Agent asserts in the Response Notice that no part of the Claimed Amount is owed to the Parent Indemnitee) is referred to herein as the “Contested Amount” (it being understood that the Contested Amount shall be modified from time to time to reflect any good faith modifications by the Parent Indemnitee to the Claimed Amount to the extent based on facts and circumstances underlying the original Claim Notice).

(c) If the Securityholders’ Agent in its Response Notice agrees that the full Claimed Amount is owed to the Parent Indemnitee, or if no Response Notice is received by the Parent Indemnitee from the Securityholders’ Agent prior to the expiration of the Dispute Period, then: (i) Parent and Securityholders’ Agent shall, within three (3) Business Days following the earlier of the delivery of such Response Notice or the expiration of the Dispute Period, jointly execute and deliver to the Escrow Agent a written notice instructing the Escrow Agent to pay the Claimed Amount to the Parent Indemnitee from the Escrow Fund; and (ii) if the amount held in the Escrow Fund is insufficient to cover the full Claimed Amount, then, subject to the limitations contained in Section 10.3, each Effective Time Holder shall pay within ten (10) Business Days following the earlier of the delivery of such Response Notice or the expiration of the Dispute Period, such Effective Time Holder’s Aggregate Pro Rata Share of the amount of such deficiency to the Parent Indemnitee.

(d) If the Securityholders' Agent delivers a Response Notice to the Parent Indemnatee during the Dispute Period agreeing that part, but not all, of the Claimed Amount is owed to the Parent Indemnatee (the "Agreed Amount"), then: (i) Parent and Securityholders' Agent shall, within three Business Days following the delivery of such Response Notice, jointly execute and deliver to the Escrow Agent a written notice instructing the Escrow Agent to pay the Agreed Amount to such Parent Indemnatee from the Escrow Fund; and (ii) if the amount held in the Escrow Fund is insufficient to cover the full Agreed Amount, then, subject to the limitations contained in Section 10.3, each Effective Time Holder shall pay within ten (10) Business Days following the delivery of such Response Notice, such Effective Time Holder's Aggregate Pro Rata Share of the amount of such deficiency to the Parent Indemnatee.

(e) If the Securityholders' Agent delivers a Response Notice to the Parent Indemnatee during the Dispute Period expressly stating that there is a Contested Amount, then, during the 30-day period following delivery of such Response Notices (the "Resolution Period"), the Securityholders' Agent and the Parent Indemnatee shall attempt in good faith to resolve the dispute related to the Contested Amount. If the Securityholders' Agent and the Parent Indemnatee resolve such dispute, such resolution shall be binding on the Securityholders' Agent, the Effective Time Holders and such Parent Indemnatee, and a settlement agreement stipulating the amount owed to such Parent Indemnatee (the "Stipulated Amount") shall be signed by such Parent Indemnatee and the Securityholders' Agent. Within three Business Days following the execution of such settlement agreement, or such shorter period of time as may be set forth in the settlement agreement, Parent and the Securityholders' Agent shall execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release the Stipulated Amount to the Parent Indemnatee from the Escrow Fund (to the extent of the Escrow Fund). If the amount held in the Escrow Fund is insufficient to cover the full Stipulated Amount, then, subject to the limitations contained in Section 10.3, each Effective Time Holder shall pay within ten (10) Business Days following the execution of such settlement agreement, or such shorter period of time as may be set forth in the settlement agreement, such Effective Time Holder's Aggregate Pro Rata Share of the amount of such deficiency to the Parent Indemnatee.

(f) Following the Resolution Period, in the event that there is a dispute relating to any Claim Notice or Contested Amount (whether it is a matter between the Parent Indemnatee, on the one hand, and the Securityholders' Agent (on behalf of the Effective Time Holders), on the other hand, or it is a matter that is subject to a claim or Legal Proceeding asserted or commenced by a third party brought against the Parent Indemnatee or either Acquired Entity), such dispute (a "Claim Dispute") shall be settled pursuant to Section 11.9. Notwithstanding the preceding sentence, nothing in this Section 10.5(f) shall prevent the Parent Indemnatee from seeking preliminary injunctive relief from a court of competent jurisdiction at any time whether pending settlement of a Claim Dispute or otherwise. The judgment or decree of a court of a Claim Dispute shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined unless otherwise agreed in writing by the parties.

(g) Subject to the Holdback Agreements, promptly after the Expiration Date, Parent will notify the Securityholders' Agent in writing of the amount that Parent determines in good faith to be reasonably necessary to satisfy all claims for indemnification, compensation or reimbursement that have been properly asserted pursuant to this Section 10.5, but not resolved,

on or prior to 11:59 p.m. (Pacific time) on the Expiration Date (each such claim a “Continuing Claim” and such amount, the “Retained Escrow Amount”), *provided, that*, the Retained Escrow Amount shall not exceed the aggregate Contested Amounts for all such Continuing Claims. Subject to Section 10.5(i), within ten (10) Business Days following the Expiration Date, Parent and the Securityholders’ Agent shall execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release from the Escrow Fund to the Payment Agent for prompt distribution to the Effective Time Holders (or to Parent or the Surviving Corporation, as applicable, for prompt distribution through payroll to the Effective Time Holders in respect of Employee Options), an amount in the aggregate equal to: (i) the amount held in the Escrow Fund as of the Expiration Date (as reduced from time to time pursuant to the terms of this Agreement); *minus* (ii) the Retained Escrow Amount, with each Effective Time Holder to receive a portion thereof equal to the product obtained by multiplying: (A) the amount to be so released; by (B) such Effective Time Holder’s Aggregate Pro Rata Share.

(h) Following the Expiration Date, after resolution and payment of a Continuing Claim, Parent and the Securityholders’ Agent shall, subject to Section 10.5(i), execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release from the Escrow Fund to the Payment Agent for distribution to the Effective Time Holders (or to Parent or the Surviving Corporation, as applicable, for prompt distribution through payroll to the Effective Time Holders in respect of Employee Options), an amount in the aggregate equal to: (i) the amount held in the Escrow Fund as of the date of such resolution and payment; *minus* (ii) the amounts that Parent determines in good faith to be reasonably necessary to satisfy other Continuing Claims (which amounts shall not exceed the aggregate Contested Amounts for all such Continuing Claims and will continue to be held in the Escrow Fund), with each Effective Time Holder to receive a portion thereof equal to the product obtained by multiplying: (A) the amount to be so released; by (B) such Effective Time Holder’s Aggregate Pro Rata Share.

(i) With respect to any amount to be released from the Escrow Fund to the Effective Time Holders pursuant to this Section 10.5 or the Escrow Agreement:

(i) if (A) any former holder of the Outstanding Capital Stock has not executed and delivered a properly completed Letter of Transmittal and surrendered such former holder’s Company Stock Certificate, if any, or electronic transfer of Company Book Entry Shares, to the Payment Agent in accordance with Section 1.8(b), to the extent applicable, (B) any former holder of the Outstanding Warrants has not executed and delivered a properly completed Letter of Transmittal to the Payment Agent and the Warrant Surrender Agreement to Parent, and (C) any former holder of the Outstanding In-the-Money Vested Options has not executed and delivered to Parent a properly completed Option Conversion Agreement, ((A), (B) and (C), collectively, the “Payment Conditions”) prior to the delivery to the Escrow Agent of the applicable joint written instructions, then any amount that would otherwise be released to such Effective Time Holder shall be held by the Payment Agent or Parent, as applicable, with interest that may have accrued, until such holder satisfies all of such Effective Time Holder’s applicable Payment Conditions;

(ii) for purposes of Sections 1.5(a)(ii), 1.6(a) and 1.6(d) only, amounts to be released from the Escrow Fund to be distributed to each Effective Time Holder shall be deemed to be the product of: (A) the aggregate amount to be released from the Escrow Fund to the Effective Time Holders; *multiplied by* (B) each Effective Time Holder's Aggregate Pro Rata Share (it being understood that the amounts referred to in this clause "(ii)" have been taken into account in determining each Effective Time Holder's Aggregate Pro Rata Share and that no Effective Time Holder shall receive more than such Effective Time Holder's Aggregate Pro Rata Share of any amount released from the Escrow Fund);

(iii) each distribution to be made from the Escrow Fund to a particular Effective Time Holder shall be effected (A) in accordance with the payment delivery instructions set forth in such Effective Time Holder's Letter of Transmittal, with respect to amounts to be distributed in respect of such Effective Time Holder's Outstanding Capital Stock or Company Warrants, if any or (B) through the payroll services of the applicable Acquired Entity or Parent, with respect to amounts to be distributed in respect of such Effective Time Holder's Employee Options, if any.

(iv) all written instructions to be delivered to the Escrow Agent with respect to any distribution from the Escrow Fund shall be consistent with this Section 10.5(i).

10.6 Defense of Third Party Claims. In the event of the assertion or commencement by any Person of any claim or Legal Proceeding (whether against the Surviving Corporation, any Acquired Entity, Parent or any other Person) with respect to which Parent in good faith believes that any Effective Time Holder may become obligated to hold harmless, indemnify, compensate or reimburse any Parent Indemnitee pursuant to Section 10.2(a), Parent shall have the right, at its election, to proceed with the defense of such claim or Legal Proceeding on its own with counsel reasonably satisfactory to the Securityholders' Agent. If Parent so proceeds with the defense of any such claim or Legal Proceeding:

(a) subject to the other provisions of Section 10, all reasonable expenses relating to the defense of such claim or Legal Proceeding (and all amounts due pursuant to any settlement, adjustment or compromise of such claim or Legal Proceeding) shall be borne and paid exclusively by the Effective Time Holders to the extent such expenses or Damages are indemnifiable pursuant to Section 10.2(a)(ix);

(b) each Effective Time Holder shall make available to Parent any documents and materials in such Effective Time Holder's possession or control that may be necessary to the defense of such claim or Legal Proceeding; and

(c) Parent shall have the right to settle, adjust or compromise such claim or Legal Proceeding without the consent of the Securityholders' Agent; *provided, however*, that if Parent settles, adjusts or compromises any such claim or Legal Proceeding without the consent of the Securityholders' Agent, then such settlement, adjustment or compromise shall not be conclusive evidence of the amount of Damages incurred by the Parent Indemnitee in connection

with such claim or Legal Proceeding. The Securityholders' Agent shall have the right to receive copies of all pleadings, notices and communications with respect to the Legal Proceeding to the extent that receipt of such documents does not affect any privilege relating to Parent or any Parent Indemnitee and subject to execution by the Securityholders' Agent of Parent's standard non-disclosure agreement to the extent that such materials contain confidential or proprietary information, which such non-disclosure agreement shall not prohibit the Securityholders' Agent from communicating any such information solely with the members of the advisory board who have been designated to act on behalf of the Effective Time Holders pursuant to an engagement letter with the Securityholders' Agent and who have a need to know such information, provided that any such recipients are subject to confidentiality obligations with respect thereto. The Securityholders' Agent, at the Effective Time Holders' cost and expense, shall be entitled to participate in the defense of any such Legal Proceedings that relates to Taxes of the Acquired Companies for Pre-Closing Tax Periods if the resolution of such Legal Proceeding would reasonably be expected to materially increase the Effective Time Holders' liability for Pre-Closing Taxes under Section 10.2(a).

If Parent does not elect to proceed with the defense of any such claim or Legal Proceeding, the Securityholders' Agent may proceed with the defense of such claim or Legal Proceeding with counsel reasonably satisfactory to Parent; *provided, however*, that the Securityholders' Agent may not settle, adjust or compromise any such claim or Legal Proceeding without the prior written consent of Parent (which consent may not be unreasonably withheld or delayed). Parent shall give the Securityholders' Agent prompt notice of the commencement of any such Legal Proceeding against Parent, Merger Sub or the Company; *provided, however*, that any failure on the part of Parent to so notify the Securityholders' Agent shall not limit any of the obligations of the Effective Time Holders under this Section 10 (except to the extent such failure materially prejudices the defense of such Legal Proceeding).

10.7 Exclusive Remedy. Except: (a) in the event of a claim for fraud or intentional misrepresentation against any Person (other than any Acquired Entity) who committed such fraud or intentional misrepresentation; and (b) for equitable remedies, from and after the Effective Time, the rights to indemnification, compensation and reimbursement set forth in this Section 10 shall be the sole and exclusive remedy of the Parent Indemnitees with respect to any breach of this Agreement.

10.8 Exercise of Remedies Other Than by Parent. No Parent Indemnitee (other than Parent or any successor thereto or assign thereof) shall be permitted to assert any indemnification claim or exercise any other remedy under this Agreement unless Parent (or any successor thereto or assign thereof) shall have consented to the assertion of such indemnification claim or the exercise of such other remedy.

10.9 Tax Treatment of Indemnity Payments. The parties agree to report each indemnification payment made in respect of any Damages as an adjustment to the Purchase Price for Tax purposes unless otherwise required by applicable Legal Requirements.

11. Miscellaneous Provisions

11.1 Securityholders' Agent.

(a) Appointment. By virtue of the adoption and approval of this Agreement, the Joinder and Support Agreements, the Letters of Transmittal and the Warrant Surrender Agreements, the Effective Time Holders irrevocably nominate, constitute and appoint Shareholder Representative Services LLC as the agent and true and lawful attorney-in-fact of the Effective Time Holders (the "Securityholders' Agent"), with full power of substitution, to act in the name, place and stead of such Persons for purposes of executing any documents and taking any actions that the Securityholders' Agent may, in the Securityholders' Agent's sole discretion, determine to be necessary, desirable or appropriate in connection with this Agreement and any other agreement, document or instrument referred to in or contemplated by this Agreement and any transaction contemplated under this Agreement or any such other agreement, document or instrument, including with respect to, any claim for indemnification, compensation or reimbursement under Section 10, the Escrow Agreement. Securityholders' Agent hereby accepts its appointment as Securityholders' Agent.

(b) Authority. The Effective Time Holders grant to the Securityholders' Agent full authority to execute, deliver, acknowledge, certify and file on behalf of such Persons (in the name of any or all of such Persons or otherwise) any and all documents that the Securityholders' Agent may, in its sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as the Securityholders' Agent may, in its sole discretion, determine to be appropriate, in performing its duties as contemplated by Section 11.1(a). Notwithstanding anything to the contrary contained in this Agreement or in any other agreement executed in connection with the transactions contemplated hereby: (i) each Parent Indemnitee shall be entitled to deal exclusively with the Securityholders' Agent on all matters relating to any claim for indemnification, compensation or reimbursement under Section 10 and under the Escrow Agreement; and (ii) each Parent Indemnitee shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Effective Time Holder by the Securityholders' Agent, and on any other action taken or purported to be taken on behalf of any such Person by the Securityholders' Agent, as fully binding upon such Person.

(c) Power of Attorney. The Effective Time Holders recognize and intend that the power of attorney granted in Section 11.1(a): (i) is coupled with an interest and is irrevocable; (ii) may be delegated by the Securityholders' Agent; and (iii) shall survive the death, incapacity, dissolution, liquidation or winding up of each of the Effective Time Holders.

(d) Replacement. The Securityholders' Agent may resign upon twenty (20) days' prior written notice delivered to the Effective Time Holders. If the Securityholders' Agent shall die, resign, become disabled or otherwise be unable to fulfill its responsibilities hereunder, the Effective Time Holders shall (by consent of those Persons who contributed at least 50% of the Escrow Amount to the Escrow Fund), within 10 days after such death, disability or inability, appoint a successor to the Securityholders' Agent (who shall be an Effective Time Holder and shall be reasonably satisfactory to Parent) and immediately thereafter notify Parent of the identity of such successor. Any such successor shall succeed the Securityholders' Agent as

Securityholders' Agent hereunder. If for any reason there is no Securityholders' Agent at any time, all references herein to the Securityholders' Agent shall be deemed to refer to the Effective Time Holders.

(e) Securityholders' Agent Expense Fund. Each Effective Time Holder hereby authorizes the Parent to withhold, or cause to be withheld, an aggregate amount of \$250,000 (the "Securityholders' Agent Expense Fund Amount") from the amounts otherwise payable by or on behalf of Parent to the Effective Time Holder pursuant to Sections 1.5(a), 1.6(a) and 1.6(d) and distribute, or cause to be distributed, to the Securityholders' Agent an amount equal to each Effective Time Holder's Aggregate Pro Rata Share of the Securityholders' Agent Expense Fund Amount (the "Securityholders' Agent Expense Fund"). The Securityholders' Agent Expense Fund shall be held by the Securityholders' Agent in a segregated client account and shall be used for the purposes of paying directly or reimbursing the Securityholders' Agent for any expenses of the Securityholders' Agent incurred pursuant to this Agreement, the Escrow Agreement or any agreements ancillary to the foregoing or any engagement letter between certain of the Effective Time Holders and the Securityholders' Agent. The Securityholders' Agent is not providing any investment supervision, recommendations or advice and shall have no responsibility or liability to the Effective Time Holders for any loss of principal of the Securityholders' Agent Expense Fund Amount other than as a result of its gross negligence or willful misconduct. The Securityholders' Agent is not acting as a withholding agent or in any similar capacity in connection with the Securityholders' Agent Expense Fund, and has no tax reporting or income distribution obligations to the Effective Time Holders. The Effective Time Holders will not receive any interest or earnings on the amounts held in the Securityholders' Agent Expense Fund and irrevocably transfer and assign to the Securityholders' Agent any ownership right that they may otherwise have had in such interest or earnings. As soon as reasonably determined by the Securityholders' Agent that the amounts held in the Securityholders' Agent Expense Fund are no longer required to be withheld, the Securityholders' Agent shall distribute any amounts remaining in the Securityholders' Agent Expense Fund (the "Securityholders' Agent Expense Fund Balance") to the Payment Agent for further distribution to each Effective Time Holder an amount in cash equal to the Securityholders' Agent Expense Fund Balance multiplied by such Effective Time Holder's Aggregate Pro Rata Share. For tax purposes, the Securityholders' Agent Expense Fund will be treated as having been received and voluntarily set aside by the Effective Time Holders at the time of Closing.

(f) Exculpation/Indemnification of Securityholders' Agent. The Securityholders' Agent will incur no liability of any kind with respect to any action or omission by the Securityholders' Agent in connection with the Securityholders' Agent's services pursuant to this Agreement and any agreements ancillary hereto, except in the event of liability directly resulting from the Securityholders' Agent's fraud, gross negligence or willful misconduct. The Securityholders' Agent shall not be liable for any action or omission pursuant to the advice of counsel. The Effective Time Holders will, severally and not jointly, in accordance with the Aggregate Pro Rata Share of each Effective Time Holder, indemnify, defend and hold harmless the Securityholders' Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Securityholders' Agent's execution and performance of this Agreement and any agreements

ancillary hereto, in each case as such Representative Loss is suffered or incurred; *provided, that*, in the event that any such Representative Loss is finally adjudicated to have been directly caused by fraud, gross negligence or willful misconduct of the Securityholders' Agent, the Securityholders' Agent will reimburse the Effective Time Holders the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Securityholders' Agent by the Effective Time Holders, any such Representative Losses may be recovered by the Securityholders' Agent from (i) the funds in the Securityholders' Agent Expense Fund and (ii) any other funds that become payable to the Effective Time Holders under this Agreement at such time as such amounts would otherwise be distributable to the Effective Time Holders; *provided, that*, while this Section 11.1(f) allows the Securityholders' Agent to be paid from the aforementioned sources of funds, this does not relieve the Effective Time Holders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Securityholders' Agent from seeking any remedies available to it at law or otherwise. In no event will the Securityholders' Agent be required to advance its own funds on behalf of the Effective Time Holders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Effective Time Holders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Securityholders' Agent under this Section 11.1(f). The foregoing indemnities will survive the Closing, the resignation or removal of the Securityholders' Agent or the termination of this Agreement.

