

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)

) Chapter 11

SIZMEK INC., *et al.*,¹)

) Case No. 19-10971 (SMB)

) Debtors.)

) (Jointly Administered)

**ORDER AUTHORIZING AND APPROVING PRIVATE SALE OF DEBTOR
SELLER'S PORTION OF THE PEER39 BUSINESS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND
GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion")² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), including Sizmek Technologies, Inc. (the "Debtor Seller"), for entry of an order (this "Order"), pursuant to Bankruptcy Code Sections 105, 363, 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014, among other things: (i) authorizing the sale of the Debtor Seller's Purchased Assets,³ free and clear of any claim, including claim of successor liability, charge, lien (statutory or otherwise), mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, rights of use, right of first offer, right of first refusal, easement,

¹ Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sizmek Inc. (4624); Sizmek DSP, Inc. (2319); Point Roll, Inc. (3173); Sizmek Technologies, Inc. (6402); Wireless Artist LLC (0302); Wireless Developer, Inc. (9686); X Plus One Solutions, Inc. (8106); and X Plus Two Solutions, LLC (4914). The location of Debtors' service address for purposes of these chapter 11 cases is: 401 Park Avenue South, Fifth Floor, New York, NY 10016.

² Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Motion for an Order Authorizing and Approving a Private Sale of Debtor Seller's Portion of the Peer39 Business Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief* [Dkt. 300] (the "Sale Motion") or the Asset Purchase Agreement attached as **Exhibit 1** (as may be amended or supplemented in accordance with the terms hereof and thereof, the "APA"), as applicable. As used herein, the "Buyer" refers to the Purchaser (as defined in the APA). A redline of the APA to the asset purchase agreement filed as Exhibit 1 to Exhibit A to the Sale Motion, is attached as Exhibit 2. Notwithstanding anything to the contrary, in connection with the Designated Back-Up Bid and Designated Back-Up Bidder (each as hereinafter defined) the foregoing is subject to paragraph 6 of this Order.

³ For the avoidance of doubt, as used herein, "Purchased Assets" shall refer only to Debtor Seller's interest in the Purchased Assets.

servitude, restrictive covenant, encroachment, license and other restriction and interest (the “Encumbrances”) in any of the Debtor Seller’s Purchased Assets, (ii) authorizing the Debtor Seller’s potential payment of the Bid Protections to the Buyer, under certain conditions set forth in the APA; (iii) authorizing the assumption and assignment of certain of Debtor Seller’s executory contracts and unexpired leases in connection therewith and (iv) granting other related relief; and upon the FTI Declaration and the First Day Declaration; and, in accordance with the *Notice of Auction* [Dkt. 333] (the “Notice of Auction”), filed on July 18, 2019, Debtors having conducted an auction (the “Auction”) for the Purchased Assets on July 24, 2019 and having determined that Buyer’s offer memorialized in the APA represents the highest or otherwise best offer for the Purchased Assets; and it appearing that the relief requested is in the best interests of Debtor Seller’s estate, its creditors, its stakeholders and other parties-in-interest; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Sale Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Sale Motion and opportunity for objections having been provided; and this Court having heard statements of counsel and the evidence presented in support of the relief requested by Debtor Seller in the Sale Motion at a hearing before this Court (the “Sale Hearing”); and it appearing that no other notice need be given; and it further appearing that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:⁴

⁴ The findings and conclusions set forth herein shall constitute this Court’s findings of fact and conclusions of law as described in Bankruptcy Rule 7052, made applicable to this matter by Bankruptcy Rule 9014.

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(a) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§1408 and 1409.

B. This Order is a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no reason to delay implementation of this Order.

C. The predicates for the relief requested in the Sale Motion are Sections 105(a), 363(b), (f) and (m) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (h) and 6006(a), (c) and (d), 9007 and 9014.

Notice of the Sale Transaction

D. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate and sufficient notice of the Auction, the Sale Hearing and the Sale Transaction has been provided in accordance with Sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9014.⁵ The notices were good, sufficient and appropriate under the circumstances, provided all interested parties with timely and proper notice of the Auction, the Sale Hearing and the Sale Transaction, and no further or other notice of the Auction, the Sale Hearing or the Sale Transaction is required.

⁵ Unless otherwise provided, "Section" references are to the Bankruptcy Code.

Good Faith of the Buyer

E. The Buyer is purchasing the Debtor Seller's Purchased Assets in good faith and is a good faith purchaser within the meaning of Section 363(m), and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in this proceeding in that, *inter alia*, the Buyer: (i) is not related in any way to the Debtor Seller; (ii) recognized that Debtor Seller was free to deal with any other party interested in acquiring the Debtor Seller's Purchased Assets; (iii) disclosed all payments it is to make and all agreements or arrangements related to the Sale Transaction; (iv) has not violated Section 363(n) by any act or omission; and (v) negotiated and executed the APA at arms' length and in good faith. Accordingly, the APA may not be avoided and no party shall be entitled to damages or other recovery pursuant to section 365(n) of the Bankruptcy Code.

Highest and Best Offer

F. The transaction contemplated by APA constitutes the highest and best offer for the Debtor Seller's Purchased Assets, and will provide a greater recovery for Debtor Seller's estate than would be provided by any other available alternative. Debtor Seller's determination, made in consultation with the Consultation Parties (as defined in the Notice of Auction), that the APA constitutes the highest and/or best offer constitutes a valid and sound exercise of Debtor Seller's business judgment and its fiduciary duties. The consideration to be provided by the Buyer pursuant to the APA is fair and adequate, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under other applicable law.

G. The APA and its terms represent a fair and reasonable offer to purchase the Debtor Seller's Purchased Assets under the circumstances of these Chapter 11 Cases. No other person or entity or group of entities has offered to purchase the Debtor Seller's Purchased Assets for greater value to Debtor Seller's estate than the Buyer. Approval of the Sale Motion and the APA and the

consummation of the transactions contemplated thereby are in the best interests of Debtor Seller, its creditors, its estate and other parties in interest.

H. Debtors have determined in a valid and sound exercise of their business judgment and in consultation with their advisors and the Consultation Parties (as defined in the Notice of Auction) that the next highest and otherwise best offer (the “Designated Back-Up Bid”) for the Purchased Assets submitted at the Auction was that of The Trade Desk, Inc. or its designee (the “Designated Back-Up Bidder”).

No Fraudulent Transfer

I. Neither the Debtor Seller nor the Buyer has entered into the APA, or proposes consummating the Sale Transaction, for the purpose of hindering, delaying or defrauding Debtor Seller’s present or future creditors. Neither the Debtor Seller nor the Buyer has entered into the APA or proposes consummating the Sale Transaction in violation of fraudulent conveyance and fraudulent transfer laws whether under the Bankruptcy Code or any other applicable law.

J. The Buyer is not a continuation or successor to Debtor Seller or its estate, there is no continuity of enterprise between the Sellers and Buyer, and the Sale does not amount to a consolidation, merger or de facto merger of the Buyer and Debtor Seller.

Section 363(f) is Satisfied

K. Debtors’ secured lenders (Cerberus and Sizmek Finco, LLC) have consented to the sale of the Debtor Seller’s Purchased Assets to the Buyer on the terms set forth in the APA and this Order. Accordingly, the conditions for a sale of the Debtor Seller’s Purchased Assets to the Buyer free and clear of all Encumbrances pursuant to Section 363(f) have been satisfied.

Section 365 is Satisfied Regarding the Assigned Contracts

L. The Debtors have satisfied all conditions and requirements for assumption and assignment of the Assigned Contracts⁶ pursuant to Section 365.

Compelling Circumstances for an Immediate Sale

M. To maximize the value of the Debtor Seller's Purchased Assets and preserve the viability of the businesses to which the Debtor Seller's Purchased Assets relate, it is essential that the Sale Transaction occur within the time provided in the APA. Time is of the essence in closing the Sale Transaction.

N. The consummation of the transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) and all applicable requirements of such Sections have been complied with in respect of the transaction.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

General Provisions

1. The Sale Motion is granted as set forth in this Order. All objections to the Sale Motion that have not been withdrawn, waived or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court, and all reservations of rights included therein, are overruled on the merits.

⁶ For the avoidance of doubt, as used herein, "Assigned Contracts" shall refer only to Assigned Contracts to which one of the Debtors is a party.

Approval of the APA

2. The APA, attached as Exhibit 1, and all other ancillary documents, and all of the terms and conditions thereof, are approved.

3. Pursuant to Section 363(b), Debtor Seller is authorized to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction with the Buyer upon the terms and conditions of the APA, including, without limitation, providing corporate authorization for Non-Debtor Seller to consummate the Sale Transaction in accordance with the terms of the APA, (b) close the Sale Transaction upon the terms and conditions of the APA and this Order, and (c) execute, deliver, perform, consummate, implement and close the APA, together with all additional instruments and documents that may be reasonably necessary or appropriate to implement the APA, provided that such additional instruments and documents do not materially adversely change the terms of the APA.

4. This Order and the APA shall inure to the benefit of Debtor Seller, its estate and creditors and the Buyer, and their respective successors and assigns.

5. The Designated Back-Up Bidder is hereby approved as the Back-Up Bidder (as defined in the Notice of Auction) and the Designated Back-Up Bid is hereby approved and authorized as the Back-Up Bid (as defined in the Notice of Auction) and, in accordance with the Notice of Auction, shall remain open and irrevocable until the earliest of (i) the first business day after the consummation of the Sale Transaction with the Buyer, (ii) September 20, 2019, and (iii) the release of the Designated Back-Up Bid by Debtors.

6. In the event Debtors proceed with the Designated Back-Up Bidder, no further relief or order shall be required, and all provisions of this Order referring to the "Buyer" shall apply to the Designated Back-Up Bidder *mutatis mutandis*, and all provisions of this Order

referring to the “APA” shall refer to the asset purchase agreement submitted by the Designated Back-Up Bidder to the Sellers, as modified by the Designated Back-Up Bidder on the record at the Auction, *mutatis mutandis*.