11.2 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

11.3 No Waiver Relating to Claims for Fraud or Intentional Misrepresentation. The liability of any Person under Section 10 will be in addition to, and not exclusive of, any other liability that such Person may have at law or in equity based on such Person's fraudulent acts or omissions or intentional misrepresentation. Notwithstanding anything to the contrary contained in this Agreement, none of the provisions set forth in this Agreement, including the provisions set forth in Section 10, shall be deemed a waiver by any party to this Agreement of any right or remedy which such party may have at law or in equity based on any other Person's fraudulent acts or intentional misrepresentation (except that of the Company as set forth in Section 10), nor will any such provisions limit, or be deemed to limit: (a) the amounts of recovery sought or awarded in any claim for fraud or intentional misrepresentation committed by such other Person against such other Person; (b) the time period during which a claim for fraud or intentional misrepresentation committed by such other Person may be brought against such other Person; or (c) the recourse which any such party may seek against such other Person with respect to a claim for fraud or intentional misrepresentation committed by such other Person.

11.4 Fees and Expenses. Subject to Sections 1.5, 10 and 11.1 and the Escrow Agreement, each party to this Agreement shall bear and pay all fees, costs and expenses that have been incurred or that are incurred in the future by such party in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by

such party in connection with or by virtue of: (a) the negotiation, preparation and review of this Agreement (including the Disclosure Schedule) and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement; (b) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any Consent required to be obtained in connection with any of such transactions; and (c) the consummation of the Merger.

11.5 Attorneys' Fees. If any action, suit or other Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party hereto, unless addressed pursuant to Section 10 in which case Section 10 shall control, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

11.6 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received: (a) if delivered by hand, when delivered; (b) if sent on a Business Day by email before 11:59 p.m. (recipient's time) on the day sent by email and receipt is confirmed, when transmitted; (c) if sent by email on a day other than a Business Day and receipt is confirmed, or if sent by email after 11:59 p.m. (recipient's time) on the day sent by email and receipt is confirmed, on the Business Day following the date on which receipt is confirmed and (d) if sent by overnight delivery via a national courier service, one Business Day after being sent, in each case to the address or facsimile telephone number or email address, as applicable, set forth beneath the name of such party below (or to such other address, facsimile telephone number or email address, as applicable, as such party shall have specified in a written notice given to the other parties hereto):

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

Pure Storage, Inc.
650 Castro Street, Suite 400
Mountain View, CA 94041
Attention: [redacted]
Email: [redacted]

with a copy (which shall not constitute notice) to:
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: [redacted]
Email: [redacted]

If to the Company, prior to Closing:

Portworx Inc.
4940 El Camino Real, Suite 200
Los Altos, CA 94022
Attention: [redacted]
Email: [redacted]

with a copy (which shall not constitute notice) to:
Goodwin Procter LLP
Three Embarcadero Center
28th Floor
San Francisco, CA 94111
Attention: [redacted]
Email: [redacted]

If to the Effective Time Holders (after Closing) or to the Securityholders' Agent:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, CO 80202
Attention: Managing Director
Email: [redacted]
Facsimile: [redacted]
Telephone: [redacted]

with a copy (which shall not constitute notice) to:
Goodwin Procter LLP
Three Embarcadero Center
28th Floor
San Francisco, CA 94111
Attention: [redacted]
Email: [redacted]

11.7 Headings. The bold-faced headings and the underlined headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

11.8 Counterparts and Exchanges by Electronic Transmission. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .pdf format shall be sufficient to bind the parties to the terms and conditions of this Agreement.

11.9 Governing Law; Dispute Resolution.

(a) **Governing Law.** This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Delaware (without giving effect to principles of conflicts of laws).

(b) **Venue.** Except as otherwise provided in the Escrow Agreement or in Section 10.5, any action, suit or other Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement (including an action, suit or other Legal Proceeding based upon fraud or intentional misrepresentation) shall be brought or otherwise commenced exclusively in any federal or state court located in the County of San Francisco, State of California. Each party to this Agreement: (i) expressly and irrevocably consents and submits to the exclusive jurisdiction of and venue in each federal or state court located in the County of San Francisco, State of California (and each appellate court located in the County of San Francisco, State of California) in connection with any such action, suit or Legal Proceeding; (ii) agrees that each federal or state court located in the County of San Francisco, State of California shall be deemed to be a convenient forum; and (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such action, suit or other Legal Proceeding commenced in any federal or state court located in the County of San Francisco, State of California, any claim that such party is not subject personally to the jurisdiction of such court, that such action, suit or other Legal Proceeding has been brought in an inconvenient forum, that the venue of such action, suit or other Legal Proceeding is improper, that challenges the application of the internal laws of the State of Delaware as set forth in Section 11.9(a), or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

11.10 Successors and Assigns; Parties in Interest. This Agreement shall be binding upon: (a) the Company and its successors and assigns (if any); (b) Parent and its successors and assigns (if any); (c) Merger Sub and its successors and assigns (if any); (d) the Securityholders' Agent and its successors and assigns (if any); and (e) the Effective Time Holders. This Agreement shall inure to the benefit of: (i) the Company; (ii) Parent; (iii) Merger Sub; (iv) the other Parent Indemnitees; (v) the Covered Persons; and (vi) the respective successors and assigns (if any) of the foregoing. Parent may freely assign any or all of its rights and obligations under this Agreement (including its indemnification rights under Section 10), in whole or in part, to any other Person without obtaining the consent or approval of any other party hereto or of any other Person. Except for the provisions of Section 5.6 and Section 10, none of the provisions of this Agreement is intended to provide any rights or remedies to any employee, creditor or other Person, other than Parent, Merger Sub, the Company and their respective successors and assigns (if any).

11.11 Remedies Cumulative; Specific Performance. Except as expressly set forth in this Agreement, the rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that, in the event of any breach or threatened breach by the Company of any covenant, obligation or other provision set forth in this Agreement: (a) Parent shall be entitled, without any proof of actual damages (and in addition to any other remedy that may be available to it) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach of threatened breach; and (b) Parent shall

not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or Legal Proceeding.

11.12 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11.13 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.14 Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered: (a) prior to the Closing Date, on behalf of the Company, Parent, Merger Sub and the Securityholders' Agent; and (b) after the Closing Date, on behalf of Parent and the Securityholders' Agent (acting exclusively for and on behalf of all of the Effective Time Holders).

11.15 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

11.16 Confidential Nature of Information. Each party agrees that all documents, materials, data and other information which it shall have obtained regarding the other parties hereto during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents shall be deemed "Confidential Information" under the Mutual Non-Disclosure Agreement dated July 20, 2020 between the Company and Parent (the "Confidentiality Agreement") and subject to the terms thereof; *provided, however*, that after the Effective Time, Parent and the Company may use or disclose any confidential information related to any Acquired Entity or its assets or business. The Securityholders' Agent shall keep all Confidential Information confidential; *provided, that*, notwithstanding the foregoing or anything in this Agreement or the Confidentiality Agreement to the contrary, following Closing, the Securityholders' Agent shall be permitted to disclose information as required by applicable Legal Requirements or to employees, advisors, agents or consultants of the Securityholders' Agent and

to the members of the advisory board who have been designated to act on behalf of the Effective Time Holders pursuant to an engagement letter with the Securityholders' Agent, in each case who have a need to know such information, *provided, further, that* such persons are subject to confidentiality obligations with respect thereto.

11.17 No Public Announcement. Prior to the Effective Time, none of Parent, Merger Sub, Securityholders' Agent, or any Acquired Entity (and none of their respective Affiliates) shall, without the approval of Parent and the Company, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any party shall be so obligated by Legal Requirements or the laws of any stock exchange upon which the securities of such Person are listed, in which case such party shall first advise each other party thereof and the parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; *provided, however,* that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement. Following the Effective Time, neither the Securityholders' Agent nor any of its Affiliates shall make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that such party shall be so obligated by Legal Requirements, in which case such party shall advise Parent thereof (to the extent legally permissible) and the parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued. Notwithstanding anything in this Agreement or the Confidentiality Agreement to the contrary, following Closing and after the public announcement of the Merger, each external Representative of the Company and Parent, including the Securityholders' Agent, shall be permitted to publicly announce that it has been engaged in connection herewith as long as such announcement does not disclose any of the other terms hereof that have not been made public through a press release issued by Parent. Notwithstanding anything else to the contrary contained herein, nothing shall prevent an Effective Time Holder that is a venture capital fund (or its representatives), from communicating to its current or potential investors the existence and terms of this Agreement, including the amount of the Merger Consideration, the Escrow Fund or the Securityholders' Agent Expense Fund, but only to the extent (a) such communications are to current or potential investors and (i) relate to the economic returns on investment, (ii) are permitted under the terms of such Effective Time Holder's governing fund documents in effect as of the date of this Agreement and (iii) are made in connection with such Effective Time Holder's or its Representative's fundraising and reporting activities (on such Effective Time Holder's behalf) required as part of its ordinary course of business and consistent with past practices and (b) such current or potential investors are subject to obligations of confidentiality.

11.18 Entire Agreement. This Agreement and the other agreements referred to herein set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof. The parties hereto acknowledge and agree that, effective as of the Effective Time, the Confidentiality Agreement is hereby terminated and shall be null and void and of no force or effect.

11.19 Disclosure Schedule. The Disclosure Schedule shall be arranged in separate parts corresponding to the numbered and lettered sections and subsections contained in this Agreement, and the information disclosed in any numbered or lettered part shall be deemed to relate to and to qualify only the particular representation or warranty of the Company set forth in the corresponding numbered or lettered section or subsection of this Agreement, except to the extent that (a) such information is explicitly cross-referenced in another part of the Disclosure Schedule or (b) it is reasonably apparent on the face of the disclosure that such information qualifies another representation and warranty of the Company in this Agreement.

11.20 Construction.

(a) Gender; Etc. For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) Ambiguities. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) Interpretation. As used in this Agreement: (i) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation”; and (ii) the use of the word “or” shall not be exclusive.

(d) References. Except as otherwise indicated, all references in this Agreement to “Sections,” “Parts,” “Schedules” and “Exhibits” are intended to refer to Sections of this Agreement and Schedules and Exhibits to this Agreement. All references to an Acquired Entity in this Agreement shall include references to any Person that merged with and into or liquidated into such Acquired Entity, or for whose Liabilities (including Taxes) such Acquired Entity is or could be held liable, as applicable.

11.21 Waiver of Conflicts; Privilege.

(a) Each party hereto acknowledges and agrees that Goodwin has acted as counsel to the Acquired Entities and the Securityholders’ Agent in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby.

(b) Parent hereby consents and agrees to, and agrees to cause the Acquired Entities to consent and agree to, Goodwin representing the Securityholders’ Agent and/or any of the Effective Time Holders (collectively, the “Seller Parties”) after the Closing in connection with the transactions contemplated by this Agreement, including with respect to disputes in which the interests of the Seller Parties may be directly adverse to Parent and its Affiliates (including Parent and the Acquired Entities), and even though Goodwin may have represented the Acquired Entities in a matter substantially related to any such dispute, or may be handling ongoing matters for the Acquired Entities. Parent further consents and agrees to, and agrees to cause the Acquired Entities to consent and agree to, the communication by Goodwin to the Seller

Parties in connection with any such representation of any fact known to Goodwin arising by reason of Goodwin's prior representation of the Acquired Entities.

(c) In connection with the foregoing, Parent hereby irrevocably waives and agrees not to assert, and agrees to cause the Acquired Entities to irrevocably waive and not to assert, any conflict of interest arising from or in connection with (i) Goodwin's prior representation of the Acquired Entities and (ii) Goodwin's representation of the Seller Parties prior to and after the Closing.

(d) Parent further agrees, on behalf of itself and, after the Closing, on behalf of the Acquired Entities, that all communications in any form or format whatsoever between or among any of Goodwin, the Acquired Entities, any of the Seller Parties, or any of their respective directors, officers employees or other Representatives that relate in any way to the negotiation, documentation and consummation of the transactions contemplated by this Agreement or any dispute arising under this Agreement (collectively, the "Deal Communications") shall be deemed to be retained and owned collectively by the Effective Time Holder, shall be controlled by the Securityholders' Agent on behalf of the Effective Time Holder and shall not pass to or be claimed by Parent, the Acquired Entities. All Deal Communications that are attorney-client privileged (the "Privileged Deal Communications") shall remain privileged after the Closing and the privilege and the expectation of client confidence relating thereto shall belong solely to the Securityholders' Agent and the Effective Time Holders, shall be controlled by the Securityholders' Agent on behalf of the Effective Time Holders and shall not pass to or be claimed by Parent or the Acquired Entities.

(e) Notwithstanding the foregoing, in the event that a dispute arises between Parent or the Acquired Entities, on the one hand, and a third party other than the Securityholders' Agent or an Effective Time Holder, on the other hand, Parent and the Acquired Entities may assert the attorney-client privilege to prevent the disclosure of the Privileged Deal Communications to such third party. In the event that Parent or the Acquired Entities is legally required by governmental order or otherwise to access or obtain a copy of all or a portion of the Deal Communications, Parent shall immediately (and, in any event, within two (2) Business Days) notify the Securityholders' Agent in writing (including by making specific reference to this Section 11.21(e)) so that the Securityholders' Agent can seek a protective order and Parent agrees to use commercially reasonable efforts, at the Securityholders' Agent's sole cost and expense, to assist therewith.

(f) To the extent that files or other materials maintained by Goodwin constitute property of its clients, only the Securityholders' Agent and the Effective Time Holders shall hold such property rights and Goodwin shall have no duty to reveal or disclose any such files or other materials or any Deal Communications by reason of any attorney-client relationship between Goodwin, on the one hand, and the Acquired Entities, on the other hand, so long as such Deal Communications would be subject to a privilege or protection if they were being requested in a claim by an unrelated third party; *provided, that*, in no event shall such Deal Communications (whether or not subject to a privilege or protection) be used against any of the Seller Parties in the context of an indemnification claim brought against such Seller Parties).

(g) Parent agrees that it will not, and that it will cause the Acquired Entities not to, (i) access or use the Deal Communications, including by way of review of any electronic data, communications or other information, or by seeking to have the Securityholders' Agent or any Effective Time Holder waive the attorney-client or other privilege, or by otherwise asserting that Parent or the Acquired Entities has the right to waive the attorney-client or other privilege, or (ii) seek to obtain the Deal Communications from Goodwin, so long as such Deal Communications would be subject to a privilege or protection if they were being requested in a claim by an unrelated third party; *provided, that*, in no event shall such Deal Communications (whether or not subject to a privilege or protection) be used against any of the Seller Parties in the context of an indemnification claim brought against such Seller Parties).

11.22 Independent Investigation; Non-Reliance.

(a) Parent and Merger Sub acknowledge and agree that (i) they are exclusively relying on the representations of the Company set forth in Section 2 and in the Company Closing Certificate, (ii) they have conducted their own examination and investigation of the Company and (iii) that they are not relying on any other statements or documents.

(b) Each of Parent and Merger Sub acknowledge that (i) none of the Company or any other Person shall have or be subject to any Liability to Parent or any other Person resulting from the distribution to Parent, or Parent's use of any information, documents, materials, projections, estimates, or budgets delivered to or made available to Parent and/or Merger Sub of future revenues, future results of operations (or any component thereof), future cash flows, or future financial condition (or any component thereof) of the Surviving Corporation or the future business and operations of the Surviving Corporation.

(c) Notwithstanding anything herein to the contrary, nothing in this Section 11.22 is intended to preclude a claim based on fraud or intentional misrepresentation.

[Remainder of page intentionally left blank]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

Portworx Inc.

a Delaware corporation

By: /s/ Murli Thirumale
Name: Murli Thirumale
Title: Chief Executive Officer

Porsche Acquisition Corp.,

a Delaware corporation

By: /s/ Joseph FitzGerald
Name: Joseph FitzGerald
Title: President

Pure Storage, Inc.,

a Delaware corporation

By: /s/ Charles Giancarlo
Name: Charles Giancarlo
Title: Chairman and Chief Executive Officer

Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as Securityholders' Agent:

By: /s/ Sam Riffe
Name: Sam Riffe
Title: Managing Director

EXHIBIT A**Certain Definitions**

For purposes of this Agreement (including this Exhibit A):

“280G Vote” has the meaning set forth in Section 5.2(b) of this Agreement.

“401(k) Plan” has the meaning set forth in Section 4.4 of this Agreement.

“ACA” means the Patient Protection and Affordable Care Act of 2010.

“Acquired Entities” shall mean, collectively, the Company and any Subsidiaries of the Company, and their respective predecessors (including any Entity that shall have merged into the Company or any of its Subsidiaries, if any) and “Acquired Entity” means any of the Acquired Entities.

“Acquired Entity Contract” means any Contract to which any Acquired Entity is a party or by which any Acquired Entity or any of its assets is bound.

“Acquired Entity Data” means all data contained in the Acquired Entity IT Systems or any databases of each Acquired Entity (including any and all trade secrets, Personal Data and User Data) and all other information and data compilations maintained by an Acquired Entity or third party that are used by, or necessary to the business of, each Acquired Entity.

“Acquired Entity Databases” has the meaning set forth in Section 2.10(r).

“Acquired Entity Employee” means any current employee of any Acquired Entity or any Affiliate of any Acquired Entity.

“Acquired Entity Employee Plan” means any plan, program, policy, practice, Contract or arrangement, whether written or unwritten, providing benefits or compensation (including any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA), any UK pension plan or UK pension arrangement and any bonus, incentive, deferred compensation, vacation, insurance, supplemental unemployment, retention, stock purchase, stock option or other equity-related award, severance, employment (including employment offer letter), consulting, change of control or fringe benefit plan, program, policy, practice or Contract), in any case (a) that is sponsored, maintained or contributed to by any Acquired Entity, (b) to which any Acquired Entity is a party, (c) with respect to which any Acquired Entity has any liability (including contingent liability), or (d) in or to which any Acquired Entity Service Provider participates or is a party, except, in each case, any plan, program, policy, practice, Contract or arrangement that is statutorily mandated in a non-U.S. jurisdiction.

“Acquired Entity IP” means all Intellectual Property and Intellectual Property Rights owned or purported to be owned by any Acquired Entity.

“Acquired Entity IP Contract” means any Contract to which any Acquired Entity is a party or by which any Acquired Entity is bound, that contains any assignment or license of, or any covenant not to assert or enforce, or any other right to use or exploit, any Intellectual Property Right or that otherwise relates to any Acquired Entity IP or any Intellectual Property developed by, with or for any Acquired Entity, including each Contract with an Acquired Entity Service Provider (it being understood that

licenses to Open Source Code to which any Acquired Entity is or was a party or by which any Acquired Entity is or was bound shall constitute Acquired Entity IP Contracts).

“Acquired Entity IT Systems” means all information technology and computer systems (including Computer Software, information technology and telecommunication hardware and other equipment) relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, used in the conduct of the business of each Acquired Entity.

“Acquired Entity Privacy Policy” means each external or internal, past or present published privacy policy of each Acquired Entity, including any policy relating to: (a) the privacy of users of any Acquired Entity Website; (b) the collection, storage, disclosure, and transfer of any User Data or Personal Data; (c) any employee information; and (d) the technical, administrative, and physical security of any User Data or Personal Data.

“Acquired Entity Product” means any Computer Software (including mobile phone applications) and all versions thereof, and all other products or services that have been or are currently being developed, marketed, distributed, licensed, sold, offered, made available (as part of a service bureau, time-sharing, application service or similar arrangement or otherwise) or provided by or on behalf of each Acquired Entity.

“Acquired Entity Registered IP” has the meaning set forth in Section 2.14(a) of this Agreement.

“Acquired Entity Returns” has the meaning set forth in Section 2.14(a) of this Agreement.

“Acquired Entity Service Provider” means any current or former employee, independent contractor, consultant, advisor, officer, member of the board of directors or managers (or similar body) or other individual service provider of any Acquired Entity or any Affiliate of any Acquired Entity.

“Acquired Entity Software” means any Computer Software owned, developed (or currently being developed), used, held, marketed, distributed, made available, licensed or sold by or on behalf of each Acquired Entity at any time (excluding any Shrink Wrap Code) or used in the development, testing, distribution, delivery, maintenance or support of, any product or service of each Acquired Entity.

“Acquired Entity Website” means any public or private website owned, maintained, or operated at any time by or on behalf of any Acquired Entity.

“Acquisition Transaction” means (a) the sale, license or disposition of all or a material portion of the business or assets of the Company or any direct or indirect Subsidiary or division of the Company (including the grant of any license to any Acquired Entity IP or any of its Subsidiaries other than non-exclusive licenses in the ordinary course of business); (b) the issuance, grant or disposition of: (i) any capital stock or other equity security of the Company or any direct or indirect Subsidiary of the Company; (ii) any option, call, warrant or right (whether or not immediately exercisable) to acquire any capital stock or other equity security of the Company or any direct or indirect Subsidiary of the Company; or (iii) any security, instrument or obligation that is or may become convertible into or exchangeable for any Company Capital Stock or other equity security of the Company or any direct or indirect Subsidiary of the Company; or (c) any merger, consolidation, business combination, share exchange, recapitalization, reorganization or similar transaction involving the Company or any direct or indirect Subsidiary of the Company; *provided, however*, (A) the issuance of Company Capital Stock by the Company to its employees upon the valid exercise of Company Options outstanding and vested as of the date of this

Agreement will not be deemed to be an “Acquisition Transaction” and (B) the issuance of Company Capital Stock by the Company upon the conversion of the Company Warrants outstanding as of the date of this Agreement will not be deemed to be an “Acquisition Transaction.”

“Adjusted Liabilities” means 50% of the Current Liabilities.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition and this Agreement, the term “control” (and correlative terms) means the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a Person.

“Affiliated Group” means an “affiliated group” (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, includes or has included any Acquired Entity or any direct or indirect predecessor of any Acquired Entity, or any other group of corporations filing Tax Returns on a combined, consolidated or unitary basis that, at any time on or before the Closing Date, includes or has included any Acquired Entity or any direct or indirect predecessor of any Acquired Entity.

“Aggregate Escrow Contribution Amount” has the meaning set forth in Section 1.5(b)(ii) of this Agreement.

“Aggregate Exercise Price” has the meaning set forth in Section 1.5(b)(i) of this Agreement.

“Aggregate Pro Rata Share” has the meaning set forth in Section 1.5(b)(iii) of this Agreement.

“Agreed Amount” has the meaning set forth in Section 10.5(d) of this Agreement.

“Agreement” means the Agreement and Plan of Merger to which this Exhibit A is attached (and including all Exhibits, Schedules and the Disclosure Schedule), as it may be amended from time to time.

“API” has the meaning set forth in Section 2.10(f) of this Agreement.

“Assumed Options” has the meaning set forth in Section 1.6(b)(i) of this Agreement.

“Basket Amount” has the meaning set forth in Section 10.3(a) of this Agreement.

“BIS” has the meaning set forth in Section 2.23 of this Agreement.

“Business Day” means any day other than: (a) a Saturday, Sunday or federal holiday; or (b) a day on which commercial banks in San Francisco, California are authorized or required to be closed.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act.

“Certificate of Merger” has the meaning set forth in Section 1.3(a) of this Agreement.

“Charter Documents” has the meaning set forth in Section 2.2(a) of this Agreement.

“Claim Notice” has the meaning set forth in Section 10.5(a) of this Agreement.

“Claimed Amount” has the meaning set forth in Section 10.5(a) of this Agreement.

“Closing” has the meaning set forth in Section 1.3(a) of this Agreement.

“Closing Cash” means the sum of (a) aggregate amount of the cash and cash equivalents of the Acquired Entities (less Restricted Cash), as of 11:59 p.m. on the day immediately preceding the Closing Date, calculated in accordance with GAAP, plus (b) the PTO Balance.

“Closing Company Transaction Expenses” means all Company Transaction Expenses as of immediately prior to the Closing.

“Closing Date” has the meaning set forth in Section 1.3(a) of this Agreement.

“Closing Date Dispute Notice” has the meaning set forth in Section 1.10(c) of this Agreement.

“Closing Date Statement” has the meaning set forth in Section 1.10(b) of this Agreement.

“Closing Indebtedness Amount” means the aggregate amount of outstanding Indebtedness as of 11:59 p.m. on the day immediately preceding the Closing Date.

“Code” means the Internal Revenue Code of 1986, as amended. All references to the Code, U.S. Treasury regulations or other governmental pronouncements shall be deemed to include references to any applicable successor regulations or amending pronouncement.

“Collar Amount” means \$200,000.

“Company” has the meaning set forth in the introductory paragraph of this Agreement.

“Company Book Entry Shares” means non-certificated shares of Company Capital Stock represented by book entry positions.

“Company Capital Stock” means the Company Common Stock and Company Preferred Stock.

“Company Closing Certificate” has the meaning set forth in Section 7.6 of this Agreement.

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

“Company Cure Period” has the meaning set forth in Section 9.1(d) of this Agreement.

“Company Financial Statements” has the meaning set forth in Section 2.4(a) of this Agreement.

“Company Indemnification Provisions” has the meaning set forth in Section 5.6(a) of this Agreement.

“Company Option” means each option, outstanding under the Company Stock Plan or otherwise, to purchase shares of Company Capital Stock (or exercisable for cash) from the Company.

“Company Preferred Stock” means the shares of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, each having a par value of \$0.0001 per share, of the Company.

“Company Restricted Stock” means any shares of Company Common Stock that are, as of the applicable time, subject to a repurchase option or risk of forfeiture under Section 83 of the Code.

“Company Stock Certificates” has the meaning set forth in Section 1.8(d) of this Agreement.

“Company Stock Plan” means each of (i) the Great Dane Systems, Inc. 2014 Stock Incentive Plan and (ii) the Portworx Inc. 2020 Stock Incentive Plan, attached hereto as Exhibit J (the “New Stock Plan”).

“Company Transaction Expenses” means, without duplication, all fees, costs, expenses, payments, expenditures or Liabilities (collectively, “Expenses”), whether invoiced prior to or after the Effective Time, incurred by or on behalf of any Acquired Entity, or to or for which any Acquired Entity is or becomes subject or liable, in connection with the Merger or any of the other transactions contemplated by this Agreement, in each that remain unpaid as of the Closing, including: (a) Expenses described in Section 11.4 of this Agreement; (b) Expenses payable to legal counsel or to any financial advisor, broker, accountant or other third party who performed services for or on behalf of, or provided advice to any Acquired Entity, or who is otherwise entitled to any compensation or payment from any Acquired Entity, in connection with or relating to this Agreement, any of the transactions contemplated by this Agreement, or the process resulting in such transactions; (c) Expenses that arise or are expected to arise, or are triggered or become due or payable, as a direct or indirect result of the consummation of the transactions contemplated by this Agreement (but not those incurred as a result of some other event or occurrence in addition to the consummation of the Transaction, for example subject to a double trigger where only one trigger has been satisfied by the consummation of the Transactions), including any fees and expenses related to the D&O Tail Policy and any bonus, severance, profit sharing or change of control payment or benefit (or similar payment obligation), made or provided, or required to be made or provided, by any Acquired Entity to any Person as a result of the Merger or any of the other transactions contemplated by this Agreement; (d) any Transaction Payroll Taxes; (e) fees and expenses of the Payment Agent in connection with the distribution of the Information Statement, the 280G Stockholder Approval, the Option Conversion Agreements and the Joinder and Support Agreements to the stockholders of the Company and holders of Company Options, as applicable, if any, (f) any Transfer Taxes borne by the Effective Time Holders pursuant to Section 6.1; (g) the payments to Acquired Entity Employees who are not Continuing Employees pursuant to Section 4.9, except with respect to Non-U.S. Continuing Employees as set forth Section 4.9; (h) Expenses incurred by or on behalf of any stockholder or any Acquired Entity Service Provider in connection with the transactions contemplated by this Agreement that any Acquired Entity is or will be obligated to pay or reimburse after the Closing; (i) any forgiveness by any Acquired Entity of any Indebtedness; (j) any Expenses incurred prior to the Closing to obtain consents, waivers or approvals under any Acquired Entity Contract as a result of or in connection with the transactions contemplated by this Agreement; or (k) any termination, severance or other fees and Expenses payable to any Acquired Entity Service Provider terminated prior to the date of this Agreement that have not been paid in full prior to the Closing; *provided, however*, that Company Transaction Expenses shall not include any amount included in the Closing Indebtedness Amount.

“Company Warrant” has the meaning set forth in Section 1.6(d) of this Agreement.

“Computer Software” means computer software, systems, databases and code (including HTML code and firmware and other software embedded in hardware devices), whether in Source Code or object code or machine readable form and all documentation, and know-how relating to any of the foregoing.

“Confidentiality Agreement” has the meaning set forth in Section 11.16 of this Agreement.

“Consent” means any approval, consent, ratification, permission, waiver, order or authorization (including any Governmental Authorization).

“Contaminant” includes any material, substance, chemical, gas, liquid, waste, effluent, pollutant or contaminant which, whether on its own or admixed with another, is identified or defined in or regulated by or pursuant to any Environmental Laws or which upon release into the Environment presents a danger to the Environment or to the health or safety or welfare of any Person.

“Contested Amount” has the meaning set forth in Section 10.5(b) of this Agreement.

“Continuing Claim” has the meaning set forth in Section 10.5(g) of this Agreement.

“Continuing Employee” has the meaning set forth in Section 5.5(c).

“Contract” means any currently-effective written, oral or other agreement (including “click-through” agreement), contract, license, sublicense, subcontract, settlement agreement, lease, understanding, arrangement, instrument, note, purchase order, warranty, insurance policy, benefit plan, in each case, that purports to be legally binding.

“Covered Persons” has the meaning set forth in Section 5.6(a) of this Agreement.

“COVID-19” means the outbreak of the virus known as “SARS-CoV2” or any mutation thereof or the disease known as “coronavirus disease 2019” as it exists as of the date of this Agreement.

“Current Liabilities” means as of 11:59 p.m. on the day prior to the Closing Date, the sum of the current liabilities of the Acquired Entities excluding any deferred revenue that is a current liability (including, for the avoidance of doubt, the PTO Balance), in each case as determined in accordance with GAAP. Such amount shall not include the Closing Indebtedness Amount (excluding the items covered by subsection (j) of the definition of “Indebtedness”), any Tax liabilities, deferred revenue or Company Transaction Expenses.

“D&O Tail Policy” has the meaning set forth in Section 4.7 of this Agreement.

“Damages” includes any loss, damage, liability, injury, judgment, settlement, award, fine, Tax, penalty, fee (including reasonable out-of-pocket attorneys’ fees), charge, cost (including reasonable costs of investigation) or expense, excluding (a) consequential damages that are not reasonably foreseeable and (b) exemplary or punitive damages, in each case of (a) and (b), except to the extent payable in a third party claim.

“Deferred Payroll Taxes” means the “applicable employment taxes” (as defined in Section 2302(d) of the CARES Act) payable by any Acquired Entity that (a) relate to the portion of the “payroll tax deferral period” (as defined in Section 2302(d) of the CARES Act) that occurs prior to the Closing and (b) are payable following the Closing as permitted by Section 2302(a) of the CARES Act, calculated without giving effect to any Tax credits afforded under the CARES Act, the Families First Coronavirus Response Act or any similar applicable federal, state or local law to reduce the amount of any such Taxes payable or owed.

“DGCL” has the meaning set forth in the recitals to this Agreement.

“Disclosure Schedule” means the schedule (dated as of the date of this Agreement) delivered to Parent on behalf of the Company and prepared in accordance with Section 11.19 of this Agreement.

“Dispute Period” has the meaning set forth in Section 10.5(b) of this Agreement.

“Disregarded Shares” has the meaning set forth in Section 1.5(a) of this Agreement.

“Dissenting Shares” has the meaning set forth in Section 1.7(a) of this Agreement.

“Domain Name” shall mean any or all of the following and all worldwide rights in, arising out of, or associated therewith; Internet domain names, web addresses, and uniform resource locators t, and all goodwill associated with any of the foregoing.

“Effective Time” has the meaning set forth in Section 1.3(a) of this Agreement.

“Effective Time Holders” means (a) the Non-Dissenting Stockholders, (b) the holders of Outstanding In-the-Money Vested Options and (c) the holders of Outstanding Warrants (after giving effect to any exercises or deemed exercises of Company Warrants prior to the Effective Time).

“Employee Option” means each Company Option that was granted to the holder in the holder’s capacity as, or that has had vesting tied to the holder’s performance of services as, a service provider who is or was an employee of an Acquired Entity for applicable employment Tax purposes.

“Employment Offer Letters” has the meaning set forth in Section 4.9 of this Agreement.

“Encumbrance” means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, intangible property right, claim, infringement, option, right of first refusal, preemptive right, license, community property interest or restriction of any nature (including any restriction on the voting of any security or restriction on the transfer, use or ownership of any security or other asset) but excluding non-exclusive licenses of Intellectual Property or Intellectual Property Rights granted by the Company or its Subsidiaries in the ordinary course of business.

“End Date” has the meaning set forth in Section 9.1(b) of this Agreement.

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

“Environment” includes: (a) any and all buildings, structures, fixtures, fittings, appurtenances, pipes, conduits, valves, tanks, vessels and containers whether above or below ground level; and (b) ambient air, land surface, sub-surface strata, soil, surface water, ground water, river sediment, marshes, wet lands, flora and fauna.

“Environmental Law” means: (a) the common law; and (b) all Legal Requirements, by-laws, Orders, instruments, directives, decisions, injunctions and judgments of any Governmental Body and all approved codes of practice (whether voluntary or compulsory) relating to the protection of the Environment or of human health or safety or welfare or to the manufacture, formulation, processing, treatment, storage, containment, labeling, handling, transportation, distribution, recycling, reuse, release, disposal, removal, remediation, abatement or clean-up of any Contaminant (and any amendment thereto)

and any and all regulations, orders and notices made or served thereunder or pursuant thereto), including, (i) the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*, as amended; (ii) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended; (iii) the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended; (iv) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended; (v) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as amended; (vi) the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 *et seq.*, as amended; (vii) the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, as amended; and (viii) any analogous applicable Legal Requirements implemented in any country in which any Acquired Entity conducts business.

“Environmental Licenses” means any Consent or Governmental Authorization required by or pursuant to any applicable Environmental Laws.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) or any other Entity that would be considered a single employer with any Acquired Entity within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Escrow Agent” has the meaning set forth in Section 1.5(c) of this Agreement.

“Escrow Agreement” has the meaning set forth in Section 1.5(c).

“Escrow Amount” has the meaning set forth in Section 1.5(b) of this Agreement.

“Escrow Contribution Amount” has the meaning set forth in Section 1.5(b) of this Agreement.

“Escrow Fund” has the meaning set forth in Section 1.5(c) of this Agreement.

“Escrowed Holdback Amount” has the meaning set forth in Section 1.5(a)(ii) of this Agreement.

“Estimated Closing Cash” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Closing Company Transaction Expenses” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Closing Indebtedness Amount” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Net Working Capital Adjustment Amount” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Net Working Capital Amount” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Purchase Price” has the meaning set forth in Section 1.10(a) of this Agreement.

“Estimated Statement” has the meaning set forth in Section 1.10(a) of this Agreement.

“EULA” has the meaning set forth in Section 2.10(f) of this Agreement.

“Exchange Ratio” has the meaning set forth in Section 1.5(b)(vi) of this Agreement.

“Excluded Inbound Licenses” has the meaning set forth in Section 2.10(c) of this Agreement.

“Excluded Outbound Licenses” has the meaning set forth in Section 2.10(d) of this Agreement.

“Expiration Date” has the meaning set forth in Section 10.1(a) of this Agreement.

“Final Closing Date Statement” has the meaning set forth in Section 1.10(d) of this Agreement.

“Final Dispute Items” has the meaning set forth in Section 1.10(d) of this Agreement.

“Final Purchase Price” “has the meaning set forth in Section 1.10(d) of this Agreement.

“FIRPTA Notification” has the meaning set forth in Section 1.3(b) of this Agreement.

“FIRPTA Statement” has the meaning set forth in Section 1.3(b) of this Agreement.

“Foreign Subsidiary” means Portworx Software India Private Limited, a private limited company incorporated under the laws of India.

“Founder” means each individual set forth on Schedule C(a).

“Fundamental Representations” means (a) the representations and warranties made by the Company set forth in Sections 2.1 (Organizational Matters), 2.3 (Capital Structure), 2.14 (Tax Matters), 2.20 (Authority; Binding Nature of Agreement), 2.21(a) (Non-Contravention), and 2.26 (Brokers) of this Agreement, (b) the representations, warranties, certifications and other statements and information set forth in the Merger Consideration Certificate and (c) the representations, warranties, certifications and other statements and information set forth in any certificate delivered by the Company pursuant to this Agreement, in each case to the extent such representations, warranties, certifications, statements and information relate to any of the representations and warranties specified in clause “(a)” of this sentence.

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

“Goodwin” means Goodwin Procter LLP.

“Governmental Authorization” means any: (a) permit, license, approval, certificate, franchise, permission, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or (b) right under any Contract with any Governmental Body.

“Governmental Body” means any: (a) multinational or supranational body exercising legislative, judicial or regulatory powers, (b) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (c) federal, state, local, municipal, foreign or other government; or (d) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

“Grant Date” has the meaning set forth in Section 2.3(b) of this Agreement.

“Holdback Amount” has the meaning set forth in Section 1.5(a)(ii) of this Agreement.

“Indebtedness” means, without duplication: (a) all obligations (including the principal amount thereof or, if applicable, the accreted amount thereof and the amount of accrued and unpaid interest thereon) of the Acquired Entities, whether or not represented by bonds, debentures, notes or other securities (whether or not convertible into any other security), for the repayment of money borrowed, whether owing to banks, financial institutions, on equipment leases or otherwise; (b) all deferred indebtedness of the Acquired Entities for the payment of the purchase price of property or assets purchased (other than accounts payable incurred in the ordinary course of business that are not more than 60 days past due); (c) all obligations of the Acquired Entities to pay rent or other payment amounts under a lease which is required to be classified as a capital lease or a liability on the face of a balance sheet prepared in accordance with GAAP (other than as set forth below with respect to real estate leases); (d) all outstanding reimbursement obligations of the Acquired Entities with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of the Acquired Entities; (e) all obligations of the Acquired Entities under any interest rate swap agreement, forward rate agreement, interest rate cap or collar agreement or other financial agreement or arrangement entered into for the purpose of limiting or managing interest rate risks; (f) all obligations secured by any Encumbrance (other than a source code escrow or Permitted Encumbrance) existing on property owned by the Acquired Entities, whether or not indebtedness secured thereby will have been assumed; (g) all guaranties, endorsements, assumptions and other contingent obligations of the Acquired Entities in respect of, or to purchase or to otherwise acquire, Indebtedness of others; (h) all premiums, penalties, fees, expenses, breakage costs, change of control and other payments required to be paid or offered in respect of any of the foregoing on prepayment; as a result of the consummation of the transactions contemplated by this Agreement; (i) all Pre-Closing Taxes (other than Taxes included in Company Transaction Expenses); in each case, to the extent unpaid as of 11:59 p.m. on the day prior to the Closing Date; and (j) an amount equal to the Adjusted Liabilities; *provided, that*, Indebtedness shall exclude all obligations arising pursuant to any leases for real property.