Transfer of the Purchased Assets

7. The transfer of the Purchased Assets to the Buyer upon the terms and conditions of the APA upon and as of the Closing and such transfer shall constitute a legal, valid, binding and effective transfer of the Debtor Seller’s Purchased Assets free and clear of all Encumbrances except for any Permitted Liens and Assumed Liabilities. Upon the Closing, the Buyer shall take title to and possession of the Purchased Assets subject only to any Permitted Liens. Pursuant to Section 363(f), the transfer of title to the Purchased Assets shall be free and clear of any and all Encumbrances except for Assumed Liabilities and Permitted Liens. All Encumbrances on the Purchased Assets other than Permitted Liens shall attach solely to the proceeds of the Sale Transaction with the same validity, priority, force and effect that they now have as against the Purchased Assets, subject to any and all claims and defenses Debtor Seller and its estate have.

8. The Buyer is not and shall not be deemed a successor to Sellers as a result of the consummation of the Sale Transaction. The Buyer has given substantial consideration under the APA for the benefit of Sellers, Debtor Seller’s estate and the holders of any Encumbrances. The consideration given by the Buyer is valid and valuable consideration for the releases of any potential claims of successor or transferee liability against the Buyer, which releases shall be deemed to have been given in favor of the Buyer by all holders of Encumbrances against Debtor Seller or any of the Debtor Seller’s Purchased Assets. Therefore, following the Closing, all persons and entities are forever prohibited and enjoined from taking any action against the Debtor Seller

or its estate that would adversely affect or interfere with the ability of Debtor Seller to sell and transfer the Purchased Assets to the Buyer in accordance with the APA and this Order to the fullest extent provided by Section 363 or adversely affect or interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim or based on any actions the Debtors may take in these chapter 11 cases. Except as expressly set forth herein or in the APA, the Buyer and its successors and assigns shall have no liability for any Claim against the Debtors or the Debtors' estates or Excluded Liabilities, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee, successor, alter ego, or otherwise, of any kind, nature or character whatsoever, by reason of any theory of law or equity, including Claims or Excluded Liabilities arising under, without limitation: (i) any employment or labor agreements or the termination thereof relating to the Debtors; (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of or related to any of the Debtors or any Debtor's affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, the Employee Plans and any participation or other agreements related to the Employee Plans, or the termination of any of the foregoing; (iii) the Debtors' business operations or the cessation thereof; (iv) any litigation involving one or more of the Debtors; and (v) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to: (A) the Employee Retirement Income Security Act of 1974, as amended; (B) the Fair Labor Standards Act; (C) Title VII of the Civil Rights Act of 1964; (D) the Federal Rehabilitation Act of 1973; (E) the National Labor Relations Act; (F) the Worker Adjustment and Retraining Notification Act of 1988; (G) the Age Discrimination and Employee

Act of 1967 and Age Discrimination in Employment Act, as amended; (H) the Americans with Disabilities Act of 1990; (I) the Consolidated Omnibus Budget Reconciliation Act of 1985; (J) the Multiemployer Pension Plan Amendments Act of 1980; (K) state and local discrimination laws; (L) state and local unemployment compensation laws or any other similar state and local laws; (M) state workers' compensation laws; (N) any other state, local or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment or termination of employment with any or all Debtors or any predecessors; (O) any antitrust laws; (P) any product liability or similar laws, whether state or federal or otherwise; (Q) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (R) any bulk sales or similar laws; (S) any federal, state or local tax statutes, regulations or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (T) any common law doctrine of de facto merger or successor or transferee liability, successor-in-interest liability theory or any other theory of or related to successor liability. For the avoidance of doubt nothing in this Order shall (i) restrict a party's right to appeal this Order or (ii) release Buyer from an applicable authority's proper exercise of police and regulatory powers.

9. Except as expressly permitted or otherwise specifically provided in the APA or this Order, all persons or entities holding Encumbrances in all or any portion of the Purchased Assets (other than Permitted Liens and Assumed Liabilities) arising under or from, or in any way relating to Debtor Seller, the Purchased Assets, the operation of Debtor Seller's business prior to the Closing or the transfer of the Purchased Assets to the Buyer, are forever barred, estopped and permanently enjoined from asserting against the Buyer or its successors or assigns, their property

such persons' or entities' Encumbrances in and to the Purchased Assets, or in any way asserting or pursuing any action against the Buyer, the Buyer's successors or assigns and/or the Purchased Assets based on any theory of successor or transferee liability. Effective as of the Closing, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release any Encumbrances (except for the Permitted Liens) on the Purchased Assets, as provided herein, that may have been recorded or may otherwise exist. If a creditor fails to cause an Encumbrance to be released, Debtor Seller is hereby authorized and directed, and the Buyer is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Purchased Assets. The transactions authorized herein shall be of full force and effect, regardless of any Debtor Seller's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business. All persons and entities are forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of Debtor Seller to sell and transfer the Debtor Seller's Purchased Assets to the Buyer in accordance with the APA and this Order to the fullest extent provided by Section 363.

10. All persons and entities that are in possession of some or all of the Debtor Seller's Purchased Assets on the Closing Date are directed to surrender possession of such Debtor Seller's Purchased Assets to the Buyer or the Buyer Designee at the Closing.

11. The provisions of this Order authorizing the Sale Transaction by Debtor Seller free and clear of Encumbrances shall be self-executing, and none of the Debtor Seller, the Buyer or any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate, and/or implement the provisions hereof with respect to the Sale; provided, however, that this paragraph

shall not excuse such parties from performing any and all of their respective obligations under the APA or as otherwise set forth in this Order or requested by Buyer.

12. Without limiting the foregoing, a certified copy of this Order may be filed with the appropriate clerk or recorded to act to cancel any of the Encumbrances on the Debtor Seller's Purchased Assets of record except the Permitted Liens.

13. This Order is binding upon all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons or entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions of Debtor Seller contemplated by the APA; provided that nothing herein shall relieve any entity of the obligation to pay filing fees required to be paid under non-bankruptcy law.

14. Any and all governmental recording offices and all other parties, persons or entities are authorized to accept this Order for recordation on or after the Closing as conclusive evidence of the free and clear, and unencumbered, transfer of all right, title, interest and ownership in and to Debtor Seller's Purchased Assets conveyed to the Buyer at Closing.

Assignment and Assumption of Assigned Contracts

15. Debtors are authorized and directed to assume and assign each Assigned Contract listed on the Assigned Contracts list (attached as Exhibit 3) to the Buyer. Debtors are authorized to pay any of Sellers' Cure Payments, as contemplated by the APA. The payment of

the applicable Cure Payments (if any) in accordance with the APA shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default. The Buyer shall then have assumed the Assigned Contract and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by Debtors of such Assigned Contracts shall not be a default thereunder. Upon the payment of the relevant Cure Payments in accordance with the APA, Debtors shall have no further liabilities to the counterparties to the Assigned Contracts that accrue and become due and payable on or after the Closing Date except as provided in the APA. Upon the assumption of an Assigned Contract and the payment of the relevant Cure Payments, if any, in accordance with the APA, the Buyer shall be deemed to be substituted for the applicable Debtor as a party to the applicable Assigned Contracts and the applicable Debtor shall be relieved, pursuant to Section 365(k) of any further liability under the Assigned Contracts.

16. To the extent any counterparty to an Assigned Contract failed to timely object to a Cure Payment, such Cure Payment shall be deemed to be finally determined as of the entry of this Order and any such counterparty shall be barred from challenging, objecting to or denying the validity of the Cure Payment. All other requirements and conditions under Sections 363 and 365 for the assumption by Debtors and the assignment of the Buyer of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with Section 365, the Buyer shall be fully and irrevocably vested with all legal, equitable, and beneficial right, title and interest of Debtors under the Assigned Contracts.

17. The Buyer has provided adequate assurance of future performance under the relevant Assigned Contracts within the meaning of Sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

18. Pursuant to Sections 105(a) 363, and 365, all counterparties to the Assigned Contracts are forever barred and permanently enjoined from raising or asserting against Debtors or the Buyer any assignment fee, default, breach or claim of pecuniary loss, condition to assignment, or enforcing a provision to terminate, recapture, impose any penalty, condition a renewal or extension or modify any term or condition upon the assignment of such Assigned Contract arising under or related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Closing.

19. The assumption and assignment of the Assigned Contracts shall be effective upon entry of this Order (conditioned upon the Closing of the Sale Transaction) and (except as provided in paragraph 20 hereof), as no objections to the proposed Cure Payments set forth on Exhibit 3 have been timely filed, the Cure Payments applicable to the Assigned Contracts shall be the amounts set forth on Exhibit 3 hereof, unless otherwise agreed by the Buyer in its sole discretion. The proposed Cure Payments shall be paid in accordance with the APA. To the extent any objections to Cure Payments are received in the future, the Debtors shall use commercially reasonable efforts to cooperate with the Buyer in opposing or otherwise resolving any disputed Cure Payments arising after the Closing of the Sale Transaction.

20. Debtors received from Hewlett-Packard Financial Services (“HPFS”) the *Limited Objection and Reservation of Rights of Hewlett-Packard Financial Service Inc. to the Debtors’ Motion For An Order Authorizing And Approving A Private Sale Of Debtor Seller’s Portion of the Peer39 Business Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief* [Dkt. 335] (“HPFS Objection”), following the inclusion of one or more units of equipment on the proposed list of equipment to be sold as part of the Sale Transaction and APA. HPFS is a lessor of equipment to Debtor Seller pursuant to that certain

Master Lease and Financing Agreement with Debtor Seller, dated October 31, 2018, as amended and supplemented, including by those specific Schedules and Annexes, which include various computer equipment units (the “HPFS Master Lease”). Among the applicable Schedules is a Schedule 3, which includes the 2 units identified in the HPFS Objection. Debtors, with the consent of HPFS, have agreed to cure and assume and assign Schedule 3 to the HPFS Master Lease to Buyer. Schedule 3 to the HPFS Master Lease is included on the Assigned Contracts list attached as Exhibit 3, and will be assumed and assigned to Buyer in accordance with paragraphs 15, 16, 17, 18 and 19 of this Order. Schedule 3, as assumed and assigned to the Buyer, shall remain governed by and subject to the terms and conditions of the HPFS Master Lease. For the avoidance of doubt, nothing in this Order shall permit the sale or transfer of the equipment subject to HPFS’ agreements free and clear of the HPFS Master Lease and HPFS’ rights thereunder. Moreover, nothing herein is intended to modify the Court’s prior Order [Dkt. 269] which addressed the potential assumption and assignment of that certain Software License Lease Agreement, dated January 1, 2018 between Debtor Seller and HPFS.