“Independent Accounting Firm” shall mean a nationally recognized accounting firm mutually agreed by Parent and the Securityholders’ Agent, provided that such Independent Accounting Firm shall be a firm that is independent to Parent.

“India Share Transfer” has the meaning set forth in Section 1.3(b)(xx) of this Agreement.

“Information Privacy and Security Laws” shall mean shall mean all Legal Requirements with which any Acquired Entity is required to comply or that apply to any Acquired Entity products and services or that relate to Processing Personal Data or other tracking of online consumer behaviors including, without limitation, federal, state or foreign laws or regulations regarding (a) data privacy or information security, (b) data breach notification, (c) unfair or deceptive practices (d) trespass, computer crime and other Laws governing unauthorized access to or use of electronic data; (e) email, telephone, or text message communications; and (f) state consumer protection laws. For the avoidance of doubt, “Information Privacy and Security Laws” include, to the extent applicable to any Acquired Entity, the General Data Privacy Regulation (Regulation (EU) 2016/679) (“GDPR”) and the California Consumer Privacy Act of 2018 (“CCPA”).

“Information Statement” means an information statement prepared by the Company and relating to the vote by the stockholders of the Company on the adoption of this Agreement and the approval of the other transactions contemplated by this Agreement.

“Insider Payables” has the meaning set forth in Section 2.4(e) of this Agreement.

“Insider Receivables” has the meaning set forth in Section 2.4(e) of this Agreement.

“Intellectual Property” means sales methodologies and processes, training protocols and similar methods and processes, algorithms, APIs, apparatus, business and marketing plans, circuit designs and assemblies, gate arrays, net lists, test vectors, design rules, models, databases, data collections, diagrams, formulae, inventions (whether or not patentable), know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, processes, proprietary information (including customer lists), protocols, schematics, specifications, Computer Software, subroutines, techniques, user interfaces, Domain Names, websites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries).

“Intellectual Property Rights” means all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world, in each case whether registered or unregistered: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, mask works and Moral Rights; (b) trademark and trade name rights and similar rights and the goodwill associated with any of the foregoing; (c) Trade Secret rights and similar rights; (d) Patents, inventions (whether or not patentable or reduced to practice) and, industrial property rights; (e) other proprietary rights in Intellectual Property; (f) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in clauses “(a)” through “(e)” above; and (g) together with, in each of clauses “(a)” through “(f)” above, all claims for Damages by reason of past infringement thereof, with the right to sue for, and collect the same.

“Joinder and Support Agreement” has the meaning set forth in the recitals to this Agreement.

“Joint Announcement” has the meaning set forth in Section 4.6 of this Agreement.

“Key Business Partner” has the meaning set forth in Section 2.22 of this Agreement.

“Key Employee” means each individual identified on Schedule C(b).

“Key Employee Offer Letters” has the meaning set forth in the recitals to this Agreement.

An individual shall be deemed to have “Knowledge” of a particular fact or other matter if: (a) such individual is actually aware of such fact or other matter; or (b) such individual would have known such fact or other matter had such individual made reasonable inquiry of his direct reports who would reasonably be expected to have actual knowledge of such fact or other matter. The Company shall be deemed to have “Knowledge” of a particular fact or other matter if the Persons identified on Exhibit I has Knowledge of such fact or other matter.

“Legal Proceeding” means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator, arbitration panel, or any other private dispute resolution procedure.

“Legal Requirement” means any federal, state, local, municipal, foreign, supranational or other law, statute, constitution, treaty, principle of common law, directive, resolution, ordinance, code, edict, writ, decree, rule, regulation, judgment, ruling, injunction or requirement issued, enacted, adopted,

promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

“Letter of Transmittal” has the meaning set forth in Section 1.8(b) of this Agreement.

“Liability” means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

“made available to Parent” means contained and accessible for a continuous period of at least 24 hours immediately prior to the date of this Agreement in the “Portworx Data Room” hosted on behalf of the Company by Donnelley Financial Solutions in connection with the Merger to which Parent and its designated Representatives had unrestricted access and notification rights during such period.

“Material Adverse Effect” means any change, event, effect or claim (each, an “Effect”) that (considered together with all other Effects) has, or would reasonably be expected to have, a material adverse effect on: (a) the business, financial condition, assets or results of operations of the Acquired Entities, taken as a whole; or (b) the ability of the Company to consummate the transactions contemplated by this Agreement; *provided, that*, in no event shall any of the following Effects be taken into account in the determination of whether there has been, is or would reasonably be expected to be, a Material Adverse Effect: (i) any Effect resulting from conditions generally affecting the industries in which the Acquired Entities operate or from changes in general business, financial, political, financial markets, credit markets, capital markets or economic conditions (including any Effect resulting from any war or military or terrorist attack or natural disasters); (ii) any change in any Legal Requirement; (iii) changes in GAAP or other applicable accounting standards; (iv) the announcement of this Agreement or the announcement, pendency or anticipated consummation of the Merger resulting solely from the identity of Parent; and (v) the failure of the Company and its Subsidiaries to achieve any financial projection, forecast, estimate, prediction or models (it being understood and agreed that the facts underlying such failure may be taken into consideration in determining whether there has been, is or would reasonably be expected to be, a Material Adverse Effect); and (vi) the COVID-19 pandemic or any other pandemic; *provided, however*, that, in the case of clauses (i) and (ii) above, any such Effect shall be taken into account in determining whether there has been, is or would reasonably be expected to be, a Material Adverse Effect, if it has disproportionately impacted the Acquired Entities (relative to other participants in the industries in which the Acquired Entities operate), taken as a whole.

“Material Contracts” has the meaning set forth in Section 2.11(a) of this Agreement.

“Merger” has the meaning set forth in the recitals to this Agreement.

“Merger Consideration” means: (a) the consideration that a Non-Dissenting Stockholder is entitled to receive in exchange for such Non-Dissenting Stockholder’s shares of Outstanding Capital Stock pursuant to Section 1.5 of this Agreement; (b) the consideration that a holder of an Outstanding In-the-Money Vested Option is entitled to receive in exchange for such Outstanding In-the-Money Vested Option pursuant to Section 1.6(a) of this Agreement; (c) the consideration that a Continuing Employee who holds an Outstanding In-the-Money Unvested Option is entitled to receive in exchange for such Outstanding In-the-Money Unvested Option pursuant to Section 1.6(b) of this Agreement; and (d) the

consideration that a holder of an Outstanding Warrant is entitled to receive in exchange for such Outstanding Warrant pursuant to Section 1.6(d) of this Agreement.

“Merger Consideration Certificate” has the meaning set forth in Section 1.3(b)(v) of this Agreement.

“Merger Sub” has the meaning set forth in the introductory paragraph of this Agreement.

“Moral Rights” means any right to claim authorship to or to object to any distortion, mutilation, or other modification or other derogatory action in relation to a work, whether or not such would be prejudicial to the author’s reputation, and any similar right, such as recognition of authorship or access to work, existing under common or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a “moral right.”

“Negotiation Period” has the meaning set forth in Section 1.10(c) of this Agreement.

“Net Working Capital” means as of 11:59 p.m. on the day prior to the Closing Date, the (a) the sum of the current assets of the Acquired Entities (calculated on a net basis, i.e., after taking into account items, including, but not limited to, allowances for doubtful accounts and accumulated depreciation and amortization, and excluding, for the avoidance of doubt, unbilled accounts receivable and excluding deposits whose collection is overdue by more than 120 days), *less* (b) an amount equal to the Adjusted Liabilities. The amount calculated pursuant to clause “(a)” in the preceding sentence shall not include any Closing Cash, Restricted Cash or any Tax assets. The Net Working Capital shall be calculated in a manner consistent with the sample calculation as of August 31, 2020 attached hereto as Schedule A-1, which sample shall include the individual components and line items used to calculate such sample.

“Net Working Capital Adjustment Amount” means the amount (if any) by which the Net Working Capital is less than or greater than the Net Working Capital Target by an amount in excess of the Collar Amount (for the sake of clarity, (a) if the Net Working Capital is less than the Net Working Capital Target by more than the Collar Amount, the Net Working Capital Adjustment shall be a negative number, and (b) if the Net Working Capital is greater than the Net Working Capital Target by more than the Collar Amount, the Net Working Capital Adjustment shall be a positive number). For the avoidance of doubt, if the Net Working Capital is equal to the Net Working Capital Target or greater than or less than the Net Working Capital Target by an amount that is not in excess of the Collar Amount, the Net Capital Adjustment Amount shall be zero.

“Net Working Capital Target” means the sum of (a) 1,515,587 plus (b) the amount of the Adjusted Liabilities.

“New Restricted Stock Units” means restricted stock units of the Company granted under the New Stock Plan.

“Non-Competition Agreement” has the meaning set forth in the recitals to this Agreement.

“Non-Continuing Employee” has the meaning set forth in Section 4.9 of this Agreement.

“Non-Continuing Employee Compensation” has the meaning set forth in Section 4.9 of this Agreement.

“Non-Dissenting Stockholder” means each stockholder of the Company (i) that does not perfect such stockholder’s appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.5 of this Agreement and (ii) that has delivered to the Payment Agent a duly completed Letter of Transmittal.

“Non-Employee Option” means each Company Option that was granted to a holder who was never an employee of an Acquired Entity for applicable employment Tax purposes, and in respect of which no Acquired Entity has any employment Tax withholding obligations.

“Non-Escrowed Holdback Amount” has the meaning set forth in Section 1.5(a)(ii) of this Agreement.

“Non-U.S. Continuing Employee” has the meaning set forth in Section 4.9 of this Agreement.

“OFAC” has the meaning set forth in Section 2.23 of this Agreement.

“Open Source Code” means any Computer Software that is distributed under “open source” or “free software” terms or is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such Computer Software, including any Computer Software distributed under the GPL, LGPL, Mozilla License, Apache License, Common Public License, BSD license or similar terms and including any Computer Software distributed with any license term or condition that: (a) requires or could require, or conditions or could condition, the use or distribution of such Computer Software on the disclosure, licensing, or distribution of any Source Code for any portion of such Computer Software or any derivative work of such Computer Software; or (b) otherwise imposes or could impose any limitation, restriction, or condition on the right or ability of the licensee of such software to use or distribute such Computer Software or any derivative work of such Computer Software.

“Option Conversion Agreement” means the Option Conversion Agreement attached hereto as Exhibit E.

“Order” means any order, writ, injunction, judgment, decree, ruling or award of any arbitrator or any court or other Governmental Body.

“Ordinary Commercial Agreements” has the meaning set forth in Section 2.14(f) of this Agreement.

“Outstanding Capital Stock” means each share of Company Preferred Stock and Company Common Stock issued and outstanding immediately prior to the Effective Time.

“Outstanding In-the-Money Unvested Option” has the meaning set forth in Section 1.6(b)(i) of this Agreement.

“Outstanding In-the-Money Vested Option” has the meaning set forth in Section 1.6(a)(i) of this Agreement.

“Outstanding Warrant” has the meaning set forth in Section 1.6(d) of this Agreement.

“Parent” has the meaning set forth in the introductory paragraph of this Agreement.

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

“Parent Cure Period” has the meaning set forth in Section 9.1(e) of this Agreement.

“Parent Indemnitees” means the following Persons: (a) Parent; (b) Parent’s current Affiliates (including Merger Sub and, following the Merger, the Surviving Corporation); (c) the respective employees, directors and officers of the Persons referred to in clauses “(a)” and “(b)” above; and (d) the respective successors and assigns of the Persons referred to in clauses “(a),” “(b)” and “(c)” above; *provided, however*, that none of the Effective Time Holders and holders of Outstanding In-the-Money Unvested Options shall be deemed to be “Parent Indemnitees.”

“Patents” means patents (including utility, utility model, plant and design patents, and certificates of invention), patent applications (including additions, provisional, national, regional and international applications, as well as original, continuation, continuation-in-part, divisionals, continued prosecution applications, reissues, and re-examination applications), patent or invention disclosures, registrations, applications for registrations and any term extension or other governmental action which provides rights beyond the original expiration date of any of the foregoing.

“Payment Agent” has the meaning set forth in Section 1.8(a) of this Agreement.

“Payment Agent Agreement” means that certain Payments Administration Agreement between Parent, the Payment Agent and the Securityholders’ Agent.

“Payment Conditions” has the meaning set forth in Section 10.5(i)(i) of this Agreement.

“Payment Fund” has the meaning set forth in Section 1.8(a) of this Agreement.

“Per Share Amount” has the meaning set forth in Section 1.5(b)(vii) of this Agreement.

“Permitted Encumbrances” has the meaning set forth in Section 2.21(e) of this Agreement.

“Person” means any individual, Entity or Governmental Body.

“Personal Data” means any information or data within the scope of or regulated by Information Privacy and Security Laws and (a) that identifies or is reasonably capable of being associated with an identified or identifiable natural person, including a natural person’s name, street address or specific geolocation information, date of birth, telephone number, email address, online contact information, photograph, social security number, driver’s license number, passport number, tax identification number, any government-issued identification number, financial account number, credit card number, any information that would permit access to a financial account, a user name and password that would permit access to an online account, any persistent identifier that can be used to recognize a user over time and across different websites, health information, biometric data, passport number, or customer or account number, user id, or (b) any information which is classified or defined as “personal data,” “protected personal information,” “personal information,” “personally identifiable information” (or other similar term) under any applicable law or regulation.

“Post-Closing Tax Period” means (a) any taxable period beginning after the Closing Date, and (b) the portion of any Straddle Period beginning on the day immediately following the Closing Date.

“Pre-Closing Period” has the meaning set forth in Section 4.1 of this Agreement.

“Pre-Closing Tax Period” means (a) any taxable period ending on or before the Closing Date, and (b) the portion of any Straddle Period beginning on the first day of such Straddle Period and ending on and including the Closing Date.

“Pre-Closing Taxes” means (a) all Taxes of any Effective Time Holder resulting from the transactions contemplated by this Agreement, (b) all Taxes of the Acquired Entities attributable to any Pre-Closing Tax Period (determined in accordance with Section 6.7 in the case of any Straddle Period, and including, for the avoidance of doubt, Deferred Payroll Taxes and any Taxes imposed pursuant to Sections 951 or 951A of the Code with respect to income earned by the Foreign Subsidiary in any Pre-Closing Tax Period); (c) all Taxes of any member of an Affiliated Group of which any Acquired Entity (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation §1.1502-6 or any analogous or similar state, local, or non-U.S. Legal Requirements, (d) any and all Taxes of any Person (other than an Acquired Entity) imposed on an Acquired Entity as a transferee or successor, by contract or pursuant to any law, rule, or regulation, which Taxes relate to an event or transaction occurring before the Closing; (e) any Transaction Payroll Taxes and the portion of any Transfer Taxes required to be borne by the Effective Time Holders under Section 6.1).

“Pro Rata Share” has the meaning set forth in Section 1.5(b)(viii) of this Agreement.

“Process” means, with respect to data, the use, collection, processing, storage, recording, organization, adaption, alteration, transfer, retrieval, consultation, disclosure, dissemination or combination of such data.

“Properties” means the leasehold properties held or occupied by any of the Acquired Entities.

“PTO Balance” has the meaning set forth in Section 4.9 of this Agreement.

“Purchase Price” has the meaning set forth in Section 1.5(b)(ix) of this Agreement.

“Purchase Price Excess Amount” “has the meaning set forth in Section 1.10(e) of this Agreement.

“Registered IP” means all Intellectual Property Rights that are registered, filed, issued or granted under the authority of, with or by, any Governmental Body (or other registrar in the case of Domain Names), including all Patents, registered copyrights, registered trademarks, and all applications for any of the foregoing.

“Related Party” means (a) each stockholder who holds more than 1% of an Acquired Entity; (b) each individual who is, or who has at any time since inception been, an officer or member of the board of directors or managers (or similar body) of any of the Acquired Entities; (c) each member of the immediate family of each of the individuals referred to in clauses “(a),” and “(b)” above; and (d) any trust or other Entity (other than the Company) in which any one of the Persons referred to in clauses “(a),” “(b)” or “(c)” above holds (or in which more than one of such Persons collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest.

“Representative Losses” has the meaning set forth in Section 11.1(f) of this Agreement.

“Representatives” means officers, employees, agents, attorneys, accountants, advisors, representatives and any member of the board of directors or managers (or similar body) of a Person.

“Required Merger Stockholder Votes” has the meaning set forth in Section 2.25 of this Agreement.

“Resolution Period” has the meaning set forth in Section 10.5(e) of this Agreement.

“Response Notice” has the meaning set forth in Section 10.5(b) of this Agreement.

“Restricted Cash” means: (a) the amount of all restricted cash, cash in reserve or escrow accounts, all un-cleared checks or withdrawals of the Acquired Entities outstanding and (b) the amount of all cash and cash equivalents of the Acquired Entities in excess of \$300,000 that is held in jurisdictions outside the United States.

“Retained Escrow Amount” has the meaning set forth in Section 10.5(g) of this Agreement.

“Retention Pool” has the meaning set forth in Section 4.10 of this Agreement.

“Review Period” has the meaning set forth in Section 1.10(c) of this Agreement.

“Section 280G” has the meaning set forth in Section 5.2(b) of this Agreement.

“Securityholders’ Agent” has the meaning set forth in Section 11.1(a) of this Agreement.

“Securityholders’ Agent Expense Fund” has the meaning set forth in Section 11.1(e) of this Agreement.

“Securityholders’ Agent Expense Fund Amount” has the meaning set forth in Section 11.1(e) of this Agreement.

“Securityholders’ Agent Expense Fund Balance” has the meaning set forth in Section 11.1(e) of this Agreement.

“Securityholders’ Agent Expense Fund Contribution Amount” has the meaning set forth in Section 1.5(b)(ix) of this Agreement.

“Shrink-Wrap Code” means generally commercially available Computer Software (other than development tools and development environments and Open Source Code) made available for an average cost of not more \$75,000 in the aggregate for all users and work stations that is used by any of the Acquired Entities but that is not (i) distributed by any Acquired Entity, (ii) incorporated into any Acquired Entity Product.

“Source Code” means, collectively, Computer Software source code, data and data mining structure, build scripts, test scripts or algorithms, which may be printed out or displayed in human readable form.

“Specified Accounting Principles” means accounting principles and policies consistent with the Company’s past practices.

“Stipulated Amount” has the meaning set forth in Section 10.5(e) of this Agreement.

An Entity shall be deemed to be a “Subsidiary” of another Person if such Person directly or indirectly owns or purports to own, beneficially or of record: (a) an amount of voting securities of or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity’s board of directors or other governing body; or (b) at least 50% of the outstanding equity, voting, beneficial or financial interests in such Entity.