Other Provisions

21. Pursuant to the APA, the Sellers shall enter into a Transition Services Agreement on the Closing Date pursuant to which Sellers shall provide to the Buyer, and the Buyer shall provide to the Sellers, certain services for the transitional period following Closing. The Debtor Seller is hereby authorized to enter into and perform under the Transition Services Agreement and to execute and deliver any additional documentation in support of that agreement.

22. In connection with the sale of the Purchased Assets, Debtors shall be required to abide by their privacy policies in place as of the date of the APA, as such policies may

be amended from time to time. Accordingly, no consumer privacy ombudsman will be appointed in connection with the sale under Section 363(b)(1).

23. Nothing contained in any chapter 11 plan confirmed in any of Debtors' Chapter 11 Cases, any order confirming any such chapter 11 plan, any order approving wind-down or dismissal of any of Debtors' Chapter 11 Cases or any subsequent chapter 7 cases, or any other order of any type or kind entered in Debtors' Chapter 11 Cases shall conflict with or derogate from the provisions of the APA or the terms of this Order, and to the extent of any conflict or derogation between this Order or the APA and such future plan or order, the terms of this Order and the APA shall control.

24. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and Debtor Seller and Buyer are authorized to close the Sale Transaction immediately upon entry of this Order.

25. The Sale Transaction shall be exempt from any bulk sales or similar law of any state or jurisdiction.

26. Except for FTICA, there are no brokers involved in consummating the Sale Transaction and no brokers' commissions are due.

27. The failure to identify any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

28. The APA and any related agreements or other instruments (other than this Order) may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not have a material adverse effect on Debtor Seller's estate.

29. The terms of this Order shall govern any inconsistencies between the terms of this Order and the APA.

30. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. In connection with the Closing of the Sale Transaction, the Debtors are authorized and directed to pay or cause to be paid directly to Cerberus Business Finance, LLC (“Cerberus”), as administrative agent and collateral agent for certain revolver and term loan lenders (the “Senior Lenders” and, together with Cerberus, the “Secured Parties”) under that certain Financing Agreement, dated as of September 6, 2017 (as subsequently amended from time to time, the “Financing Agreement”), \$14,925,000 in cash out of the amount payable to the Sellers by the Buyer at Closing *plus* 100% of any portion of the Escrow Amount released to the Sellers pursuant to Section 3.3(e) of the APA (collectively, the “Direct Cerberus Payments”). Cerberus is authorized to apply the Direct Cerberus Payments to satisfy amounts owed to the Secured Parties under the Financing Agreement in accordance with the terms and conditions thereof. The authority for Cerberus to receive and apply the Direct Cerberus Payments under this Order will not restrict the relief that might be sought by any party in interest against the Secured Parties pursuant to the terms and conditions of the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, and 507, and Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* [Dkt. 37] or any successor order thereto, as to which possible relief the rights of all parties (including the Secured Parties) are fully reserved.

32. This Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms of the Order and the APA, all amendments thereto and any

waivers and consents thereunder and each of the agreements executed in connection therewith to which Debtor Seller is a party or which had been assigned by Debtor Seller to the Buyer, and to adjudicate, if necessary, any and all disputes relating in any way to the Sale Transaction.

Dated: July 30th, 2019
New York, New York

/s/ STUART M. BERNSTEIN

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to the Sale Order

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of July 24, 2019 (the “Effective Date”) by and among Sizmek Technologies Ltd., an Israeli company (“Sizmek Israel”), and Sizmek Technologies, Inc., a Delaware corporation (“Parent” and together with Sizmek Israel, “Sellers” and each, a “Seller”), and P39 Tech LLC, a Delaware limited liability company (or one of its direct or indirect subsidiaries) (“Purchaser”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in Article I of this Agreement.

RECITALS

WHEREAS, Sellers are collectively engaged in the business of pre bid data provision for programmatic buying (such business, as presently conducted by Sellers, shall be referred to herein as the “Business”);

WHEREAS, Sizmek Israel is a wholly owned subsidiary of Parent;

WHEREAS, on March 29, 2019, Parent and several of its affiliates commenced Case No. 19-10971 (jointly administered) (the “Bankruptcy Case”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, in connection therewith, Sellers wish to sell, transfer, convey, assign and deliver to Purchaser all of the Purchased Assets (defined below), together with the Assumed Liabilities (defined below) of Sellers upon the terms and subject to the conditions set forth in this Agreement (hereinafter collectively referred to as the “Transaction”);

WHEREAS, Purchaser wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions set forth in this Agreement;

WHEREAS, the Purchased Assets owned by Parent shall be sold pursuant to a Sale Order of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale Order shall include the assumption and assignment of certain executory contracts and service agreements, unexpired leases of equipment and liabilities thereunder, under Section 365 of the Bankruptcy Code and pursuant to the terms and conditions of this Agreement; and

WHEREAS, all of the obligations of Parent hereunder are conditioned upon the approval of the Bankruptcy Court in accordance with the terms hereof, it being understood that the obligations of Sizmek Israel require no further authorization.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 For purposes of this Agreement (including the Disclosure Schedules hereto) the terms defined in this Agreement shall have the respective meanings specified herein, and, in addition, the following terms shall have the following meanings:

“Accounts Payable” means, with respect to Sellers and a particular date, any and all trade accounts payable of Sellers to third parties relating to or arising in connection with the operation and conduct of the Business, less any credits or rebates owed to Sellers with respect to such account (but solely to the extent such credits or rebates are not included in the definition of Accounts Receivable); provided, however, that Accounts Payable shall exclude for all purposes Intercompany Claims.

“Accounts Receivable” means, with respect to Sellers and a particular date, (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to Sellers relating to, or arising in connection with, the operation and conduct of, the Business or otherwise and any other similar rights of Sellers to payment from third parties whether or not invoiced as of such date, and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of services rendered, in each case owing to Sellers; (ii) all other accounts or notes receivable of Sellers and the full benefit of all security for such accounts or notes receivable; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding such date or have not been written off or sent to collection prior to the close of business on the day immediately preceding such date (it being understood that the receipt of a check prior to the close of business on the day immediately preceding such date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby), in each case of clauses (i) through (iii), less any credits or rebates owed to any third party with respect to such account or other right (but solely to the extent such credits or rebates are not included in the definition of Accounts Payable); provided, however, that Accounts Receivable shall exclude for all purposes Intercompany Claims.

“Ad Server APA” means that certain Asset Purchase Agreement, dated as of May 31, 2019, by and among Parent, Sizmek Technologies Ltd, a United Kingdom company (“Sizmek UK”) and Amazon.com, Inc. (“Amazon”) filed as Exhibit 1 to Exhibit A to Debtors’ Motion for an Order Authorizing and Approving a Private Sale of Debtor Seller’s Portion of the Ad Server Business Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief Doc. No. 210, In re Sizmek, Inc., Case No. 19-10971 (SMB) (Bankr. S.D.N.Y. June 3, 2019), as amended, modified, supplemented or replaced from time to time.

“Ad Server Assets” means the “Purchased Assets” as such term is defined in the Ad Server APA.

“Affiliate” means, as to any Person, any other Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control”

(including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other direct or indirect ownership interest, by Contract or otherwise.

“Bankruptcy Code” means 11 U.S.C. Section 101, et. seq., and any amendments thereof.

“Break-Up Fee” means, in consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the other Transaction Documents, and the negotiation thereof, and the identification and quantification of assets to be included in the Purchased Assets, and regardless of whether or not Purchaser makes any matching or competing offers, an amount equal to Three Hundred Ninety Thousand U.S. Dollars (\$390,000), which amount, as to Parent, shall and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be payable as set forth in Section 8.20(b) hereof.

“Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash but excluding any checks that remain uncashed or uncleared prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.

“Closing Net Working Capital” means the Net Working Capital as of the Closing Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Cure Payments” means, (i) with respect to Parent, “cure payments” required to be made under Section 365 of the Bankruptcy Code in connection with any assumption and assignment of an Assumed Contract to Purchaser, and (ii) with respect to any other Seller, any outstanding Accounts Payable required to be paid in connection with the assignment of any Assumed Contract to Purchaser.

“Contract” means any written or oral contract, agreement, lease, license, financial instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Disclosure Schedules” means the schedules delivered by Sellers to Purchaser as of the Effective Date setting forth the exceptions to the representations and warranties contained in Article VI and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to the corresponding numbered schedule that is included in the Disclosure Schedules (unless, and to the extent, the relevance to other representations and warranties is readily apparent from the actual text of the disclosures).

“Employee Plans” means any employment, consulting, pension, severance or other similar contract, plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits or for deferred

compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which is entered into, maintained, contributed to or required to be contributed to, by Sellers or under which Sellers could reasonably be expected to incur any liability including under any employee pension benefit plan and any employee welfare benefit plan which Sellers maintain, administer, contribute to or are required to contribute to, or have maintained, administered, contributed to or were required to contribute to, or under which Sellers could reasonably be expected to incur any liability.

“Escrow Agent” means Citibank, N.A., or its successor, in its capacity as such pursuant to the Escrow Agreement.

“Expense Reimbursement Amount” means the aggregate amount of all reasonable and documented out-of-pocket costs, expenses and fees incurred by Purchaser and its Affiliates in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the other Transaction Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by Purchaser and its Affiliates in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including the Bankruptcy Case and other judicial and regulatory proceedings related to such transactions, up to a maximum of Three Hundred Fifty Thousand U.S. Dollars (\$350,000), which amount shall as to Parent and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be payable as set forth in Section 8.20(b) hereof.