“Straddle Period” means any taxable year or period beginning on or before and ending after the Closing Date.

“Surviving Corporation” has the meaning set forth in Section 1.1 of this Agreement.

“Tax” (and, with correlative meaning, “Taxes”) includes (a) any federal, state, local, foreign, supra-governmental or supranational net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, employee contribution, withholding on amounts paid to or by any Person, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental tax (including taxes under Code Section 59A), escheat payments or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever and denominated by any name whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Body and (b) any liability for the payment of amounts determined by reference to amounts described in clause “(a)” as a result of being or having been a member of any group of corporations that files, will file, or has filed Tax Returns on a combined, consolidated or unitary basis, as a result of any obligation under any agreement or arrangement (including any Tax allocation, Tax indemnity or Tax sharing agreement), as a result of being a transferee or successor, or otherwise.

“Tax Return” means any return (including any information return, claim for refund, tax credit, incentive or benefit, or amended return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax (including any attached schedule) or in connection with the administration, implementation or enforcement of or compliance with any applicable Legal Requirement relating to any Tax.

“Trade Secrets” means trade secrets, confidential information, proprietary information and data, including all Source Code, documentation, know how, processes, technology, formulae, customer lists, business and marketing plans, inventions (whether or not patentable) and marketing information, in each case, to the extent protectable under applicable trade secret law.

“Transaction Payroll Taxes” means the employer portion of any employment, social security, payroll or similar Taxes with respect to bonuses, severance or other compensatory payments made in connection with the transactions contemplated by this Agreement that accrue on or prior to the Closing Date (including the cash-out, vesting, settlement or exercise of restricted stock, restricted stock units, or options), but only to the extent the deduction for such payments accrues for federal income Tax purposes on or prior to the Closing Date, and whether paid at, prior to, or following the Closing Date, and whether payable by Parent, an Acquired Entity, or any of their respective Affiliates; provided that Transaction Payroll Taxes shall not include any such Taxes associated with the post-closing cash-out, vesting, settlement, or exercise of New Restricted Stock Units or Assumed Options.

“Unaudited Interim Balance Sheet” has the meaning set forth in Section 2.4(a) of this Agreement.

“Underwater Vested Option” has the meaning set forth in Section 1.6(a)(i) of this Agreement.

“User Data” means any Personal Data or other data or information collected by or on behalf of any Acquired Entity or its clients from users of any Acquired Entity Website or any Acquired Entity Software.

“Vested Option” has the meaning set forth in Section 1.6(a)(i) of this Agreement.

“Waived Section 280G Payments” has the meaning set forth in Section 5.2(b) of this Agreement.

“WARN Act” has the meaning set forth in Section 2.15(k) of this Agreement.

“Warrant Surrender Agreement” means that Warrant Surrender Agreement, in the form of Exhibit G, delivered by each holder of the Outstanding Warrant.

EXHIBIT B
FORM OF JOINDER AND SUPPORT AGREEMENT

EXHIBIT C
FORM OF NON-COMPETITION AGREEMENT

EXHIBIT D
FORM OF HOLDBACK AGREEMENT

EXHIBIT E
OPTION CONVERSION AGREEMENT

EXHIBIT F
FORM OF ESCROW AGREEMENT

EXHIBIT G
FORM OF WARRANT SURRENDER AGREEMENT

EXHIBIT H
FORM OF LETTER OF TRANSMITTAL

EXHIBIT I

PERSONS WHOSE KNOWLEDGE IS IMPUTED TO THE COMPANY

EXHIBIT J
FORM OF NEW STOCK PLAN

Pure Storage, Inc.

Change in Control And Severance Benefit Plan

Section 1. Introduction.

The Pure Storage, Inc. Change in Control and Severance Benefit Plan (the “**Plan**”) amends, restates and replaces in its entirety Pure’s Change in Control Severance Benefit Plan that was adopted as of August 19, 2015 (the “**Prior Plan**”), effective as of November 24, 2020 (the “**Effective Date**”). The purpose of the Plan is to provide for the payment of severance benefits to certain eligible officers of Pure Storage, Inc. (“**Pure**”) in the event that such employees become subject to involuntary employment terminations, including in connection with an acquisition of Pure. This Plan document also is the Summary Plan Description for the Plan. In the event of a Change in Control (as defined below), any references to “Pure” herein will be deemed to mean Pure and/or the acquiring, surviving, resulting or successor party or purchaser of Pure’s assets (or, in each case, the parent or ultimate parent thereof), as the context requires.

For purposes of the Plan, the following terms are defined as follows:

(a) “**Affiliate**” means any “parent” or “subsidiary” of Pure as such terms are defined in Rule 405 of the Securities Act of 1933, as amended. The Plan Administrator shall have the authority to determine the time or times at which “parent” or “subsidiary” status is determined within the foregoing definition.

(b) “**Base Pay**” means the base pay amount (excluding incentive pay, premium pay, commissions, overtime, bonuses and other forms of variable compensation) as in effect during the last regularly scheduled payroll period immediately prior to a Covered Termination and prior to any reduction that would give rise to an employee’s right to resign for Good Reason.

(c) “**Board**” means the Board of Directors of Pure; provided, however, that if the Board has delegated authority to administer the Plan to the Compensation Committee of the Board, then “**Board**” shall also mean the Compensation Committee.

(d) “**Cause**” means, with respect to a particular Eligible Employee, the occurrence of any or more of the following events: (A) an Eligible Employee’s conviction (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, dishonesty or moral turpitude; (B) an Eligible Employee’s commission or attempted commission of or participation in a fraud or act of dishonesty or misrepresentation against Pure; (C) an Eligible Employee’s material violation of any contract or agreement between the Eligible Employee and Pure, including without limitation, material breach of the Eligible Employee’s Confidential Information and Inventions Assignment Agreement, or of any Pure policy, or of any statutory duty the Eligible Employee owes to Pure; or (D) an Eligible Employee’s conduct that constitutes gross insubordination, incompetence or habitual neglect of duties, provided, however, that the action or conduct described in clause (C) above and this clause (D) will constitute “Cause” only if such action or conduct continues after the Board has provided the Eligible Employee with written notice thereof and thirty (30) days opportunity to cure the same (provided that the Board is not obligated to provide such written notice and opportunity to cure if the action or conduct is not reasonably susceptible to cure). The determination that a termination is for Cause shall be made by the Plan Administrator in its sole discretion.

(e) “**CEO**” means the Pure’s Chief Executive Officer.

(f) “**Change in Control**” means the occurrence of any one or more of the following events: (A) any consolidation or merger of Pure with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of Pure immediately prior to such consolidation, merger or reorganization, continue to hold a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; (B) any transaction or series of related transactions to which Pure is a party in which in excess of fifty percent (50%) of Pure’s voting power is transferred; provided that the foregoing shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by Pure or indebtedness of Pure is cancelled or converted or a combination thereof; or (C) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of Pure. This definition of Change in Control is intended to conform to the definitions of “change in ownership of a corporation” and “change in ownership of a substantial portion of a corporation’s assets” provided in Treasury Regulation Sections 1.409A-3(i)(5)(v) and (vii). Once a Change in Control has occurred, no future events shall constitute a Change in Control for purposes of the Plan.

(g) “**Change in Control Period**” means the period (i) commencing three (3) months prior to the Closing and ending (ii) twelve (12) months following the Closing.

(h) “**Change in Control Termination**” means an Involuntary Termination that occurs within the Change in Control Period. For such purposes, if the event(s) giving rise to an Eligible Employee’s right to resign for Good Reason arise within the Change in Control Period, and the Eligible Employee’s resignation occurs no later than one hundred twenty (120) days after the first occurrence of the applicable event giving rise to a resignation for Good Reason, such termination shall be a Change in Control Termination.

(i) “**Closing**” means the initial closing of the Change in Control as defined in the definitive agreement executed in connection with the Change in Control. In the case of a series of transactions constituting a Change in Control, “Closing” means the first closing that satisfies the threshold of the definition for a Change in Control.

(j) “**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

(l) “**Covered Termination**” means a Regular Termination or a Change in Control Termination.

(m) “**Director**” means a member of the Board.

(n) “**Eligible Employee**” means an active employee of Pure with a title of Vice President or above who meets all the requirements to be eligible to receive Plan benefits as set forth in Section 2, including timely provision of an effective Release (as such term is defined in Section 2(b)).

(o) “**Employment Agreement**” means any individual employment offer letter, contract or agreement that an Eligible Employee has with Pure.

(p) “**Entity**” means a corporation, partnership, limited liability company or other entity.

(q) “**Equity Plan**” means Pure’s 2009 Equity Incentive Plan and Pure’s 2015 Equity Incentive Plan or any successor or other equity incentive plan adopted or under which awards have been assumed by Pure which govern the stock awards, as applicable.

(r) “**Executive Staff**” means (i) Pure’s executive officers as determined under Section 16 of the Securities Exchange Act of 1934 (other than the CEO), and (ii) other members of Pure’s executive team, in each case, only as affirmatively determined by the Plan Administrator in its discretion.

(s) “**Good Reason**” means the occurrence of any of the following events without the Eligible Employee’s written consent; provided however, that any resignation by the Eligible Employee due to any of the following events shall be deemed for Good Reason only if (i) the Eligible Employee gives Pure written notice of the intent to terminate for Good Reason within thirty (30) days after the occurrence of any of the events and that the Eligible Employee asserts that grounds for a resignation for Good Reason exist as a result which is not corrected within thirty (30) days after Pure (or any successor thereto) receives such written notice from the Eligible Employee; and (ii) the Eligible Employee resigns within one hundred twenty (120) days of the first occurrence of the applicable event: (A) a material diminution of the Eligible Employee’s duties, position or responsibilities, provided, however, a mere change in title or reporting relationship following a Change in Control will not by itself constitute “Good Reason” for the Eligible Employee’s resignation, and further provided, however, that the acquisition of Pure and subsequent conversion of Pure as a whole to a division or unit of the acquiring entity will not by itself result in a “diminution;” (B) a reduction by Pure in the Eligible Employee’s base salary as in effect immediately prior to such reduction by more than ten percent (10%) (unless such reduction is made pursuant to an across the board reduction applicable to senior executives of Pure); or (C) the relocation of the Eligible Employee’s assigned office location resulting in an increase in the Eligible Employee’s one-way commuting distance from the Eligible Employee’s residence by at least forty-five (45) miles (disregarding, for this purpose, any remote work conducted at Eligible Employee’s residence or as otherwise permitted by Pure).

(t) “**Individual Severance Arrangement**” means any Employment Agreement providing for severance benefits to an Eligible Employee or any other severance arrangement between the Eligible Employee and Pure other than the Plan, in each case that remains in effect through the date of a Covered Termination.

(u) “**Involuntary Termination**” means an Eligible Employee’s termination from all positions he or she then holds with Pure, which constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h) without regard to any alternative definition thereunder), and which is either (i) a termination by Pure without Cause other than as a result of death or disability or (ii) a resignation by the Eligible Employee with Good Reason.

(v) “**Plan Administrator**” means the Board, or a duly authorized committee thereof, prior to the Closing and the Representative upon and following the Closing.

(w) “**Pure**” means Pure Storage, Inc. or, following a Change in Control, the surviving Entity resulting from such event.

(x) “**Regular Termination**” means an Involuntary Termination that is not (i) a Change in Control Termination or (ii) a resignation by the Eligible Employee with Good Reason.

(y) “**Representative**” means one or more members of the Board or other persons or Entities designated by the Board prior to or in connection with a Change in Control that will have authority to administer and interpret the Plan upon and following the Closing as provided in Section 7(a).

(z) “**Target Bonus**” means the on-target amount of an Eligible Employee’s annual cash incentive compensation in effect immediately prior to a Covered Termination as if all applicable performance goals for such year were attained at a level of 100% of target.

Section 2. Eligibility For Benefits.

(a) **Eligible Employee.** An employee of Pure is eligible to participate in the Plan if (i) the employee is an Eligible Employee at any time on or after the Effective Date of the Plan and prior to a Covered Termination; (ii) such Eligible Employee’s employment with Pure terminates due to a Covered Termination; and (iii) such Eligible Employee meets the other Plan eligibility requirements set forth in this Section 2. The determination of whether an employee is an Eligible Employee (including determinations as to leveling and which roles/titles qualify under the Plan) shall be made by the Plan Administrator, in its sole discretion, and such determination shall be binding and conclusive on all persons. Pure may adopt a form of participation agreement to require acknowledgement of the terms of the Plan and confirm status as an Eligible Employee.

(b) **Release Requirement.** In order to be eligible to receive benefits under the Plan, the employee also must execute a general waiver and release in substantially the form attached hereto as Exhibit A, Exhibit B or Exhibit C, as appropriate (the “**Release**”), within the applicable time period set forth therein, but in no event more than fifty-two (52) days following the date of the applicable Covered Termination, and such Release must become effective in accordance with its terms. Pure, in its sole discretion, may modify the form of the Release to comply with applicable law, Pure practices and/or any changes reasonably requested by an acquirer in a Change in Control. The Release may be incorporated into a termination agreement or other agreement with the employee.

(c) **No Duplicative Benefits Provided Under Plan.** This Plan does not supersede the terms of any Individual Severance Arrangement. Unless otherwise determined by the Plan Administrator in its discretion, if an employee is an Eligible Employee and otherwise eligible to receive severance benefits under this Plan that are of the same category and would otherwise duplicate the benefits available under the terms of any Individual Severance Arrangement (“**Duplicative Benefits**”) such Eligible Employee will receive severance benefits under the Individual Severance Arrangement in lieu of any Plan benefits to the extent such benefits are Duplicative Benefits, and severance benefits will be provided under the Plan only to the extent, if any, that Plan benefits are not Duplicative Benefits.

(d) **Exceptions to Benefit Entitlement.** An employee who otherwise is an Eligible Employee will not receive benefits under the Plan in the following circumstances, as determined by the Plan Administrator in its sole discretion:

(1) The employee voluntarily terminates employment with Pure without Good Reason, other than to accept immediate reemployment with another entity that is wholly or majority owned (directly or indirectly) by Pure, or terminates employment due to the employee’s death or disability. Voluntary terminations include, but are not limited to, resignation, retirement or failure to return from a leave of absence on the scheduled date.

(2) The employee is offered immediate reemployment by a successor to Pure or an Affiliate or by a purchaser of Pure's assets, as the case may be, following a Change in Control and the terms of such reemployment would not otherwise give rise to the employee's right to resign for Good Reason (determined as if the Entity offering such reemployment were Pure). For purposes of the foregoing, "immediate reemployment" means that the employee's employment with the successor to Pure or an Affiliate or the purchaser of its assets, as the case may be, results in uninterrupted employment such that the employee does not incur a lapse in pay or benefits as a result of the change in ownership of Pure or the sale of its assets. Such reemployment will not make the employee ineligible if a Covered Termination occurs later.

(3) The employee is rehired by Pure or an Affiliate and recommences employment prior to the date benefits under the Plan are scheduled to commence.

Section 3. Amount Of Benefit.

(a) **Severance Benefit upon a Regular Termination.** Subject to the terms of the Plan, an Eligible Employee shall receive the following severance benefits upon a Regular Termination:

(1) **Cash Severance Benefit.** The Eligible Employee will be entitled to receive a single lump sum cash payment equal to the number of months, as listed on the table below, of the Eligible Employee's Base Pay, payable to the Eligible Employee within ten (10) business days following the effective date of the Release, subject to Section 5 below:

Level	Months of Base Pay
CEO	12
Executive Staff	6
Vice President	N/A

(2) **Continued Health Plan Benefits.** If the Eligible Employee timely elects continued group health plan continuation coverage under COBRA following a Regular Termination, Pure shall pay the full amount of the Eligible Employee's COBRA premiums, on behalf of such Eligible Employee for continued coverage under Pure's group health plans, including coverage for the Eligible Employee's eligible dependents, until the earlier of (i) period listed on the table below, (ii) the date the Eligible Employee receives similar coverage (whether with a new employer or otherwise) or (iii) the expiration of the Eligible Employee's continuation coverage under COBRA:

Level	Months of COBRA
CEO	18
Executive Staff	6
Vice President	N/A

(b) **Severance Benefit upon a Change in Control Termination.** Subject to the terms of the Plan, an Eligible Employee shall receive the following severance benefits upon a Change in Control Termination:

(1) **Cash Severance Benefit.** The Eligible Employee will be entitled to receive a single lump sum cash payment equal to the months, as listed on the table below, of the Eligible Employee's Base Pay and Target Bonus, payable to the Eligible Employee within ten (10) business days following the later of (i) the effective date of the Release, or (ii) the effective date of the Closing, subject to Section 5 below:

Level	Months of Base Pay	Months of Target Bonus
CEO	18	12
Executive Staff	12	12
Vice President	6	6

(2) **Continued Health Plan Benefits.** If the Eligible Employee timely elects continued group health plan continuation coverage under COBRA following a Change in Control Termination, Pure shall pay the full amount of the Eligible Employee's COBRA premiums, on behalf of such Eligible Employee for continued coverage under Pure's group health plans, including coverage for the Eligible Employee's eligible dependents, until the earlier of (i) period listed on the table below, (ii) the date the Eligible Employee receives similar coverage (whether with a new employer or otherwise) or (iii) the expiration of the Eligible Employee's continuation coverage under COBRA:

Level	Months of COBRA
CEO	18
Executive Staff	12
Vice President	6

(3) **Accelerated Vesting of Stock Awards.**

(i) Effective as of the later of the effective date of the Release or the effective date of the Closing, to the extent not previously vested: (A) the vesting and exercisability of all outstanding stock options to purchase Pure's common stock that are held by the Eligible Employee on such date shall be accelerated in full, (B) any reacquisition or repurchase rights held by Pure in respect of common stock issued pursuant to any other stock award granted to the Eligible Employee by Pure shall lapse in full, and (C) the vesting of any other stock awards granted to the Eligible Employee by Pure, and any issuance of shares triggered by the vesting of such stock awards, shall be accelerated in full. With respect to any award that vests, in whole or in part, upon satisfaction of on-going performance criteria at Closing ("**Performance Award**"), vesting acceleration shall (X) occur, for any Performance Award outstanding as of the Effective Date, with respect to the number of shares subject to the award as if the applicable performance criteria had been attained at 100% of target, and (Y) be treated, for any Performance Award granted after the Effective Date, as set forth in the award agreement governing the applicable Performance Award.

(ii) In order to give effect to the intent of the foregoing provision, notwithstanding anything to the contrary set forth in the Eligible Employee's stock award agreements or the Equity Plan under which such stock award was granted that provides that any then unvested portion of

the award will immediately expire upon the Eligible Employee's termination of service, no unvested portion of the Eligible Employee's stock award shall generally terminate any earlier than the later of (A) the effective date of the Release, (B) the Release Deadline (as defined in Section 5) or (C) the Closing; provided, however that after giving effect to the vesting acceleration provisions set forth above, the Eligible Employee's stock awards shall remain subject to earlier termination in connection with a Change in Control or a Corporate Transaction (as each term is defined in the applicable Equity Plan) in which the Eligible Employee's stock award is not assumed, substituted or continued by the acquiring or surviving entity as provided for in such Equity Plan; provided, however, that, in the event and to the extent applicable stock awards are cancelled and converted into a right to receive cash or other proceeds upon or following the consummation of a Change in Control (the "**Proceeds**"), then the vesting acceleration benefits set forth in this Section 3(b) shall apply to the Proceeds in the same manner as such benefits would apply to such stock awards if such stock awards had been assumed, continued or substituted in connection with the Change in Control.

(c) **Additional COBRA Terms.** Notwithstanding the foregoing, if at any time Pure determines, in its sole discretion, that it cannot provide the COBRA premium benefits without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of paying COBRA premiums on the Eligible Employee's behalf, Pure will instead pay the Eligible Employee on the last day of each remaining month of the applicable COBRA payment period a fully taxable cash payment equal to the COBRA premium for that month, subject to applicable tax withholding (such amount, the "**Special Severance Payment**"), such Special Severance Payment to be made without regard to the Eligible Employee's election of COBRA coverage or payment of COBRA premiums and without regard to the Eligible Employee's continued eligibility for COBRA coverage during the applicable COBRA payment period. Such Special Severance Payment shall end upon expiration of the applicable COBRA payment period. Upon the conclusion of the period of COBRA premium payments made by Pure, the Eligible Employee will be responsible for the entire payment of premiums (or payment for the cost of coverage) required under COBRA for the duration of the Eligible Employee's eligible COBRA coverage period. For purposes of Eligible Employee's COBRA premiums, (A) references to COBRA shall be deemed to refer also to analogous provisions of state law and (B) any applicable insurance premiums that are paid by Pure shall not include any amounts payable by the Eligible Employee under an Internal Revenue Code Section 125 health care reimbursement plan, which amounts, if any, are the Eligible Employee's sole responsibility.

(d) **Additional Benefits.** Notwithstanding the foregoing, Pure may, in its sole discretion, provide benefits to employees who are not Eligible Employees ("**Non-Eligible Employees**") chosen by the Plan Administrator, in its sole discretion, and the provision of any such benefits to a Non-Eligible Employee shall in no way obligate Pure to provide such benefits to any other Non-Eligible Employee, even if similarly situated. If benefits under the Plan are provided to a Non-Eligible Employee, references in the Plan to "Eligible Employee" (and similar references) shall be deemed to refer to such Non-Eligible Employee.

(e) **Certain Reductions.** Pure, in its sole discretion, shall have the authority to reduce an Eligible Employee's severance benefits, in whole or in part, by pay and benefits provided during a period following written notice of a plant closing or mass layoff, pay and benefits in lieu of such notice, or other similar benefits payable to the Eligible Employee by Pure or an Affiliate that become payable in connection with the Eligible Employee's termination of employment pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act or any other similar state law, (ii) any Pure policy or practice providing for the Eligible

Employee to remain on the payroll for a limited period of time after being given notice of the termination of the Eligible Employee's employment, or (iii) any other severance benefit agreement or arrangement between Pure and the Eligible Employee, and the Plan Administrator shall so construe and implement the terms of the Plan. Any such reductions that Pure determines to make pursuant to this Section 3(c) shall be made such that any benefit under the Plan shall be reduced solely by any similar type of benefit under such legal requirement, agreement, policy or practice (*i.e.*, any cash severance benefits under the Plan shall be reduced solely by any cash payments or severance benefits under such legal requirement, agreement, policy or practice, and any continued insurance benefits under the Plan shall be reduced solely by any continued insurance benefits under such legal requirement, agreement, policy or practice). Pure's decision to apply such reductions to the severance benefits of one Eligible Employee and the amount of such reductions shall in no way obligate Pure to apply the same reductions in the same amounts to the severance benefits of any other Eligible Employee, even if similarly situated. In Pure's sole discretion, such reductions may be applied on a retroactive basis, with severance benefits previously paid being re-characterized as payments pursuant to Pure's statutory obligation.

(f) Parachute Payments. The following provisions shall not supersede any provisions to the contrary provided under any Individual Severance Arrangement, if applicable:

(1) In the event that any of the severance payments and other benefits provided by this Plan or otherwise payable to an Eligible Employee (a) constitute "parachute payments" within the meaning of Section 280G of the Code, and (b) but for this Section, would be subject to the excise tax imposed by Section 4999 of the Code ("**Excise Tax**"), the Eligible Employee's severance payments and benefits under this Plan or otherwise shall be payable either in full or in such lesser amount which would result in no portion of such severance payments or benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income and employment taxes and the Excise Tax, results in the receipt by the Eligible Employee, on an after-tax basis, of the greatest amount of severance payments and benefits under this Plan or otherwise, notwithstanding that all or some portion of such severance payments or benefits may be taxable under Section 4999 of the Code. Any reduction in the severance payments and benefits required by this Section shall be made in the following order: (i) reduction of cash payments; (ii) reduction of accelerated vesting of equity awards other than stock options; (iii) reduction of accelerated vesting of stock options; and (iv) reduction of other benefits paid or provided to the Eligible Employee. In applying this principle, the reduction shall be made in a manner consistent with the requirements of Section 409A.

(2) The calculations in this Section will be performed by the professional firm engaged by Pure for general tax purposes as of the day prior to the date of the event that might reasonably be anticipated to result in severance payments and benefits that would otherwise be subject to the Excise Tax. If the tax firm so engaged by Pure is serving as accountant or auditor for the acquiring company, Pure shall appoint a nationally recognized tax firm to make the determinations required by this Section. Pure shall bear all expenses with respect to the determinations by such firm required to be made by this Section. Pure and the Eligible Employee shall furnish such tax firm such information and documents as the tax firm may reasonably request in order to make its required determination. The tax firm will provide its calculations, together with detailed supporting documentation, to Pure and the Eligible Employee as soon as practicable following its engagement. Any good faith determinations of the tax firm made hereunder shall be final, binding and conclusive upon Pure and the Eligible Employee. However, the Eligible Employee shall have the final authority to make any good faith determination(s) associated with the assumptions used by the tax firm in providing its calculations, and such good faith determination by the Eligible Employee shall be binding on Pure.

(3) As a result of the uncertainty in the application of Sections 409A, 280G or 4999 of the Code at the time of the initial determination by the professional tax firm described in this Section, it is possible that the Internal Revenue Service (the “**IRS**”) or other agency will claim that an Excise Tax greater than that amount, if any, determined by such professional firm for the purposes of this Section is due (the “**Additional Excise Tax**”). The Eligible Employee shall notify Pure in writing of any claim by the IRS or other agency that, if successful, would require payment of Additional Excise Tax. The Eligible Employee and Pure shall each reasonably cooperate with the other in connection with any administrative or judicial proceedings concerning the existence or amount of liability for Excise Tax with respect to payments made or due to the Eligible Employee. Pure shall pay all reasonable fees, expenses and penalties of the Eligible Employee relating to a claim by the IRS or other agency. In the event it is finally determined that a further reduction would have been required under this Section to place the Eligible Employee in a better after-tax position, the Eligible Employee shall repay Pure such amount within thirty (30) days thereof in order to effect such result.

Section 4. Return Of Pure Property.

An Eligible Employee will not be entitled to any severance benefit under the Plan unless and until the Eligible Employee returns all Pure Property. For this purpose, “Pure Property” means all Pure documents (and all copies thereof) and other Pure property which the Eligible Employee had in his or her possession at any time, including, but not limited to, Pure files, notes, drawings, records, plans, forecasts, reports, studies, analyses, proposals, agreements, financial information, research and development information, sales and marketing information, operational and personnel information, specifications, code, software, databases, computer-recorded information, tangible property and equipment (including, but not limited to, computers, facsimile machines, mobile telephones, servers), credit cards, entry cards, identification badges and keys; and any materials of any kind which contain or embody any proprietary or confidential information of Pure (and all reproductions thereof in whole or in part).

Section 5. Tax Withholding; Offset; Section 409A.

All payments under the Plan will be subject to applicable withholding for federal, state and local taxes. If an Eligible Employee is indebted to Pure on his or her termination date, Pure reserves the right to offset any severance payments under the Plan by the amount of such indebtedness. All severance benefits provided under the Plan are intended to satisfy the requirements for an exemption from application of Section 409A of the Code to the maximum extent that an exemption is available and any ambiguities herein shall be interpreted accordingly.

Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under the Plan that constitute “deferred compensation” within the meaning of Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (collectively “**Section 409A**”) shall not commence in connection with an Eligible Employee’s termination of employment unless and until the Eligible Employee has also incurred a “separation from service,” as such term is defined in Treasury Regulations Section 1.409A-1(h) (“**Separation from Service**”), unless Pure reasonably determines that such amounts may be provided to the Eligible Employee without causing the Eligible Employee to incur the adverse personal tax consequences under Section 409A.

It is intended that (i) each installment of any benefits payable under the Plan to an Eligible Employee be regarded as a separate “payment” for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i), (ii) all payments of any such benefits under the Plan satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4) and 1.409A-1(b)(9)(iii), and (iii) any such benefits consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(9)(v). However, if Pure determines that any such benefits payable under the Plan constitute “deferred compensation” under Section 409A and the Eligible Employee is a “specified employee” of Pure, as such term is defined in Section 409A(a)(2)(B)(i), then, solely to the extent necessary to avoid the imposition of the adverse personal tax consequences under Section 409A, (A) the timing of such benefit payments shall be delayed until the earlier of (1) the date that is six (6) months and one (1) day after the Eligible Employee’s Separation from Service and (2) the date of the Eligible Employee’s death (such applicable date, the “**Delayed Initial Payment Date**”), and (B) Pure shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the benefit payments that the Eligible Employee would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the benefits had not been delayed pursuant to this paragraph and (2) commence paying the balance, if any, of the benefits in accordance with the applicable payment schedule.

In no event shall payment of any benefits under the Plan be made prior to an Eligible Employee’s termination date or prior to the effective date of the Release. If Pure determines that any payments or benefits provided under the Plan constitute “deferred compensation” under Section 409A, and the Eligible Employee’s Separation from Service occurs at a time during the calendar year when the Release could become effective in the calendar year following the calendar year in which the Eligible Employee’s Separation from Service occurs, then regardless of when the Release is returned to Pure and becomes effective, the Release will not be deemed effective any earlier than the latest permitted effective date (the “**Release Deadline**”). If Pure determines that any payments or benefits provided under the Plan constitute “deferred compensation” under Section 409A, then except to the extent that payments may be delayed until the Delayed Initial Payment Date pursuant to the preceding paragraph, on the first regular payroll date following the effective date of an Eligible Employee’s Release, Pure shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the benefit payments that the Eligible Employee would otherwise have received through such payroll date but for the delay in payment related to the effectiveness of the Release and (2) commence paying the balance, if any, of the benefits in accordance with the applicable payment schedule.

Section 6. Reemployment.

In the event of an Eligible Employee’s reemployment by Pure during the period of time in respect of which severance benefits pursuant to the Plan have been paid, Pure, in its sole and absolute discretion, may require such Eligible Employee to repay to Pure all or a portion of such severance benefits as a condition of reemployment.

Section 7. Right to Interpret and Administer Plan; Amendment and Termination.

(a) **Interpretation and Administration.** Prior to the Closing, the Board, or a duly authorized committee thereof, shall be the Plan Administrator and shall have the exclusive discretion and authority to establish rules, forms, and procedures for the administration of the Plan and to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, but not limited to, the eligibility to participate in the Plan and amount of benefits paid under the Plan. The rules, interpretations,

computations and other actions of the Board shall be binding and conclusive on all persons. Upon and after the Closing, the Plan will be interpreted and administered in good faith by the Representative who shall be the Plan Administrator during such period. All actions taken by the Representative in interpreting the terms of the Plan and administering the Plan upon and after the Closing will be final and binding on all Eligible Employees. Any references in this Plan to the “Board” or “Plan Administrator” with respect to periods following the Closing shall mean the Representative.

(b) Amendment and Termination. The Plan Administrator reserves the right to amend or terminate the Plan at any time in its discretion; *provided, however*, that any amendment or termination of the Plan that would adversely affect a particular employee will not be effective as to such employee without his or her written consent if such amendment or termination is to occur (i) upon or following a Regular Termination but on or prior to the date on which the Eligible Employee would otherwise be entitled to payment or other benefits hereunder, (ii) within the Eligible Employee’s cure period, if any, pursuant to the definition of Cause hereunder, (iii) upon or following the event(s) giving rise to the Eligible Employee’s right to resign for Good Reason and the Eligible Employee’s resignation occurs within one hundred twenty (120) days of the first occurrence of the applicable event or (iv) at any time during a Change in Control Period. In addition, the Plan will automatically terminate following the satisfaction of all Pure’s obligations under the Plan.

Section 8. No Implied Employment Contract.

The Plan shall not be deemed (i) to give any employee or other person any right to be retained in the employ of Pure or (ii) to interfere with the right of Pure to discharge any employee or other person at any time, with or without cause, which right is hereby reserved.

Section 9. Legal Construction.

This Plan is intended to be governed by and shall be construed in accordance with the Employee Retirement Income Security Act of 1974 (“**ERISA**”) and, to the extent not preempted by ERISA, the laws of the State of California.

Section 10. Claims, Inquiries And Appeals.

(a) Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is:

Pure Storage, Inc.
Attn: Chief Legal Officer
650 Castro Street, Suite 400
Mountain View, CA 94041

(b) Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application, and of the applicant’s right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

- (1) the specific reason or reasons for the denial;
- (2) references to the specific Plan provisions upon which the denial is based;
- (3) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and
- (4) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described in Section 10(d) below.

This notice of denial will be given to the applicant within ninety (90) days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional ninety (90) days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial ninety (90) day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within sixty (60) days after the application is denied. A request for a review shall be in writing and shall be addressed to:

Pure Storage, Inc.
Attn: Chief Legal Officer
650 Castro Street, Suite 400
Mountain View, CA 94041

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) shall have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and other information relating to his or her claim. The applicant (or his or her representative) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Decision on Review. The Plan Administrator will act on each request for review within sixty (60) days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional sixty (60) days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial sixty (60) day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the

Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will set forth, in a manner calculated to be understood by the applicant, the following:

- (1) the specific reason or reasons for the denial;
- (2) references to the specific Plan provisions upon which the denial is based;
- (3) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and
- (4) a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA.

(e) **Rules and Procedures.** The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant's own expense.

(f) **Exhaustion of Remedies.** No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 10(a) above, (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 10(c) above, and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to an Eligible Employee's claim or appeal within the relevant time limits specified in this Section 10, the Eligible Employee may bring legal action for benefits under the Plan pursuant to Section 502(a) of ERISA.

Section 11. Basis of Payments to and From Plan.

The Plan shall be unfunded, and all cash payments under the Plan shall be paid only from the general assets of Pure.

Section 12. Other Plan Information.

(a) **Employer and Plan Identification Numbers.** The Employer Identification Number assigned to Pure (which is the "Plan Sponsor" as that term is used in ERISA) by the Internal Revenue Service is 27-1069557. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 504.

(b) **Ending Date for Plan's Fiscal Year.** The date of the end of the fiscal year for the purpose of maintaining the Plan's records is the same as Pure's fiscal year end.

(c) **Agent for the Service of Legal Process.** The agent for the service of legal process with respect to the Plan is:

Pure Storage, Inc.
Attn: Chief Legal Officer
650 Castro Street, Suite 400
Mountain View, CA 94041

In addition, service of legal process may be made upon the Plan Administrator.

(d) **Plan Sponsor.** The “Plan Sponsor” is:

Pure Storage, Inc.
650 Castro Street, Suite 400
Mountain View, CA 94041
1-800- 379-7873

(e) **Plan Administrator.** The Plan Administrator is the Board prior to the Closing and the Representative upon and following the Closing. The Plan Administrator’s contact information is:

Pure Storage, Inc.
Attn: Chief Legal Officer
650 Castro Street, Suite 400
Mountain View, CA 94041
1-800- 379-7873

The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

Section 13. Statement of ERISA Rights.

Participants in this Plan (which is a welfare benefit plan sponsored by Pure Storage, Inc.) are entitled to certain rights and protections under ERISA. If you are an Eligible Employee, you are considered a participant in the Plan and, under ERISA, you are entitled to:

(a) **Receive Information About Your Plan and Benefits**

(1) Examine, without charge, at the Plan Administrator’s office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(2) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Plan Administrator may make a reasonable charge for the copies; and

(3) Receive a summary of the Plan’s annual financial report, if applicable. The Plan Administrator is required by law to furnish each Eligible Employee with a copy of this summary annual report.

(b) Prudent Actions by Plan Fiduciaries. In addition to creating rights for Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Eligible Employees and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

(c) Enforce Your Rights. If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within thirty (30) days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

(d) Assistance with Your Questions. If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Exhibit A

RELEASE AGREEMENT

I understand and agree completely to the terms set forth in the Pure Storage, Inc. Change in Control and Severance Benefit Plan (the “Plan”).

I understand that this Release Agreement (the “**Release**”), together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between Pure, affiliates of Pure and me with regard to the subject matter hereof. I am not relying on any promise or representation by Pure or an affiliate of Pure that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my proprietary information and inventions agreement with Pure and/or an affiliate of Pure.

In consideration of the severance benefits and other consideration provided to me under the Plan that I am not otherwise entitled to receive, I hereby generally and completely release Pure and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and their current and former partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, successors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date I sign this Release (collectively, the “Released Claims”). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with Pure and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity, or profits interests in Pure and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) (“**ADEA**”), the federal Employee Retirement Income Security Act of 1974 (as amended), the California Labor Code and the California Fair Employment and Housing Act (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in the Released Claims: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with Pure or its affiliate to which I am a party; the charter, bylaws, or operating agreements of Pure or its affiliate; or under applicable law; (b) any rights that cannot be waived as a matter of law; or (c) any claims arising from Pure’s breach of its obligations under the Plan. In addition, I understand that nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing, or any other government agency, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Released Claims.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, and that the consideration given under the Plan for the waiver and release in this paragraph is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (c) I have twenty-one (21) days to consider this Release (although I may choose voluntarily to sign this Release earlier); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an officer of Pure; and (e) this Release shall not be effective until the date upon which the revocation period has expired, which shall be the eighth day after I sign this Release provided I have not revoked it.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**” I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against Pure.

I hereby represent that I have been paid all compensation owed for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers’ compensation claim.

I acknowledge that to become effective, I must sign and return this Release to Pure so that it is received not later than twenty-one (21) days following the date it is provided to me or such other date as specified by Pure.

Eligible Employee

Printed Name:___

Signature: __

Date:___

Exhibit B

RELEASE AGREEMENT

I understand and agree completely to the terms set forth in the Pure Storage, Inc. Change in Control and Severance Benefit Plan (the “Plan”).

I understand that this Release Agreement (the “**Release**”), together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between Pure, affiliates of Pure and me with regard to the subject matter hereof. I am not relying on any promise or representation by Pure or an affiliate of Pure that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my proprietary information and inventions agreement with Pure and/or an affiliate of Pure.

In consideration of the severance benefits and other consideration provided to me under the Plan that I am not otherwise entitled to receive, I hereby generally and completely release Pure and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and its and their current and former partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, successors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date I sign this Release (collectively, the “Released Claims”). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with Pure and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity, or profits interests in Pure and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) (“**ADEA**”), the federal Employee Retirement Income Security Act of 1974 (as amended), the California Labor Code and the California Fair Employment and Housing Act (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in the Released Claims: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with Pure or its affiliate to which I am a party; the charter, bylaws, or operating agreements of Pure or its affiliate; or under applicable law; (b) any rights that cannot be waived as a matter of law; or (c) any claims arising from Pure’s breach of its obligations under the Plan. In addition, I understand that nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing, or any other government agency, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Released Claims.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, and that the consideration given under the Plan for the waiver and release in this paragraph is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (c) I have forty-five (45) days to consider this Release (although I may choose voluntarily to sign this Release earlier); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an office of Pure; (e) this Release shall not be effective until the date upon which the revocation period has expired, which shall be the eighth day after I sign this Release provided I have not revoked it; and (f) I have received with this Release all of the information required by the ADEA, including without limitation a detailed list of the job titles and ages of all employees who were terminated in this group termination and the ages of all employees of Pure in the same job classification or organizational unit who were not terminated.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**” I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against Pure.