“First Lien Agent” means Cerberus Business Finance, LLC, in its capacity as administrative agent and collateral agent under that certain Financing Agreement, dated as of September 6, 2017, by and among Parent, as borrower, Solomon Acquisition Corp. and the other guarantors party or joined thereto and the lenders from time to time party thereto, as amended by the First Amendment to Financing Agreement, dated as of April 2, 2018, as amended by the Second Amendment to Financing Agreement, dated as of April 27, 2018, as amended by the Third Amendment to Financing Agreement, dated as of May 30, 2018, as amended by the Fourth Amendment to Financing Agreement, dated as of June 29, 2018, as amended by the Fifth Amendment to Financing Agreement, dated as of July 19, 2018, as amended by the Sixth Amendment to Financing Agreement, dated as of August 6, 2018, and as further amended, amended and restated, supplemented or otherwise modified from time to time.

“Governmental Authority” means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“Intercompany Agreements” means all contracts and agreements between or among a Seller and/or its Affiliates and another Seller and/or its Affiliates or between any of their respective Affiliates.

“Intercompany Claims” means all claims, liabilities, loans and receivables between or among one of the Sellers and any of their respective Affiliates, including, without limitation, the Intercompany Note and the items set forth on Schedule 1.1.

“Intercompany Note” means that certain Amended and Restated Promissory Note dated October 27, 2016 owed by Sizmek Israel to Parent.

“ITA” means the Israeli tax authority.

“Knowledge” means in the case of Sellers, the actual knowledge of Markus Plattner, Sascha Wittler, Mark Grether, George Pappachen and Volker Hatz, after reasonable inquiry.

“Laws” means any federal, state, provincial, local, domestic or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law, and any final decree, judgment or injunction of any Governmental Authority.

“Legal Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Liability” means any liability, indebtedness, obligation, expense, claim, loss, cost, damage, obligation, responsibility, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, whether or not secured.

“Liens” means any security interests, mortgages, interests, liens, pledges, charges, defects of title, options and other rights of third parties, rights of first refusal, claims or any other encumbrance or restriction on ownership.

“Material Adverse Effect” means any event or change or circumstance, in respect of the operation of the Business and Purchased Assets that, individually or when aggregated with any one or more of the other such changes, events or circumstances, has had or could reasonably be expected to have a material adverse effect on the Purchased Assets or the Business, taken as a whole; provided, however, that none of the following events, changes or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be deemed to be or constitute a Material Adverse Effect, and none of the following changes, events or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be taken into account when determining whether a Material Adverse Effect has occurred: (i) war, acts of nature, general strikes, acts of terror or acts of hostilities, including but not limited to, military engagements and shelling of civilian areas, (ii) general economic, market or political changes or conditions, (iii) events, changes or circumstances which generally affect the industries in which Sellers conduct the Business, (iv) changes in Laws, unless such Laws or conditions apply solely or principally to the Business or Sellers, (v) the filing and the pendency of the Bankruptcy Case, (vi) actions or omissions taken or not taken by or on behalf of Sellers in compliance with a specific request from or consented to in writing by Purchaser following the execution of this Agreement and (vii) events, changes or circumstances attributable to the announcement of this Agreement; provided, however, that, with respect to clauses (i) through (iv), effects resulting from any event, change or circumstance that

has had a materially disproportionate adverse effect on Sellers or the Business compared to other businesses operating in the industries in which Sellers and the Business operate may be considered for purposes of determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur, but only to the extent of the incremental material disproportionate impact.

“Net Working Capital” means, as of a particular date, (i) all Accounts Receivable as of such date, minus (ii) all Accounts Payable as of such date.

“Ordinance” means the Israeli Income Tax Ordinance (New Version), 1961, as amended, and all rules and regulations promulgated thereunder, as may be amended from time to time, including any publications and clarifications issued by the ITA.

“Ordinary Course of Business” means, in connection with the Business, the ordinary course of business of Sellers consistent with past practices of Sellers (including with respect to quantity and frequency), taking into account (i) Parent’s current financial condition and financial distress, (ii) any direct effects of the Bankruptcy Case and (iii) the requirements set forth in the Ad Server APA and the effects of the sale of the Ad Server Assets.

“Permitted Liens” means (i) statutory Liens of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the ordinary course of business (A) for amounts not yet overdue or (B) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty (30) days) are being contested in good faith, (ii) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings, (iii) pledges or deposits under worker’s compensation, unemployment insurance and social security laws to the extent required by applicable Law, (iv) rights of third parties pursuant to ground leases, leases, subleases, licenses, concessions or similar agreements that have been disclosed to Purchaser in writing, (v) Liens directly caused by or directly resulting from the acts of Purchaser or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees, (vi) Liens arising by operation of Law under Article 2 of any state’s Uniform Commercial Code (or successor statute or any similar foreign Law) in favor of a seller of goods or buyer of goods, (vii) Liens arising by operation of law in either Seller’s jurisdiction of incorporation and (viii) restrictions or requirements set forth in the Sale Order relating to the Purchased Assets owned by Parent.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Authority (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

“PwC” shall mean PricewaterhouseCoopers Advisory Ltd.

“Sale Motion” means the motion to be filed with the Bankruptcy Court by Parent, in form and substance satisfactory to the First Lien Agent and Purchaser (in their respective reasonable discretion), seeking (i) approval of the applicable terms and conditions of the Transaction Documents, (ii) authorization for the sale of the applicable Purchased Assets by Parent pursuant to Section 363 of the Bankruptcy Code and the assumption and assignment of the Purchased Assets of Parent that are executory contracts pursuant to Section 365 of the Bankruptcy Code, free and

clear of all Liens, (iii) approval of the Break-Up Fee and the Expense Reimbursement Amount, and (iv) authorization to hold the Sale Hearing on an expedited basis of not more than twenty-one (21) days from the filing of the Sale Motion, and all as provided in the Sale Order.

“Sale Hearing” means the hearing on the Sale Motion conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement and the other Transaction Documents.

“Sale Order” means the order of the Bankruptcy Court, substantially in the form attached as Exhibit A (which Exhibit A has been reviewed by and is satisfactory to the First Lien Agent), that has not been stayed, vacated or stayed pending appeal, authorizing and approving the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts to Purchaser (or an Affiliate thereof) on the terms and conditions set forth in this Agreement.

“Solvent” means, with respect to any Person on a particular date, that on such date (i) the present fair salable value of the property and assets of such Person exceeds the debts and liabilities, including contingent liabilities, of such Person, (ii) the present fair salable value of the property and assets of such Person is greater than the amount that shall be required to pay the probable liability of such Person on its debts and other liabilities, including contingent liabilities, as such debts and other liabilities become absolute and matured, (iii) such Person does not intend to incur, or believe (nor should it reasonably believe) that it shall incur, debts and liabilities, including contingent liabilities, beyond its ability to pay such debts and liabilities as they become absolute and matured, and (iv) such Person does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted; provided, however, for purposes of this definition, all Intercompany Claims shall be disregarded. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Target Net Working Capital” means \$3,250,000.

“Taxes” mean any federal, state, local or foreign (non-US, including Israeli) tax, including income, capital gains, land betterment, purchase, companies', gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property (including general and special real estate taxes and assessments, special service area charges, tax increment financing, charges, payments in lieu of taxes and similar charges and assessments), windfall profits, environmental (including tax under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, foreign or domestic withholding, social security (or similar), national insurance, health, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, governmental fee, governmental assessment or governmental charge of a similar nature, whether computed on a separate or consolidated, unitary or combined basis or in any other manner including any interest, penalties or additions to Tax or additional amounts with respect to the foregoing.

“Tax Return” means any return, report, information return or other document (including any related or supporting information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any Laws, regulations or administrative requirements relating to any Taxes.

“Valid Certificate” means a valid certificate, ruling or any other written instructions regarding Tax withholdings, issued by the ITA in customary form and substance reasonably satisfactory to Purchaser (which for the avoidance of doubt includes Purchaser’s opportunity to review any application to, and correspondence with, the ITA with respect to the Transaction), that is applicable to the payments to be made to any Person pursuant to this Agreement stating that no withholding, or reduced withholding, of any Israeli Tax is required with respect to such payment or providing any other instructions regarding Tax withholdings. For avoidance of doubt, a generic valid exemption with respect to “Services and Assets,” which is unlimited in its amount, shall be deemed a “Valid Certificate,” solely with respect to consideration paid to Sizmek Israel for its assets and if in force at the time of the actual payment.

“VAT” means value added tax.

ARTICLE II PURCHASE AND SALE OF PURCHASED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement and, with respect to the assets of Parent, the timing and process contemplated by the Sale Order, at the Closing, Sellers shall, and shall cause their Affiliates to, sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery from Sellers and their Affiliates, all of Sellers’ and their Affiliates’ right and title to and interest in and to the following assets, properties, and rights (contractual or otherwise) owned by Sellers and their Affiliates, in each case, which primarily relate to, or are primarily used or held for use in connection with, the Business (collectively, the “Purchased Assets”), free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of Sellers or any other party, other than Permitted Liens:

(a) the equipment, machinery or other tangible personal property, specifically listed or described in Schedule 2.1(a) hereto and any warranty rights or claims associated therewith;

(b) the contracts, agreements, contract rights, leases of real property, leases of equipment, machinery or other tangible personal property license agreements, customer contracts, purchase and sales orders (if any), financial instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which either Seller or any Affiliate thereof is a party (whether or not legally bound thereby) and which relate to the Purchased Assets and the operation of the Business, specifically listed or described in Schedule 2.1(b) hereto as such schedule may be amended pursuant to Section 2.3(c) below (the “Assumed Contracts”);

(c) the permits specifically listed or described in Schedule 2.1(c) to the extent transferable to Purchaser pursuant to their terms and in accordance with applicable Laws;

(d) all intellectual property and intellectual property rights which primarily relate to, or are primarily used or held for use, in connection with, the Business (the “Intellectual Property”), including the Intellectual Property listed or described in Schedule 2.1(d) hereto;

(e) the prepaid items and expenses specifically listed or described in Schedule 2.1(e) hereto;

(f) the books and records including customer or client lists, files, documentation, records and the related documentation related to the Purchased Assets or Assumed Liabilities other than those described in Section 2.2(e);

(g) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) related to the Purchased Assets or the Assumed Liabilities other than those described in Sections 2.2(f), 2.2(h), 2.2(k), 2.2(l) and 2.2(m);

(h) all Accounts Receivable payable to Sellers or their Affiliates by customers of the Business;

(i) the deposits and prepayments held by third parties pursuant to any Assumed Contract;

(j) all goodwill, going concern value and similar assets, other intangible property, and rights of any kind as against others (whether by contract or otherwise) relating to any of the Purchased Assets (including the Intellectual Property), the Assumed Liabilities or the Business; and

(k) other than as specifically set forth in Section 2.2, Sellers’ and their Affiliates’ right, title and interest in and to all other assets, whether real or personal, tangible or intangible, which primarily relate to, or are primarily used or held for use in connection with, the operation of the Business.

Section 2.2 Excluded Assets. Notwithstanding the foregoing, the following assets, properties and rights of Sellers are specifically excluded from the definition of Purchased Assets (collectively, the “Excluded Assets”):

(a) all Cash and Cash Equivalents;

(b) the Closing Cash Payment;

(c) any permit to the extent not transferable pursuant to its terms and in accordance with applicable Laws;

(d) any Contracts that are not Assumed Contracts listed on Schedule 2.1(b) hereto (the “Excluded Contracts”);

(e) any of the following books and records: corporate seals, organizational documents, corporate governance agreements, minute books, stock books, books of account or other records having to do with the corporate organization or governance of Sellers, all employee-related or employee benefit-related files or records (other than summary compensation charts for Israeli Transferred Employees and personnel files of all other Transferred Employees), and any other books and records which Sellers are prohibited from transferring to Purchaser under applicable Law and is required by applicable Law to retain;

(f) all insurance policies of Sellers and all rights to applicable claims and proceeds thereunder;

(g) equity securities or other ownership interests of Sellers and any of either Seller's direct or indirect subsidiaries;

(h) Sellers' claims for and rights to receive Tax refunds with respect to taxable periods (or portions thereof) ending prior to the Closing Date, and Tax Returns with respect to taxable periods (or portions thereof) ending prior to the Closing Date, and any notes, worksheets, files or documents relating thereto;

(i) Sellers' bank accounts;

(j) Sellers' rights under this Agreement, including rights relating to the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered between Sellers and Purchaser in connection with the transactions contemplated hereby, and any other agreement between Sellers and Purchaser entered into on or after the Effective Date;

(k) all avoidance claims or causes of action available to Parent under Chapter 5 of the Bankruptcy Code or any similar actions under any other applicable Law;

(l) all claims or causes of action against Sellers' Affiliates, directors and officers;

(m) all Intercompany Claims;

(n) all claims or causes of action against Alphabet Inc. or its Affiliates related to or in connection with illegitimate websites;

(o) any assets, rights or properties (including Contracts) that are not primarily used in or related to the Business;

(p) the Ad Server Assets; and

(q) those assets set forth on Schedule 2.3(o) hereto.

Section 2.3 Assumed Liabilities; Excluded Liabilities.

(a) At the Closing, Purchaser shall assume and agree to perform and discharge only the following Liabilities of Sellers to the extent not previously performed or discharged, and no others (collectively, the “Assumed Liabilities”):

(i) all Liabilities of Sellers which first accrue and are to be performed from and after the Closing under the Assumed Contracts, and which relate solely to periods of time on or after the Closing;

(ii) all Liabilities and obligations relating to and arising from the operation, possession or ownership of or interest in the Purchased Assets which first accrue, or relate solely to periods of time, on or after the Closing;

(iii) all Accounts Payable as of the Closing Date;

(iv) all Liabilities including wages and commissions relating to the employment of the Transferred Employees which first accrue on or after the Closing (it being acknowledged that Sellers shall be liable for the payroll and wages that accrue on or prior to the Closing Date); provided, however, that notwithstanding anything to the contrary contained in this Agreement, Purchaser or its Affiliates shall be solely responsible for any Liabilities arising as a result of the termination of employment by Purchaser or an Affiliate thereof of any Transferred Employee at any time after the Closing;

(v) the Cure Payments; and

(vi) all Liabilities directly arising from or directly related to a breach or default by Purchaser of this Agreement or any agreement delivered hereunder.

(b) Other than the Assumed Liabilities, Purchaser shall not assume (or be deemed to have assumed) or be bound by or be obligated or responsible for any duties, responsibilities, services, commitments, expenses, obligations or liabilities of Sellers or their Affiliates or relating to the Purchased Assets or the Business (or which may be asserted against or imposed upon Purchaser as a successor or transferee of Sellers as an acquirer of the Purchased Assets as a matter of law) of any kind or nature, fixed or contingent, known or unknown, including, without limitation, the following (collectively, the “Excluded Liabilities”):

(i) any Liability of Sellers or their Affiliates in respect of any Taxes, other than any Assumed Liability described in Section 2.3(a)(iv);

(ii) any Liability of Sellers or their Affiliates under any Excluded Contract or Excluded Asset;

(iii) any Liability of Sellers or their Affiliates relating to or arising from Sellers’ or their Affiliates’ operation, possession or ownership of or interest in the Purchased Assets or the Business prior to the Closing Date, other than any Assumed Liability described in Sections 2.3(a)(iii) and 2.3(a)(v);

(iv) any Liability of Sellers or their Affiliates arising out of or resulting from its compliance or noncompliance with any Law;

(v) any Liability of Sellers or their Affiliates relating to any Legal Proceeding arising out of or in connection with the conduct of the Business or any other conduct of Sellers or their Affiliates or any of their respective officers, directors, employees, consultants, agents or advisors, in each case, prior to the Closing Date (other than the Assumed Liabilities and any Liabilities to the extent arising from or related to a breach or default by Purchaser of this Agreement);

(vi) any Liabilities of Sellers or their Affiliates arising under or in connection with any Employee Plans of, or maintained or required to be maintained by, Sellers or their Affiliates, other than any Assumed Liability described in Section 2.3(a)(iii);

(vii) any Liability of Sellers or their Affiliates to pay any fees or commissions to any broker or finder in connection with the transactions contemplated by this Agreement;

(viii) any Liability of Sellers or their Affiliates relating to employees arising from acts or omissions prior to or at the Closing, including Liabilities relating to any Legal Proceeding by any such employee and any Liability arising from or relating to layoffs or terminations of employees by Sellers or their Affiliates prior to or on the Closing Date;

(ix) any Intercompany Claims;

(x) any Liability arising from the infringement, misappropriation or violation of any intellectual property of any other Person arising from or relating to the operation of the Business prior to the Closing; and

(xi) any other Liability of Sellers or their Affiliates that is not an Assumed Liability.

(c) Purchaser may amend the Schedules setting forth the Assumed Contracts and the Excluded Contracts attached hereto at any time on or before one (1) business day prior to the Closing Date in order to exclude from the definition of Assumed Contract, and include in the definition of Excluded Contract, any Contract not otherwise excluded in the definition thereof; provided, however, the prior written consent of the First Lien Agent and Sellers (which shall not be unreasonably withheld) shall be required in order to remove Contracts from the Schedule of Assumed Contracts and include them on the Schedule of Excluded Contracts if any such Contracts would, if excluded as an Excluded Contract, reasonably be expected to cause or result in Liability to Sellers in the form of rejection damages in excess of \$5,000 per Contract or \$25,000 for all such Contracts. The parties hereto, with the consent of the First Lien Agent with respect to Contracts of Parent, may amend Schedule 2.1(b) at any time on or before one (1) business day prior to the Closing Date in order to include in the definition of Assumed Contract any Contract of Parent not already included therein.

(d) The Assumed Contracts of Parent shall be assumed by Parent and assigned to Purchaser in accordance with the requirements of Section 365 of the Bankruptcy Code and the Sale Order.

Section 2.4 Required Consents.

(a) Notwithstanding anything to the contrary contained herein, but subject to Section 9.4 and Section 9.10, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to Purchaser of any Purchased Asset (i) is prohibited by any applicable Law or (ii) would require the consent of any third party or any Governmental Authority (including pursuant to the Sale Motion) (all such required consents of third parties which are necessary for the consummation of the transactions contemplated hereby, the “Required Consents”) and shall otherwise not have been obtained prior to Closing and the Closing nevertheless occurs, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery, or an attempted sale, conveyance, transfer, assignment or delivery of such Purchased Asset (a “Deferred Asset”) and the provisions set forth below in Section 2.4(b) shall govern.

(b) Following the Closing Date (for so long as Sellers remain in existence), the parties hereto shall have a continuing obligation to use their respective commercially reasonable efforts to cooperate with each other and to obtain, at Purchaser’s sole cost and expense, all Required Consents and each party hereto shall provide all of the assistance that is reasonably requested by the other party hereto in connection with securing such Required Consents; provided, however, that the parties’ obligations under this Section 2.4(b) shall be subject to the Efforts Conditions. To the extent that any Required Consents are not obtained prior to the Closing, Sellers and Purchaser shall cooperate with each other in good faith to establish, to the extent practicable, arrangements that are reasonable and lawful as to Sellers and Purchaser, and which result in the benefits and obligations under the applicable Deferred Asset, including enforcement for the benefit of Purchaser of any and all rights of Sellers against a third party thereto arising out of the breach or cancellation thereof by such third party; provided that Purchaser shall undertake to pay or satisfy the corresponding Liabilities for the enjoyment of such benefit to the extent that Purchaser would have been responsible therefor hereunder as Assumed Liabilities if such Required Consent had been obtained prior to Closing.