I hereby represent that I have been paid all compensation owed for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers’ compensation claim.

I acknowledge that to become effective, I must sign and return this Release to Pure so that it is received not later than forty-five (45) days following the date it is provided to me or such other date as specified by Pure.

Eligible Employee

Printed Name:___

Signature: __

Date:___

Exhibit C

RELEASE AGREEMENT

I understand and agree completely to the terms set forth in the Pure Storage, Inc. Change in Control and Severance Benefit Plan (the “Plan”).

I understand that this Release Agreement (the “*Release*”), together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between Pure, affiliates of Pure and me with regard to the subject matter hereof. I am not relying on any promise or representation by Pure or an affiliate of Pure that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my proprietary information and inventions agreement with Pure and/or an affiliate of Pure.

In consideration of the severance benefits and other consideration provided to me under the Plan that I am not otherwise entitled to receive, I hereby generally and completely release Pure and its affiliates, and their parents, subsidiaries, successors, predecessors and affiliates, and its and their current and former partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, successors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date I sign this Release (collectively, the “Released Claims”). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with Pure and its affiliates, or their affiliates, or the termination of that employment; (b) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity, or profits interests in Pure and its affiliates, or their affiliates; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Employee Retirement Income Security Act of 1974 (as amended), the California Labor Code and the California Fair Employment and Housing Act (as amended).

Notwithstanding the foregoing, I understand that the following rights or claims are not included in the Released Claims: (a) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with Pure or its affiliate to which I am a party; the charter, bylaws, or operating agreements of Pure or its affiliate; or under applicable law; (b) any rights that cannot be waived as a matter of law; or (c) any claims arising from Pure’s breach of its obligations under the Plan. In addition, I understand that nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, the California Department of Fair Employment and Housing, or any other government agency, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the claims identified in this paragraph, I am not aware of any claims I have or might have that are not included in the Released Claims.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**” I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against Pure.

I hereby represent that I have been paid all compensation owed for all hours worked; I have received all the leave and leave benefits and protections for which I am eligible pursuant to the Family and Medical Leave Act or otherwise; and I have not suffered any on-the-job injury for which I have not already filed a workers’ compensation claim.

I acknowledge that to become effective, I must sign and return this Release to Pure so that it is received not later than fourteen (14) days following the date it is provided to me or such other date as specified by Pure.

Eligible Employee

Printed Name:___

Signature: __

Date:___

November 3, 2020

Paul Mountford

RE: TRANSITION SERVICES, SEPARATION & RELEASE AGREEMENT

Dear Paul:

This Amendment to your Executive Employment Agreement Terms and Separation & Release Agreement is entered into by and between Paul Mountford ("You") and Pure Storage, Inc. (the "Company") (the "Agreement"). You and the Company are collectively referred to as the "Parties" throughout this Agreement.

RECITALS

WHEREAS, You and the Company are parties to the Employment Terms Offer Letter dated October 15, 2019 (the "**Offer**"), attached hereto as Exhibit A;

WHEREAS, the Parties desire to amend the Offer on the terms and conditions set forth herein and enter into an agreement whereby the Parties release the other from any and all liability as it relates to your employment with the Company;

WHEREAS, the Parties desire for this Agreement to supersede any and all prior promises, warranties, representations, or agreements – whether oral or written and including the Offer – relating to your employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the Parties hereto agree as follows:

1. Employment End Date. You agree that your employment with the Company will terminate on January 31, 2021 (the "**Separation Date**"), unless your employment terminates sooner as stated in this paragraph. If termination occurs earlier or later than February 1, 2021, the actual date of termination shall become the "Separation Date" for purposes of this Agreement. Between today and your Separation Date (the "**Transition Period**"), you agree to assist the Company in delivering the planned committed bookings for Q4 FY21, assist in planning for FY22, and assist in the re-organization of the GTM organization, as appropriate (the "**Transitional Duties**"). At the sole discretion of the CEO, your transition time may be reduced, or you may be required not to report to work or perform any work-related tasks or transitional duties, or be otherwise involved in any Company operations. Should you take a leave of absence during the transition period, your Separation Date will not change and you will be separated regardless of your status. On January 31, 2021 (or earlier if your transition period is reduced or you are otherwise terminated for Cause (defined below)), your access to the Company's systems and any Company-related electronic accounts will be deactivated.

During the Transition Period, your employment with the Company will be at-will. That means that during the Transition Period you are entitled to resign your employment with or without advance notice, and the Company may terminate your employment with or without Cause or advance notice. For purposes of this Agreement, "Cause" for the Company to terminate your employment shall exist if any of the following occurs:

- a) Your conviction (including a guilty plea or plea of *nolo contendere*) of any felony, or any crime involving fraud, dishonesty or moral turpitude;
- b) Your commission or attempted commission of or participation in a fraud or act of dishonesty, or misrepresentation against the Company;
- c) Your material violation of any material contract or agreement between you and the Company, including without limitation, material breach of your Employee Proprietary Information Agreement ("PIA"), or of the

Company's Code of Conduct or any material Company policy, or of any statutory duty you owe to the Company; or

d) Your conduct that constitutes gross insubordination, incompetence, or habitual neglect of duties.

2. Transition Benefits. Between now and your Separation Date, the Company will provide you with the following benefits described below (the "Transition Benefits"):

(a) **Pay During Transition Period.** During the Transition Period, you will continue to receive your **Base Salary**¹, subject to applicable payroll deductions, applicable payroll taxes, and authorized after-tax deductions, in accordance with applicable state law. You are entitled to this payment by law and will receive it regardless of whether you enter into this Agreement. As you know, the Company does not provide vacation accrual, or accrual of other paid time off to its employees. Therefore, you will not accrue any vacation or paid time off during the Transition Period and you will not have any accrued and unused vacation or other paid time off to be paid out at your Separation Date.

(b) **Fiscal Year 2021 Second Half Bonus Eligibility.** You will remain eligible for the 2H FY21 Bonus, to the extent a 2H FY21 Bonus is funded and paid, pursuant to the terms and conditions of the Pure Storage, Inc. Cash Incentive Plan (the "**Corporate Bonus Plan**"). Your personal performance multiplier for the Bonus will be capped at 100%. The payout for the 2H FY21 Bonus will not be determined until after the end of the Company's Fiscal Year and will be paid out pursuant to the terms and conditions of the Corporate Bonus Plan. For avoidance of doubt, in the event you are not employed at the Company at the time the Company regularly pays out the 2H FY21 Bonus under the Corporate Bonus Plan and the 2H FY21 Bonus is funded, you will receive your 2H FY21 Bonus payment by March 31, 2021.

(c) **Health Coverage and Related Medical Benefits.** During your Transition Period, you will continue to enjoy health insurance coverage, to the extent you are already enrolled. Your health insurance coverage is paid for by the Company through midnight on the last day of the calendar month in which you terminate. Following your Separation Date, you will be eligible to continue that coverage under the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") at your own expense.

(d) **Equity Interests.** During your employment, you were granted certain time-based and performance-based restricted stock unit ("**RSU**") awards under the Company's 2015 Equity Incentive Plan. The vesting of all such RSU awards, and participation in the Employee Stock Purchase Plan ("**ESPP**") (and collectively your "**Equity Interests**"), will continue during your Transition Period and will cease as of your Separation Date, except as provided in Section 3(c) of this Agreement. All rights, duties and obligations with respect to all of your Equity Interests will continue to be governed by the applicable equity plan and related agreements. Except as provided in Section 3(c) of this Agreement, any and all unvested Equity Interests will be cancelled on your Separation Date.

3. Post Termination Benefits. If you: (a) sign, date, and return the fully-executed Agreement to the Company; and (b) you do not subsequently revoke it; and (c) your employment with the Company is not terminated for Cause (as defined herein) between now and the Separation Date; and (d) you comply with the terms and conditions of this Agreement, including successful completion of the Transitional Duties; and (e) you reaffirm the promises and releases in this Agreement on or within five (5) days of your Separation Date by executing the "**Final Waiver**" (attached as Exhibit C), then you will be entitled to the following **Post-Termination Benefits**:

(a) **Severance Payment.** The Company will pay you cash severance in the amount of \$390,000.00, less applicable payroll withholdings and deductions and any other amounts owed to the Company (the "Severance Payment"). The Severance Payment will be paid in a single lump sum and provided to you within thirty (30) days after the Effective Date of this Agreement (as defined in Section 13(b)) or the Separation Date, whichever is later, provided you have complied with the terms of this Agreement.

¹ **Base Salary** is your fixed salary compensation (if you receive salary and are not paid overtime).

(b) **COBRA Payment.** Following your Separation Date, if you timely elect continued coverage under COBRA, the Company will pay your COBRA premiums for eighteen (18) month(s), on the same terms and conditions as before your separation, beginning the first day of the month after your health insurance benefits end (referred to as the “**COBRA Payment**”). The Company’s obligation to make these COBRA Payments will stop immediately if you become eligible for other health insurance benefits at the expense of another employer or the date you cease to be eligible for COBRA continuation coverage for any reason, including plan termination. You must provide the Company prompt written notice of the availability of employer-sponsored health insurance as soon as possible following such eligibility. Please note that you are entitled to COBRA coverage whether or not you sign this Agreement, but you must timely sign and return this document if you want the Company to pay COBRA premium(s) for you as set forth above.

(c) **Consulting Agreement.** The Company agrees to enter into a Consulting Agreement (the “**Consulting Agreement**”) with you, on the terms and conditions set forth in the Consulting Agreement, attached hereto as Exhibit D. The Consulting Agreement will address any compensation, specifically providing for the vesting of the shares that you may be eligible to receive on March 20, 2021 (if any) under the performance-based RSU award granted to you on May 19, 2020 (the “PSU”). The remainder of the PSU award will be cancelled on March 20, 2021. No other compensation will be provided under the Consulting Agreement.

4. **Expense Reimbursements.** You agree to submit your final documented expense reimbursement statement reflecting all business expenses you incurred through your Separation Date, if any, for which you seek reimbursement, **no later than Feb 15, 2021**. The Company will reimburse you for all documented and legitimate expenses approved for reimbursement pursuant to its regular business practice and in accordance with the Company’s Global Travel & Expense Policy.

5. **Return of Company Property and Satisfaction of Financial Obligations to the Company.** Within five (5) business days following the expiration of the Consulting Period (as defined in the Consulting Agreement), the Company must have received all Company equipment, property, documents (and all copies thereof), and information that you have in your possession or control, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, contact information, financial information, specifications, training materials, computer-recorded information, tangible property including, but not limited to, computers, credit cards, entry cards, identification badges and keys; and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof). You agree that you will make a diligent search to locate any such documents, property and information within the timing referenced in this paragraph. In addition, if you have used any personally owned computer, server, e-mail system, mobile phone, or portable electronic device (e.g., iPhone, Android, other smartphone, etc.), (collectively, “**Personal Systems**”) to receive, store, prepare or transmit any Company confidential or proprietary data, materials or information, then no later than five (5) business days following the expiration of the Consulting Period, you will provide – if requested – the Company with a computer-useable copy of all such information and then permanently delete and expunge all such Company confidential or proprietary information from such Personal Systems without retaining any copy or reproduction in any form. You agree to provide the Company access to your Personal Systems, if requested, for the purpose of verifying that the required copying and/or deletion is completed. If you have not returned all Company equipment, including your Company-issued laptop, within five (5) business days following the expiration of the Consulting Period, it will be considered a material breach of this Agreement.

On or before your Separation Date, you agree to satisfy any and all outstanding financial obligations to the Company, including, but not limited to, variable deficits, personal charges on your corporate-issued credit card, and erroneous overpayments made to you.

6. **Confidential Information Agreement.** You acknowledge and reaffirm your continuing obligations to the Company under the **PIA** with the Company, which you signed at the commencement of your employment. A copy of the PIA you signed is attached as **Exhibit B** to this Agreement.

7. **Immigration Status.** As a foreign national working in the United States pursuant to O-1 Alien of Extraordinary Ability nonimmigrant status, the validity of your status depends on continued employment with Pure Storage as the sponsor of your O-1 petition. Because your employment with Pure Storage is being terminated on January 31, 2021, you must take immediate steps to depart the United States, find another employer to sponsor your O-1, or change to another valid immigration status. Once your employment has ended, Pure Storage is required by law to notify the United States Citizenship and Immigration Service that you are no longer employed at the company. If you choose to remain in the United States, we recommend that you consult with an independent immigration attorney to advise you as to your

immigration-related rights and responsibilities at this juncture. You may be eligible for a 60-day grace period following your Separation Date. You may use part of the Transition Period to find a new O-1 sponsor or change to another valid status. Please note that this grace period is granted on a discretionary basis by the USCIS. Please also be advised that if you decide to return to your home country upon the termination of your employment, Pure Storage will be responsible for the reasonable costs for return transportation to this country upon your written request, if, and only if, required by law. If return to your home country is required by law, Pure will provide reasonable transportation costs for you only (not for your family members or your personal belongings). Transportation costs must be approved in advance of booking with the CEO of the Company.

8. No Other Compensation or Benefits. Other than as set forth in this Agreement and Consulting Agreement, you acknowledge that you are not eligible for and will not receive any salary, bonuses, Equity Interests or vesting, variable commissions, severance or any other form of compensation or benefits from the Company after the Separation Date, with the exception of any vested benefits you may have under the express terms of a written ERISA-qualified benefit plan (e.g., 401(k) account).

9. Confidentiality. The provisions of this Agreement will be held in strictest confidence by you and the Company and will not be publicized or disclosed in any manner whatsoever; *provided, however*, that: (a) you may disclose this Agreement in confidence to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement to fulfill standard or legally required corporate reporting or disclosure requirements; (d) you may disclose this Agreement, and any other documents or information (without notice to the Company) when communicating with the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission ("**Government Agencies**"), or during the course of an investigation or proceeding that may be conducted by any Government Agency; and (e) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law. In particular, and without limitation, you will not disclose the provisions of this Agreement to any current or former Company employee, contractor or consultant. Nothing in this provision or this Agreement is intended to prohibit or restrain you in any manner from making disclosures that are protected under the whistleblower provisions of federal or state law or regulation.

10. Non-Disparagement. You agree not to disparage the Company or the Company's officers, directors, employees, stockholders, affiliates, agents, distributors, partners, customers, products or services, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that you may respond accurately and fully to any question, inquiry or request for information when required by legal process (e.g., a valid subpoena or other similar compulsion of law) or as part of a government investigation. Nothing, however, in this provision or this Agreement is intended to prohibit or restrain you in any manner from making disclosures that are protected under the whistleblower provisions of federal or state law or regulation.

11. No Voluntary Adverse Action; Cooperation. You agree that you will not voluntarily provide assistance, information or advice, directly or indirectly (including through agents or attorneys), to any person or entity in connection with any claim or cause of action of any kind brought against the Company, nor shall you induce or encourage any person or entity to bring such claims; provided that you may respond accurately and fully to any question, inquiry or request for information when required by legal process (e.g., a valid subpoena or other similar compulsion of law) or as part of a government investigation. In addition, nothing in this provision or this Agreement is intended to prohibit or restrain you in any manner from making disclosures that are protected under the whistleblower provisions of federal law or regulation or under other applicable law or regulation. Further, you agree to cooperate fully with the Company in connection with its actual or contemplated defense, prosecution, or investigation of any claims or demands by or against third parties, or other matters arising from events, acts, or failures to act that occurred during the period of your employment by the Company. Such cooperation includes, without limitation, making yourself available to the Company upon reasonable notice, without subpoena, to provide complete, truthful and accurate information in witness interviews, depositions, and trial testimony. The Company will reimburse you for reasonable out-of-pocket expenses you incur in connection with any such cooperation (excluding foregone wages) and will make reasonable efforts to accommodate your scheduling needs. Moreover, you agree to execute all documents (if any) necessary to carry out the terms of this Agreement.

12. No Admissions. You understand and agree that the promises and payments in consideration of this Agreement shall not be construed as an admission of any liability, obligation, wrongdoing or violation of law by the Company to you or to any other person, and the Company makes no such admission.

13. Release of Claims.

(a) **General Release.** In exchange for the consideration under this Agreement to which you would not otherwise be entitled, including but not limited to the Transition and Post-Termination Benefits, you hereby generally and completely release, acquit and forever discharge the Company, and its parent, subsidiary, or affiliated entities, along with its and their predecessors and successors and their respective directors, officers, employees, shareholders, partners, agents, attorneys, insurers, affiliates and assigns (collectively, the **"Released Parties"**), of and from any and all claims, liabilities and obligations, both known and unknown, that arise from or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date that you sign this Agreement (collectively, the **"Released Claims"**).

(b) **Scope of Release.** The Released Claims include, but are not limited to: (i) all claims arising out of or in any way related to your employment with the Company, or the termination of that employment; (ii) all claims related to your compensation or benefits from the Company, including salary, bonuses, variable commissions, other incentive compensation, vacation, paid time off, expense reimbursements, severance payments, fringe benefits, stock, stock options, COBRA payments, or any other ownership or equity or profits interests in the Company; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including but not limited to claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (v) all federal, state, and local statutory claims, including but not limited to claims for discrimination, harassment, retaliation, wrongful termination, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (the **"ADA"**), the federal Age Discrimination in Employment Act (the **"ADEA"**), the California Labor Code (as amended), the California Fair Employment and Housing Act (as amended), and any other laws, statutes, or regulations of the state in which you reside and/or work.

(c) **ADEA Waiver.** You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you may have under the ADEA, and that the consideration given for the waiver and release in the preceding paragraph hereof is in addition to anything of value to which you are already entitled. You further acknowledge that you have been advised, as required by the ADEA, that: (i) your waiver and release do not apply to any rights or claims that may arise after the date that you sign this Agreement; (ii) you should consult with an attorney prior to signing this Agreement (although you may choose voluntarily not to do so); (iii) you have twenty-one (21) days to consider this Agreement (although you may choose voluntarily to sign it earlier); (iv) you have seven (7) days following the date you sign this Agreement to revoke the Agreement (by providing written notice of your revocation to the Company's Chief Legal Officer; and (v) this Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth day after the date that this Agreement is signed by you provided that you do not revoke it (the **"Effective Date"**).

(d) **Section 1542 Waiver.** In giving the releases set forth in this Agreement, which include claims which may be unknown to you at present, you acknowledge that you have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."** You hereby expressly waive and relinquish all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to the releases granted herein, including but not limited to the release of unknown and unsuspected claims granted in this Agreement.

(e) **Excluded Claims.** Notwithstanding the foregoing, the following are not included in the Released Claims (the **"Excluded Claims"**): (i) any rights or claims for indemnification you may have pursuant to any written indemnification agreement with the Company to which you are a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (ii) any rights which are not waivable as a matter of law; and (iii) any claims for breach of this Agreement. You hereby represent and warrant that, other than the Excluded Claims, you are not aware of any claims you have or might have against any of the Released Parties that are not included in the Released Claims. Nothing in this Agreement shall prevent you from filing, cooperating with, communicating with, or participating in any proceeding (including providing documents or other information without notice to the Company) before any Government Agency. While this Agreement does not limit your right to receive an award for information provided to the SEC, you understand and agree that, to the maximum extent permitted by law, you are otherwise waiving any and all rights you have waived to individual relief based on any claims that you have released and waived by signing this Agreement.