(c) If, for a period of up to ninety (90) days following the Closing Date (or such shorter period as Sellers are in existence), (i) Purchaser identifies any asset of Sellers relating to the Business that it believes is both material and necessary to purchase that is not a Purchased Asset pursuant to Section 2.1 or identified as an Excluded Asset pursuant to Section 2.2, (ii) Sellers (and the First Lien Agent, with respect to assets of Parent) agree in writing that such asset should be a Purchased Asset (which determination shall be made in good faith by Sellers), and (iii) such asset is still owned by either Seller, then such asset shall be deemed to be a Purchased Asset for all purposes of this Agreement, and Sellers shall use their commercially reasonable efforts to convey such asset to Purchaser. For the avoidance of doubt, to the extent any Contract is deemed to be a Purchased Asset pursuant to this Section 2.4(c), such Contract shall be deemed to be an Assumed Contract for all purposes of this Agreement.

(d) Notwithstanding anything else contained herein, nothing in this Section 2.4 shall be deemed a waiver by Purchaser of its right to have received on or before the Closing an effective assignment of all of the Purchased Assets, nor will this Section 2.4 be deemed to constitute an agreement to exclude from the Purchased Assets any of the assets described in Section 2.1.

ARTICLE III PURCHASE PRICE; ALLOCATION

Section 3.1 Purchase Price.

(a) In exchange for the sale, assignment, transfer, conveyance and delivery from Sellers of the Purchased Assets, Purchaser shall provide consideration (collectively, the "Purchase Price"), consisting of:

(i) assumption of the Assumed Liabilities pursuant to this Agreement;
and

(ii) cash in an amount equal to Eighteen Million U.S. Dollars (\$18,000,000) (the "Initial Purchase Price"), subject to adjustment in accordance with Section 3.1(b)(ii) and Section 3.3, which shall be allocated among the Sellers based on the relative value of the respective Purchased Assets sold by them hereunder (which allocation shall be substantially in accordance with the PwC report, a copy of which has been provided to Purchaser.

(b) At the Closing, Purchaser shall pay to Sellers (or their designee(s)) (in accordance with Section 3.1(a)(ii)) an amount of cash (the "Closing Cash Payment") equal to:

(i) the Initial Purchase Price;

(ii) plus the amount, if any, by which the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)) exceeds the Target Net Working Capital, or minus the amount, if any, by which the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)) is less than the Target Net Working Capital; and

(iii) minus Five Hundred Thousand U.S. Dollars (\$500,000) (the "Escrow Amount").

(c) At the Closing, Purchaser shall deposit the Escrow Amount into an escrow account (the "Escrow Account") established by the Escrow Agent pursuant to an escrow agreement in substantially the form attached hereto as Exhibit B (the "Escrow Agreement") to be released in accordance with Section 3.3(e).

Section 3.2 Deposit. Prior to the execution of this Agreement, Purchaser has provided a cash deposit in the amount of One Million Three Hundred Thousand U.S. Dollars (\$1,300,000), which amount was deposited and is being held in escrow with the Escrow Agent (the "Deposit") pursuant to the Escrow Agreement. If the Closing occurs, the Deposit shall be released to Sellers (or their designee(s)), subject to any Tax withholding obligation, and credited towards the Closing Cash Payment in the proportions set forth in Section 3.1(a)(ii). If the Closing does not occur, then the Deposit shall be disbursed as follows: (a) in the event of a termination of this Agreement by Sellers pursuant to Section 11.2(c), the Deposit shall be released, subject to any Tax withholding obligation, to Parent (or its designee(s)) as liquidated damages, and (b) in the event of a termination of this Agreement for any reason other than those specified in clause (a) above, the Deposit shall be returned to Purchaser. If Sellers deliver to the Escrow Agent, no later than one (1) business day prior to the release and payment of any Deposit funds by the Escrow Agent as set forth in this

Section 3.2, a Valid Certificate, then the deduction and withholding of any Israeli Taxes shall be made in accordance with the provisions of such Valid Certificate.

Section 3.3 Purchase Price Adjustment.

(a) At least five (5) business days prior to the Closing Date, Sellers shall prepare and deliver to Purchaser a good faith estimate of the Closing Net Working Capital (“Estimated Closing Net Working Capital”), including a reasonably detailed schedule showing Sellers’ calculation thereof, without giving effect to any purchase accounting adjustments arising from the transactions contemplated by this Agreement. Sellers and their representatives shall, upon Purchaser’s request, provide Purchaser with reasonable access to the Persons involved in calculating Closing Net Working Capital and to any relevant document or information reasonably requested by Purchaser and within Sellers’ possession for purposes of Purchaser’s review and verification thereof (it being understood that Sellers shall not be required to create any new document or information in response to any such request). If Purchaser has any objections to Sellers’ calculation of Estimated Closing Net Working Capital, within such five (5) Business Day Period prior to the Closing Date, Purchaser may prepare and deliver to Sellers a written notice, executed by an officer of Purchaser, setting forth (x) in reasonable detail Purchaser’s good faith objection(s) to Sellers’ calculation of Estimated Closing Net Working Capital and (y) Purchaser’s proposed calculation of Estimated Closing Net Working Capital. Purchaser and Sellers shall work together in good faith to resolve any such objections. If Purchaser and Sellers are unable to resolve any such objections, subject to the proviso at the end of this sentence, the Estimated Closing Net Working Capital shall be modified and deemed to be the average of (i) Sellers’ proposed calculation of Estimated Closing Net Working Capital, and (ii) Purchaser’s proposed calculation of Estimated Closing Net Working Capital, in each case as modified based on their discussions during such five (5) Business Day period (the “Average Estimate”); provided, that, if the Average Estimate is lower than Sellers’ proposed calculation of Estimated Closing Net Working Capital by more than the Escrow Amount, the Estimated Closing Net Working Capital shall be modified and deemed to be (A) Sellers’ proposed calculation of Estimated Closing Net Working Capital, minus (B) the Escrow Amount.

(b) No later than sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Sellers a statement setting forth Purchaser’s calculation of Closing Net Working Capital (the “Final Closing Net Working Capital”), including a reasonably detailed schedule showing Purchaser’s calculation thereof. For a period of forty-five (45) days after delivery of Purchaser’s calculation of the Final Closing Net Working Capital (the “Review Period”), Purchaser shall provide Sellers and their representatives, upon request, with reasonable access during normal business hours to the Persons who prepared the Final Closing Net Working Capital, and to any relevant document or information reasonably requested by Sellers and within Purchaser’s possession for purposes of Sellers’ review and verification thereof (it being understood that Purchaser shall not be required to create any new document or information in response to any such request).

(c) If Sellers disagree with Purchaser’s calculation of the Final Closing Net Working Capital, Sellers shall, prior to the expiration of the Review Period, notify Purchaser in writing of such disagreement by setting forth Sellers’ basis for such disagreement (an “Objection Notice”). If Sellers timely deliver an Objection Notice to Purchaser, then Purchaser and Sellers

shall negotiate in good faith to resolve their disagreements with respect to the computation of the Final Net Working Capital. In the event that Purchaser and Sellers are unable to resolve all such disagreements within thirty (30) days after Purchaser's receipt of such Objection Notice, Purchaser and Sellers shall submit such remaining disagreements (the "Disputed Items") to Andersen Tax LLC or, if Andersen Tax LLC is unable or unwilling to serve, another nationally recognized accounting firm as is mutually acceptable to Purchaser and Sellers (the "Accounting Firm"). Purchaser and Sellers will instruct the Accounting Firm to render its determination with respect to the Disputed Items in a written report that specifies the conclusions of the Accounting Firm as to each such Disputed Item; provided, however, that the Accounting Firm will render a determination only as to the Disputed Items. Purchaser and Sellers will each use their commercially reasonable efforts to cause the Accounting Firm to render its determination within thirty (30) days after referral of the Disputed Items to such firm or as soon thereafter as reasonably practicable. The Accounting Firm's determination of the Disputed Items will be final and binding on the parties for purposes of this Agreement; provided, however, that the Accounting Firm may not assign a value to any Disputed Item that is greater than the greatest value, or less than the smallest value, claimed for such Disputed Item by Purchaser and Sellers. Purchaser will revise the calculation of Final Closing Net Working Capital as appropriate to reflect the resolution of the Disputed Items pursuant to this Section 3.3(c). The fees and expenses of the Accounting Firm will be paid by Purchaser, on the one hand, and Sellers, on the other hand, in inverse proportion to the relative amounts of the Disputed Items determined to be for the account of Purchaser and Sellers, respectively (such that if 25% of the Disputed Items are determined to be for the account of the first party, and 75% of the Disputed Items are determined to be for the account of the second party, the first party will pay 75% of the fees and expenses of the Independent Accounting Firm and the second party will pay 25%).

(d) For purposes of complying with this Section 3.3, Purchaser and Sellers will furnish to each other and to the Accounting Firm such work papers and other documents and information relating to the Disputed Items as the Accounting Firm may request and are available to that party (or its independent public accountants). Purchaser may require that the Independent Accounting Firm enter into a customary form of confidentiality agreement with respect to the work papers and other documents and information relating to the Business provided to the Accounting Firm pursuant to this Section 3.3.

(e) If the Final Closing Net Working Capital as finally determined pursuant to this Section 3.3 is less than the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)), then Purchaser and Sellers will provide joint written instructions to the Escrow Agent instructing the Escrow Agent to release the amount of such difference to Purchaser from the Escrow Account in accordance with the terms of the Escrow Agreement and any remainder thereof to Sellers in accordance with the allocation percentages set forth in Section 3.1(a)(ii). If the Final Closing Net Working Capital as finally determined pursuant to this Section 3.3 is greater than the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)), then Purchaser will pay to Sellers (in accordance with the allocation percentages set forth in Section 3.1(a)(ii)) the amount of such difference in cash and Purchaser and Sellers will provide joint written instructions to the Escrow Agent instructing the Escrow Agent to release the balance of the Escrow Account to Sellers in accordance with the terms of the Escrow Agreement. Any payment made pursuant to this Section 3.3 will be treated by the parties for all purposes as an adjustment to the Purchase Price and will not be subject to offset for any reason. The Escrow

Account shall be Purchaser's sole and exclusive remedy with respect to claims pursuant to this Section 3.3 or otherwise relating to Net Working Capital.

(f) Notwithstanding the foregoing, it is expressly understood among the parties that if neither Seller remains in existence at any time at which the Final Closing Net Working Capital has not been finally determined in accordance with this Section 3.3, then, subject to the terms of the Escrow Agreement, all references in this Section 3.3 to "Sellers" or either "Seller" shall be deemed references to the "First Lien Agent."

Section 3.4 Tax Withholding.

(a) Notwithstanding anything to the contrary in this Agreement, Purchaser, any of its Affiliates that shall acquire Purchased Assets or assume Assumed Liabilities, or any agent or other Person acting on their behalf (each, a "Payor"), shall be entitled to deduct and withhold from any consideration or payment payable or otherwise deliverable pursuant to this Agreement such amounts that are required to be deducted and withheld therefrom under applicable Law (including, for the avoidance of doubt, the Ordinance). Any amounts so deducted and withheld shall be remitted to the applicable Tax authority and 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 (the "Payee").

(b) If any Payee delivers, no later than three (3) business days prior to the Closing Date or the date of the applicable payment, as the case may be, a Valid Certificate to Purchaser and the applicable Payor, then the deduction and withholding of any Israeli Taxes shall be made in accordance with the provisions of such Valid Certificate (subject to withholding on account of non-Israeli Taxes, if applicable).

Section 3.5 VAT. The Purchase Price is exclusive of VAT, and to the extent that VAT payments are required with respect to any portion thereof under applicable Law, Purchaser shall add such amount to the applicable payment such that the VAT shall be borne and paid by Purchaser or its designee; provided that Purchaser or its designee shall only be required to make any such payments against provision of a valid VAT invoice by Sellers or their respective Affiliate. Notwithstanding anything herein to the contrary, the Purchase Price (together with the Assumed Liabilities) will be allocated among the Purchased Assets and Assumed Liabilities acquired from Sizmek Israel by any Israeli Affiliate(s) of Purchaser (the "Israeli Purchased Assets"), on the one hand, and the Purchased Assets and Assumed Liabilities acquired from Sizmek Israel by Purchaser and non-Israeli Affiliates of Purchaser (the "Non-Israeli Purchased Assets" and "Non-Israeli Purchased Assets Price", respectively), on the other hand, substantially in accordance with the PwC report, a copy of which has been provided to Purchaser; provided, however, that such allocation shall be provided to Purchaser for its review and comment, and Sellers shall consider Purchaser's comments in good faith and discuss them with PwC. The parties agree that the sale of the Non-Israeli Purchased Assets at the Non-Israeli Purchased Assets Price to Purchaser or its designee will be subject to zero rate VAT in accordance with Section 30 of the Israeli Value Added Tax Law-1975 and Purchaser hereby represents and warrants that it (and any applicable non-Israeli Affiliate or designee of Purchaser) is a foreign resident for purposes of Section 30 of the Israeli VAT Law, 1975. The parties shall take all required steps to file any Tax reports consistent with the above characterizations. For the avoidance of doubt, it is agreed that Purchased Assets (and

Assumed Liabilities) which are transferred from any Seller other than Sizmek Israel shall not be subject to any VAT.

Section 3.6 Direct Payment to Selling Entity. Notwithstanding anything herein to the contrary, the portion of the consideration that is allocable to the Purchased Assets and Assumed Liabilities of either Seller or an Affiliate thereof (each, a “Selling Entity”), as set forth in Section 3.1(a)(ii), shall be paid directly to such Selling Entity.

Section 3.7 Allocation of Purchase Price. The parties agree to allocate for Tax purposes (and, as applicable, to cause their respective Affiliates to allocate for Tax purposes) the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets in accordance with the following procedures and, to the extent applicable, in accordance with Section 1060 of the Code, and the Treasury Regulations promulgated thereunder and with respect to Purchased Assets acquired from Sizmek Israel, in accordance with applicable Israeli Tax laws; provided, however, that the allocation among the various Sellers shall be consistent with the allocation of the Closing Cash Payment among Sellers as provided in Section 3.1(a)(ii) and between Israeli Purchased Assets and Non-Israeli Purchased Assets as provided in Section 3.5. Within ninety (90) days after the Closing Date, Purchaser shall deliver to Parent a proposed allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes as of the Closing Date (the “Purchaser’s Allocation”). No later than thirty (30) days following the delivery of the Purchaser’s Allocation, Sellers may deliver to Purchaser a statement setting forth in reasonable detail any objections thereto, the basis for such objections, and Parent’s proposed allocation (“Sellers’ Allocation Notice”). If a Seller timely delivers to Purchaser a Sellers’ Allocation Notice, Sellers and Purchaser shall, during the twenty (20) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts. The Purchaser’s Allocation, if no Sellers’ Allocation Notice is timely delivered, or as adjusted pursuant to any agreement between Sellers and Purchaser during the twenty (20) day period following the timely delivery of Sellers’ Allocation Notice, shall be final and binding on the parties. If Sellers’ Allocation Notice is timely delivered and Sellers and Purchaser are unable to reach agreement within such twenty (20) day period, Purchaser and Sellers shall submit such remaining disagreements to the Accounting Firm. Purchaser and Sellers shall submit, in writing, to the Accounting Firm their briefs detailing their views as to the appropriate allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets, and the Accounting Firm shall make a written determination as to the appropriate allocation of the Purchase Price and any other such amounts among the Purchased Assets, which determination shall be final and binding on the parties for all purposes hereunder. Purchaser and Sellers will each use their commercially reasonable efforts to cause the Accounting Firm to render its determination within thirty (30) days or as soon thereafter as reasonably practicable. Each of Purchaser and Sellers shall bear fifty percent (50%) of the fees and expenses of the Accounting Firm incurred in connection with this Section 3.7. The allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets, as finally determined pursuant to this Section 3.7, is referred to herein as the “Allocation.” Each of the parties (a) shall (and shall cause its Affiliates to) prepare and file all Tax Returns (and Internal Revenue Service Forms 8594) in a manner consistent with the Allocation and (b) shall not (and shall cause its Affiliates not to) take any position on any Tax Return or in connection with any Tax proceeding inconsistent with the Allocation, in each case, except to the extent otherwise required by a “determination” within the meaning of Section 1313(a)

of the Code (or any analogous provision of applicable state, local or non-U.S. Law). Notwithstanding the above, for the avoidance of doubt, any reporting for Tax purposes of the parties shall be consistent with the allocation of the Closing Cash Payment among Sellers as provided in Section 3.1(b) and between Israeli Purchased Assets and Non-Israeli Purchased Assets as provided in Section 3.5.

ARTICLE IV INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 4.1 Transfer Documents. At the Closing, Sellers will deliver to Purchaser (a) one or more Bills of Sale in form and substance reasonably satisfactory to Purchaser and Sellers (the “Bill of Sale”), and (b) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including, without limitation, an assignment of the Intellectual Property in form and substance reasonably satisfactory to Purchaser and Sellers (the “Intellectual Property Assignment Agreement”), assignments of the Assumed Contracts that are not included within the Sale Order in form and substance reasonably satisfactory to Purchaser and Sellers (the “Assumed Contract Assignment Agreement”) and any other assignments as shall be reasonably necessary or appropriate to vest in Purchaser all of Sellers’ right and title to, and interest in, the Purchased Assets (other than, to the extent applicable, any Deferred Assets). If, in accordance with Section 2.4, any Deferred Asset is not sold, conveyed, transferred, assigned and delivered to Purchaser at the Closing, then promptly following receipt of any applicable Required Consent following the Closing, Sellers shall deliver to Purchaser a Bill of Sale, Intellectual Property Assignment Agreement and/or Assumed Contract Assignment Agreement, as applicable, and any other assignments as shall be reasonably necessary or appropriate to vest in Purchaser all of Sellers’ right and title to, and interest in, the applicable Deferred Asset.

Section 4.2 Assignment and Assumption Documents. At the Closing, Purchaser and Sellers, as applicable, will execute and deliver an Assignment and Assumption Agreement in form and substance reasonably satisfactory to Purchaser and Sellers (the “Assumption Agreement”) in order to effect the assignment and assumption of the Assumed Liabilities.

ARTICLE V CLOSING

Section 5.1 Closing Date. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place via the electronic exchange of signatures, at the offices of Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, NY 10022, or at such other location as may be mutually agreed upon among the parties hereto on (a) July 31, 2019 (the “Anticipated Closing Date”), or if all of the conditions to Closing set forth in Articles IX and X have not been satisfied (or waived) on or prior to the Anticipated Closing Date, then on the date which is not later than the date that is one (1) business day after the date on which all conditions to Closing set forth in Articles IX and X have been satisfied (or waived) or (b) such later date as the parties mutually agree in writing (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. Eastern Time on the Closing Date.

ARTICLE VI SELLERS' REPRESENTATIONS AND WARRANTIES

Sellers jointly and severally represent and warrant to Purchaser that the statements contained in this Article VI are true and correct as of the date of this Agreement, subject to the disclosures and exceptions set forth in the Disclosure Schedules attached hereto:

Section 6.1 Organization, Qualification and Corporate Power. Sizmek Israel is a company duly organized and validly existing under the Laws of Israel and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not reasonably be expected to be material to the Business as a whole. Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not reasonably be expected to be material to the Business as a whole. Subject, only in the case of Parent, to obtaining the Sale Order, Sellers have (a) all necessary power and authority to own and operate their properties and to carry on the Business as it is now being conducted, (b) the power and authority to execute and deliver and perform their obligations under this Agreement and the other Transaction Documents, and (c) to consummate the transactions contemplated hereby and thereby. As used herein, the term "Transaction Documents" means this Agreement and all other agreements, documents and instruments executed in connection herewith or required to be executed and/or delivered by Sellers in accordance with the provisions of this Agreement. For the avoidance of doubt, none of the representations and warranties set forth in this Section 6.2 with respect to Sizmek Israel are in any way dependent upon obtaining the Sale Order.