14. Voluntary Agreement and Representations. By signing this Agreement, you acknowledge that you have carefully read and understand this Agreement; you understand that this Agreement is legally binding; and by signing it you give up certain rights. In addition, you hereby represent that as of the date of signature, you have been paid all compensation owed and for all time worked, you have received all the leave and leave benefits and protections for which you are eligible pursuant to the Company's policies or any applicable law, and you have not suffered any on-the-job injury or illness for which you have not already filed a workers' compensation claim.

15. Dispute Resolution.

(a) Arbitration Agreement. To ensure the timely and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action arising from or relating to the enforcement, breach, performance, negotiation, execution, or interpretation of this Agreement, your employment, or the termination of your employment, including but not limited to statutory claims, shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by law by final, binding and confidential arbitration, by a single arbitrator, conducted by JAMS, Inc. ("**JAMS**") under the then applicable JAMS rules (which can be found at the following web address: <https://www.jamsadr.com/rules-employment-arbitration/>, and which will be provided to you upon request). **By agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.**

(b) Individual Claims. All claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. This section shall not apply to an action or claim brought in court pursuant to the California Private Attorneys General Act of 2004 or to any other action or claim that cannot be subject to arbitration as a matter of law.

(c) Arbitration Process. The Company acknowledges that you will have the right to be represented by legal counsel at any arbitration proceeding. The arbitration will take place in the county (or comparable governmental unit) in which you were last employed by the Company, as determined by the arbitrator; provided, however, that if the arbitrator determines there will be an undue hardship to you to have the arbitration in such location, the arbitrator will choose an alternative appropriate location. The arbitrator shall: (a) have the authority to compel, pursuant to the California Arbitration Act and California Code of Civil Procedure Section 1283.05, adequate discovery for the resolution of the dispute, including discovery from third parties, and to award such relief as would otherwise be permitted by law; and (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall be authorized to award any or all remedies that you or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS' arbitration fees in excess of the amount of court fees that would be required of you if the dispute were decided in a court of law. Nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

16. Miscellaneous. This Agreement, including its Exhibits, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to your employment with the Company. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any and all prior and other such promises, warranties, representations, or agreements. This Agreement may not be modified or amended except in a written agreement signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, and their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question shall be deemed modified so as to be rendered enforceable in a manner consistent with the intent of the parties, insofar as possible under applicable law. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. Any changes to this Agreement – whether material or immaterial – will not restart the consideration period. This Agreement shall be deemed to have been entered into, and shall be construed and enforced, in accordance with the laws of the State of California without regard to conflicts of law principles. This Agreement may be executed electronically and/or in counterparts, each of which shall be deemed to be part of one original, and electronically-submitted signatures and signatures transmitted via .PDF file or photo shall be equivalent to original signatures.

Please return the fully executed, accurately dated, and unmodified Agreement to the Company no later than November 20, 2020. If you do not return the Agreement by midnight on this deadline, the Separation Benefits offered herein will be revoked and you will not be eligible to receive them.

Sincerely,

Pure Storage, Inc.

/s/ Joseph FitzGerald
Joseph FitzGerald
Chief Legal Officer

I have read, understand, and voluntarily accept and agree to the above terms:

/s/ Paul Mountford
Date: November 3, 2020
Paul Mountford

Exhibit A

Executive Offer of Employment

[provided separately]

Exhibit B

Employee Proprietary Information Agreement

[provided separately]

**Exhibit C
Final Waiver**

**This document must be signed on or within five (5) days of your Separation Date
in order for you to receive Post-Termination Benefits**

Paul Mountford, an individual (the "Employee"), and Pure Storage, Inc., a Delaware corporation (the "Company"), entered into an AMENDMENT TO EXECUTIVE EMPLOYMENT TERMS AND SEPARATION & RELEASE AGREEMENT on or about November 3, 2020 (the "Agreement"). Employee and Company are collectively referred to as "Parties". This document shall constitute the Final Waiver as contemplated and described in the Agreement, the contents, terms, and conditions of which are incorporated by reference.

The Parties hereby acknowledge, affirm, and agree to be bound by the covenants, promises, conditions, representations, releases, and waivers set forth in the Agreement.

The Parties further acknowledge, affirm, and agree that this Final Waiver applies with the same force and effect as if the Agreement had been entered into on the date of this Final Waiver.

Date:

Joseph FitzGerald
On behalf of Pure Storage, Inc.

Date:

Paul Mountford

Exhibit D
Form of Consulting Agreement

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT is made effective as of January 29, 2021 ("**Effective Date**") by and between PURE STORAGE, INC. and its successors or assignees ("**Company**") and Paul Mountford ("**Consultant**") and shall continue up through March 20, 2021 (the "**Termination Date**"), at which time, this Agreement shall automatically terminate, unless extended in writing and such writing is executed by the Parties. Company and Consultant may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

1. **ENGAGEMENT OF SERVICES.** Company may from time to time submit a Statement of Work ("**SOW**") to Consultant substantially in the form of **Exhibit A** to this Agreement. Subject to the terms of this Agreement, Consultant will provide the services set forth in each SOW accepted by Consultant (the "Project(s)") by the completion dates set forth therein. The manner and means that Consultant chooses to complete the Projects are in Consultant's sole discretion and control. Consultant shall perform the services necessary to complete the Projects in a timely and professional manner consistent with industry standards and at a location, place and time that Consultant deems appropriate. Company agrees to provide the equipment, tools, and other materials as may be necessary for Consultant to complete the Projects, and will make its facilities and equipment available to Consultant when necessary. Company understands that addition or removal of Consultant resources from engagements take thirty (30) days to effectuate.
2. **COMPENSATION.**
 - 2.1 **Fees.** Company will pay Consultant the fee specified in each SOW as Consultant's sole compensation for the Project, provided such Project meets the terms of the SOW and this Agreement and is of a quality consistent with industry standards. Consultant shall be responsible for all expenses incurred in performing services under this Agreement, except as set forth in the SOW. Upon termination of this Agreement for any reason prior to completion of an SOW, Company will pay Consultant fees and expenses on the basis stated in the SOW for work which is then in progress, within thirty (30) days of the later of Consultant's invoice and the effective date of such termination.
 - 2.2 **Invoicing.** Unless otherwise provided in the applicable SOW, (a) payment to Consultant of undisputed fees will be due thirty (30) days following Company's receipt of an invoice which contains accurate records of the work performed sufficient to document the invoiced fees; and (b) Consultant will submit invoices to Company upon completion of the milestones specified in the applicable SOW or, if no such milestones are specified, on a monthly basis for services performed in the previous month.
3. **CONTRACTOR RELATIONSHIP.** Consultant's relationship with Company will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Consultant (a) is not the agent of Company; (b) is not authorized to make any representation, contract, or commitment on behalf of Company; (c) will not be entitled to any of the benefits that Company makes available to its employees, such as group insurance, profit-sharing or retirement benefits (and waives the right to receive any such benefits); and (d) will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state, or local tax authority with respect to Consultant's performance of services and receipt of fees under this Agreement. If applicable, Company will report amounts paid to Consultant by filing Form 1099-MISC with the Internal Revenue Service, as required by law. Consultant agrees to accept exclusive liability for complying with all applicable state and federal laws, including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Consultant under this Agreement. Company will not withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on Consultant's behalf. Consultant hereby agrees to indemnify and defend Company against any and all such taxes or contributions, including penalties and interest. Consultant agrees to provide proof of payment of appropriate taxes on any fees paid to Consultant under this Agreement upon reasonable request of Company.

4. INTELLECTUAL PROPERTY RIGHTS.

- 4.1 Confidential Information.** Consultant agrees that during the term of this Agreement and thereafter, it (a) will not use or permit the use of Confidential Information (defined below) in any manner or for any purpose not expressly set forth in this Agreement; (b) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any such Confidential Information to any third party; (c) will limit access to Confidential Information to Consultant personnel who need to know such information in connection with their work for Company; and (d) will not remove any tangible embodiment of any Confidential Information from Company's premises without Company's prior written consent. "Confidential Information" includes, but is not limited to, all information related to Company's business and its actual or anticipated research and development, including without limitation (i) (a) trade secrets, inventions, mask works, ideas, processes, formulas, computer source and object codes, data, databases and data collections, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (ii) information regarding products or plans for research and development, marketing, sales and business plans, budgets, financial statements, licenses, contracts, prices and costs, suppliers, and customers; (iii) information regarding the skills and compensation of Company's employees, Consultants, and any other service providers of Company; (iv) the existence of any business discussions, negotiations, or agreements between Company and any third party; and (v) all such information related to any third party that is disclosed to Company or to Consultant during the course of Company's business ("**Third Party Information**"). Notwithstanding the foregoing, it is understood that Consultant is free to use information which is generally known in the trade or industry, information which is not gained as a result of a breach of this Agreement, and Consultant's own skill, knowledge, know-how, and experience.
- 4.2 Competitive or Conflicting Engagements.** Consultant agrees, during the term of this Agreement, not to enter into a contract or accept an obligation that is inconsistent or incompatible with Consultant's obligations under this Agreement. Consultant further warrants that there is no other existing contract, obligation or duty on Consultant's part that is inconsistent with this Agreement. Consultant further agrees not to disclose to Company, bring onto Company's premises, or induce Company to use any confidential information that belongs to anyone other than Company or Consultant. Section 4.2 does not preclude Consultant from working with other companies provided that any employees of Consultant assigned to work on an SOW for Company shall not be assigned by Consultant to work on projects for a competitor of Company.
- 4.3 Inventions and Intellectual Property Rights.** As used in this Agreement, the term "Invention" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein. The term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country.
- 4.4 Background Technology.** As used in this Agreement, the term "Background Technology" means all Inventions developed by Consultant other than in the course of providing services to Company hereunder and all Inventions acquired or licensed by Consultant that Consultant uses in performing services under this Agreement or incorporates into Work Product (defined below). Consultant will disclose any Background Technology in the SOW in which Consultant proposes to use or incorporate into Work Product, and shall not use or incorporate such Background Technology into the Work Product without the prior written consent of Company. If no Background Technology is disclosed in an SOW, Consultant warrants that it will not use Background Technology or incorporate it into Work Product provided pursuant thereto.
- 4.5 Disclosure of Work Product.** As used in this Agreement, the term "Work Product" means any Invention that is solely or jointly conceived, made, reduced to practice, or learned by Consultant in the course of any services performed for Company or with the use of materials of Company during the term of this Agreement. For purposes of this Agreement, and all SOWs hereunder, Work Product is defined to also include all deliverables being provided to Company under this Agreement and all SOWs hereunder. Consultant agrees to disclose promptly in writing to Company, or any person designated by Company, all Work Product.

- 4.6 Ownership of Work Product.** Consultant agrees that any and all Work Product, and all Inventions and all worldwide Intellectual Property Rights therein, shall be the sole and exclusive property of Company. It is expressly understood by Consultant that SOWs under this Agreement will result in Consultant creating deliverables that will qualify as works made for hire under 17 USC Section 101 and that ownership of all such works shall vest in Company.
- 4.7 Assignment of Work Product.** If Consultant has any rights to the Work Product that are not owned by Company upon creation or embodiment, Consultant irrevocably assigns to Company all right, title and interest worldwide in and to such Work Product. Except as set forth below, Consultant retains no rights to use the Work Product and agrees not to challenge the validity of Company's ownership in the Work Product.
- 4.8 License to or Waiver of Other Rights.** If Consultant has any right to the Work Product that cannot be assigned to Company by Consultant, Consultant unconditionally and irrevocably grants to Company during the term of such rights, an exclusive, even as to Consultant, irrevocable, perpetual, worldwide, fully paid and royalty- free license, with rights to sublicense through multiple levels of sublicensees, to **reproduce**, make derivative works of, distribute, publicly perform and publicly display in any form or medium, whether now known or later developed, make, use, sell, import, offer for sale and exercise any and all such rights. If Consultant has any rights to the Work Product that cannot be assigned or licensed to Company, Consultant unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Company or related to Company's customers, with respect to such rights, and agrees, at Company's request and expense, to consent to and join in any action to enforce such rights.
- 4.9 Assistance.** Consultant agrees to assist Company in every way, both during and after the term of this Agreement, to obtain and enforce United States and foreign Intellectual Property Rights relating to Work Product in all countries. In the event Company is unable to secure Consultant's signature on any document needed in connection with such purposes, Consultant hereby irrevocably designates and appoints Company and its duly authorized officers and agents as its agent and attorney in fact, which appointment is coupled with an interest, to act on its behalf to execute and file any such documents and to do all other lawfully permitted acts to further such purposes with the same legal force and effect as if executed by Consultant.
- 5. CONSULTANT REPRESENTATIONS AND WARRANTIES.** Consultant hereby represents and warrants that (a) the Work Product will be an original work of Consultant and any third parties will have executed assignment of rights reasonably acceptable to Company prior to being allowed to participate in the development of the Work Product; (b) the Work Product will fully conform to the requirements and terms set forth in the SOW; (c) to the best of his/her knowledge, neither the Work Product nor any element or development thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (d) neither the Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e) Consultant will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Consultant has full right and power to enter into and perform this Agreement without the consent of any third party; (g) Consultant will comply with all laws and regulations applicable to Consultant's obligations under this Agreement, will refrain from any unethical conduct, and will maintain high standards of professionalism; and (i) should Company permit Consultant to use any of Company's equipment, or facilities during the term of this Agreement, such permission shall be gratuitous and Consultant (i) shall be responsible for any injury to any person (including death) or damage to property arising out of use of such equipment or facilities; (ii) shall perform all services during Company's normal business hours, unless Company otherwise specifically requests; and (iii) shall comply with Company's then- current access policies and procedures, including those pertaining to safety, security, anti-harassment, and confidentiality.
- 6. TERMINATION.** Unless previously terminated for the reasons set forth below in Sections 6.1 and 6.2 of this Agreement, the term of this Agreement shall commence on the Effective Date and shall terminate on the Termination Date.
- 6.1 Termination without Cause.** Company may terminate this Agreement without cause at its convenience upon written notice to Consultant. Consultant may terminate this Agreement at any time that there is no uncompleted SOW in effect upon fifteen (15) days' prior written notice to Company. Company will pay Consultant only those fees and expenses related to services actually performed during such notice period, as specified in the SOW.

- 6.2 Termination with Cause.** Either party may terminate this Agreement immediately in the event that the other party has materially breached the Agreement and fails to cure such breach within five (5) days of receipt of notice by the non-breaching party, setting forth in reasonable detail the nature of the breach. Company may also terminate this Agreement immediately in its sole discretion in the event of Consultant's material breach of the section titled Intellectual Property Rights. Company will pay Consultant only those fees and expenses related to services actually performed during such notice period, as specified in the SOW.
- 6.3 Return of Company Property.** Upon termination of the Agreement or upon Company's request at any other time, Consultant will deliver to Company all of Company's property, equipment, and documents, together with all copies thereof, and any other material containing or disclosing any Work Product, Third Party Information or Confidential Information of Company and certify to Company in writing that Consultant has fully complied with this obligation. Consultant further agrees that any property situated on Company's premises and owned by Company is subject to inspection by Company personnel at any time with or without notice.
- 6.4 Survival.** The following provisions shall survive termination of this Agreement: Sections and Subsections titled Intellectual Property Rights, Consultant Representations and Warranties, Indemnification, Return of Company Property, Survival, and General Provisions.
- 7. RESERVED.**
- 8. GENERAL PROVISIONS.**
- 8.1 Governing Law and Venue.** This Agreement and any action related thereto will be governed, and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Consultant hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Company's principal place of business is located for any lawsuit filed there against Consultant by Company arising from or related to this Agreement.
- 8.2 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 8.3 No Assignment.** This Agreement, and Consultant's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by Consultant without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees.
- 8.4 Notices.** Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the signature page, by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.
- 8.5 Injunctive Relief.** Consultant acknowledges that, because its services are personal and unique and because Consultant will have access to Confidential Information of Company, any breach of this Agreement by Consultant would cause irreparable injury to Company for which monetary damages would not be an adequate remedy and, therefore, will entitle Company to injunctive relief (including specific performance). The rights and remedies provided to each party in this Agreement are cumulative and in addition to any other rights and remedies available to such party at law or in equity.
- 8.6 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

- 8.7 **Export.** Consultant agrees not to export, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, to countries outside the United States, in violation of the United States export laws or regulations.
- 8.8 **Entire Agreement; Modification.** This Agreement and any SOWs attached hereto together constitute the entire agreement between the Consultant and Pure and supersedes in its entirety any and all oral or written agreements previously existing between Consultant and Pure with respect to the subject matter hereof. For clarity, the pre-existing indemnity agreement between the Company and Consultant will apply, on its terms, during the duration of this Agreement. This Agreement may only be amended in a writing signed by duly authorized representatives of the parties.

[SIGNATURE PAGE TO FOLLOW]

Pure Storage, Inc.

By:

Title: Chairman and Chief Executive Officer

Date: January 29, 2021

Address: 650 Castro Street
Mountain View, CA 94041

Consultant: Paul Mountford

By:

Date: January 29, 2021

EXHIBIT A

STATEMENT OF WORK

Consultant: Paul Mountford Date: January 29, 2021
Statement of Work #: One (1)

This Statement of Work forms part of the Consultant Agreement dated January 29, 2021 by and between Pure Storage, Inc. ("**Pure**") and Paul Mountford ("**Consultant**").

DESCRIPTION OF SERVICES; SERVICE FEES

- a. Consultant will assist in the transition of his duties and responsibilities as the Company's Chief Operating Officer as may be reasonably requested by the Company through March 20, 2021 ("Consulting Period").
- b. Consultant will continue vesting his outstanding performance-based RSU equity award granted May 19, 2020 in accordance with the terms and conditions thereof during the Consulting Period. Consultant will receive no additional fees or remuneration for the services performed under this Agreement.
- c. The Company will reimburse Consultant, in accordance with the Company's Global Travel & Expense Policy, for all reasonable expenses incurred by Consultant in performing the services requested by the Company pursuant to this Agreement.

Pure Storage, Inc.

By: _____

Title: Chairman and Chief Executive Officer

Date: January 29, 2021

Consultant: Paul Mountford

By: _____

Date: January 29, 2021

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
EXCHANGE RULES 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles Giancarlo, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pure Storage, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2020

By:

/s/ CHARLES GIANCARLO

**Charles Giancarlo
Chief Executive Officer
(Principal Executive Officer)**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
EXCHANGE RULES 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kevan Kryslar, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pure Storage, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2020

By:

/s/ KEVAN KRYSLER

Kevan Kryslar
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles Giancarlo, certify pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Pure Storage, Inc. for the quarterly period ended November 1, 2020, fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and result of operations Pure Storage, Inc.

Date: December 9, 2020

By: /s/ CHARLES GIANCARLO

Charles Giancarlo
Chief Executive Officer
(Principal Executive Officer)

I, Kevan Kryslar, certify pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Pure Storage, Inc. for the quarterly period ended November 1, 2020, fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and result of operations Pure Storage, Inc.

Date: December 9, 2020

By: /s/ KEVAN KRYSLER

Kevan Kryslar
Chief Financial Officer
(Principal Financial Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Pure Storage, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.