Section 6.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject, only in the case of Parent, to obtaining the Sale Order, (a) the execution, delivery and performance of this Agreement and the other Transaction Documents by Sellers and the transfer or assignment of the Purchased Assets to Purchaser have been duly and validly authorized and approved by all necessary corporate action, (b) this Agreement and the other Transaction Documents constitute valid and binding obligations of Sellers, enforceable against Sellers in accordance with their terms and (c) Sellers have full power, right and authority to sell and convey to Purchaser the Purchased Assets. For the avoidance of doubt, none of the representations and warranties set forth in this Section 6.2 with respect to Sizmek Israel are in any way dependent upon obtaining the Sale Order.

Section 6.3 Title to Assets; Subsidiaries. Subject to obtaining the Sale Order, Sellers have good and marketable title to, or a valid leasehold interest in, all of the properties and assets included in the Purchased Assets, and upon the consummation of the transactions contemplated hereby and by the Transaction Documents, Purchaser will acquire good and marketable title to, or a valid leasehold interest in, all of the Purchased Assets, in each case free and clear of all Liens other than Permitted Liens. The Purchased Assets constitute all of the properties and assets used in or necessary to conduct the Business in substantially the same manner as conducted by Sellers on the Effective Date, subject to (a) any Excluded Contracts that Purchaser elects not to acquire as provided in Section 2.3(c) and (b) any services provided under the Transition Services Agreement.

Section 6.4 Legal Proceedings. Except for the Bankruptcy Case or as set forth on Schedule 6.4, there is no Legal Proceeding pending or, to the Knowledge of Sellers, threatened in writing against Sellers, the Purchased Assets or the Business (or to the Knowledge of Sellers, pending or threatened, against any of the Business Employees or any other officers or directors of Sellers with respect to their business activities related to the Purchased Assets or the Business) that (a) as of the Effective Date challenges or that as of the Effective Date is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement; or (b) is related to the Purchased Assets, the Assumed Liabilities or the Business.

Section 6.5 Real Property. Sellers do not own any real property. Schedule 6.5 sets forth the street addresses of all real property used or held for use in the Business which Sellers or an Affiliate thereof leases, operates, occupies or subleases in connection with the Business or upon which any tangible Purchased Assets are located and all instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in Sellers or an Affiliate thereof or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable) (collectively, the "Leases").

Section 6.6 No Violation of Laws or Agreements. Subject to obtaining the Sale Order, the execution and delivery by Sellers of this Agreement and the Transaction Documents contemplated hereby, the performance by Sellers of their obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated herein and therein will not (a) violate any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority to which Sellers are subject; (b) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the Purchased Assets, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which either Seller is a party and which relates to any of the Purchased Assets or the Business (except, with respect to Parent, for breaches due solely to the filing of the Bankruptcy Case, which shall include failures to make payments or changes in financial condition); or (c) contravene, conflict with or result in a violation of any provision of any organizational documents of Sellers, except in the cases of clauses (a) and (b) above, for such violations which would not, individually or in the aggregate, reasonably be expected to be material to the Business as a whole. Other than the Sale Order and the consents set forth on Schedule 6.6, no consent, waiver, approval or order of or from, or filing with or notification to, any Person (including any Governmental Authority) is required in connection with the execution, delivery and performance of this Agreement or the other Transaction Documents by Sellers.

Section 6.7 Employee Benefits. Sellers have made available to Purchaser summaries of all material written or unwritten Employee Plans covering Business Employees, Contractors and former employees, directors or consultants in, or related to, the Business. Sellers have made available to Purchaser true and complete summaries of all such material written or unwritten Employee Plans, including summaries of written descriptions thereof which have been distributed to Business Employees and for which any Seller or any Affiliate thereof has copies, all annuity contracts or other funding instruments relating thereto, and a summary description of all Employee Plans which are not in writing. Neither Seller nor any of their respective Affiliates is liable for any

payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Business Employees (other than routine payments to be made in the Ordinary Course of Business). Except as set forth on Schedule 6.7, there are no pending claims against either Seller or any of their respective Affiliates under any workers' compensation plan or policy or for short or long term disability, other than routine sick leave entitlements, in each case with respect to any Business Employees, Contractors or former employees, directors or consultants in, or related to, the Business.

Section 6.8 Labor Matters.

(a) Schedule 6.8(a)-1 sets forth a true, correct and complete list of all employees of Sellers and their Affiliates engaged in the Business (the "Business Employees") and includes each Business Employee's name and title, work location, date of hire or engagement, status, actual scope of employment (*i.e.*, full-time, part-time or temporary), overtime classification (*i.e.*, exempt or non-exempt), prior notice entitlement, salary and any other compensation and benefits, payable, maintained or contributed to or with respect to which any potential liability is borne by Sellers or any Affiliate thereof to each of the Business Employees and including but not limited to the following entitlements: bonus (including type of bonus, calculation method and amounts received in the last financial year), deferred compensation, commissions (including calculation method and amounts paid during the last financial year), overtime payment, vacation entitlement and accrued vacation, travel entitlement (including any travel pay, car, leased car arrangement and car maintenance payments), sick leave entitlement and accrual, shares and any other incentive payments, recuperation pay entitlement and accrual, pension arrangement or any other provident fund (including managers' insurance and further education fund), their respective contribution rates and the salary basis for such contributions, whether such Business Employee, is subject to Section 14 Arrangement under the Israeli Severance Pay Law - 1963 ("Section 14 Arrangement") (and, to the extent such Business Employee is subject to the Section 14 Arrangement, an indication of whether such Section 14 Arrangement has been applied to such person from the commencement date of his or her employment and on the basis of his or her entire salary), last compensation increase to date including the amount thereof, and whether the Business Employee is on leave (and if so, the category of leave, the date on which such leave commenced and the date of expected return to work). Other than their salaries, the Business Employees are not entitled to any payment or benefit that may be reclassified as part of their determining salary for any purpose, including for calculating any social contributions. No Business Employee is entitled (whether by virtue of any Contract or policy of Sellers or any of their Affiliates) to any benefits, entitlement or compensation that is not listed on Schedule 6.8(a)-1. Neither Seller nor any Affiliate of either Seller has made any promises or commitments to any Business Employees or any former employees engaged in the Business, whether in writing or not, with respect to any future changes or additions to their compensation or benefits, as listed on Schedule 6.8(a)-1. Other than as listed on Schedule 6.8(a)-1, (i) there are no other employees employed by either Seller or any Affiliate thereof engaged in the Business, and (ii) all Business Employees and all former employees of Sellers and their Affiliates engaged in the Business have signed an employment agreement substantially in one of the forms delivered or made available to Purchaser prior to the Effective Date. Details of any person who has accepted an offer of employment made by Sellers or any of their Affiliates with respect to the Business, but whose employment has not yet started and any Business Employee who was provided with or who received a notice of termination of his

or her employment in the twelve (12) months prior to the Effective Date are set forth on Schedule 6.8(a)-2.

(b) Schedule 6.8(b)-1 sets forth a true and complete list of all present independent contractors and consultants to Sellers and their Affiliates with respect to the Business (“Contractors”), and includes each Contractor’s name, date of commencement, and rate of all regular compensation and benefits, bonus or any other compensation payable. Except as set forth on Schedule 6.8(b)-2, all Contractors can be terminated on notice of thirty (30) days or less to the Contractor. Except as set forth on Schedule 6.8(b)-3, all Contractors are and all former independent contractors and consultants of the Business were rightly classified as independent contractors and would not reasonably be expected to be reclassified by any Governmental Authority as employees of Sellers or any of their Affiliates, for any propose whatsoever and all Contractors and all former independent contractors and consultants have received all their rights to which they are and were entitled to according to any applicable Law or Contract with Sellers or their Affiliates. Neither Sellers nor any of their Affiliates are engaged with any personnel through manpower agencies with respect to the Business.

(c) Except as set forth on Schedule 6.8(c) and except for “at-will” offer letters that do not contain post-termination obligation on Sellers and their Affiliates, there are no employment, consulting, severance or indemnification contracts between Sellers (or any Affiliate thereof) and any U.S. Business Employees. Except as set forth on Schedule 6.8(c), (i) neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) is nor has been party to or bound by any collective bargaining or similar agreement with any labor organization; (ii) neither Seller nor any Affiliate of either Seller has Business Employees or had any former employees engaged in the Business that are represented by any labor organization nor is any labor organizations purporting to represent or seeking to represent any Business Employees, and there are no representation proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or other labor relations tribunal; and (iii) to the Knowledge of Sellers, there is no union organizing activities among the Business Employees. Neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) is or has ever been a member of any employers’ association or organization. Neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) has paid, been required to pay or been requested to pay any payment (including professional organizational handling charges) to any employers’ association or organization. Except for extension orders which generally apply to all employees in Israel, no extension orders apply to either Seller or any Affiliate of either Seller (solely with respect to the Business Employees) and no Business Employee benefits from any such extension orders.

(d) Other than as may become due by Sellers as a result of termination of Business Employees effective as of Closing, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will with respect to the Business Employees (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation due, to any current or former officer, director or employee (or their respective beneficiaries) of Sellers, (ii) increase any benefits otherwise payable under any Employee Plan, or (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits.

(e) There are no pending or, to the Knowledge of Sellers, threatened, lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, claims, or proceedings (including any administrative investigations, charges, claims, actions, or proceedings), against Sellers brought by or on behalf of any applicant for Business employment, any current or former employee, representative, agent, consultant, independent contractor, subcontractor or leased employee, volunteer or “temp” of Sellers in each case with respect to the Business, or any group or class of the foregoing, or any Governmental Authority, or alleging violation of any labor or employment Laws, breach of any express or implied contract of employment, wrongful termination of employment, or any other discriminatory, wrongful, or tortious conduct in connection with the employment relationship with respect to the Business.

(f) Neither Seller nor any Affiliate thereof (solely with respect to the Business Employees) has received notice of complaints, charges or claims against such Seller or any such Affiliate, and Sellers do not have any Knowledge of any such complaints, charges or claims being threatened, by or before any Governmental Authority or based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by Sellers or any of their Affiliates (solely with respect to the Business), of any individual.

(g) Sellers and their Affiliates (solely with respect to the Business Employees and the Contractors) are and have been in compliance in all material respects with all Laws relating to employees, employment and labor issues.

(h) Except as set forth on Schedule 6.8(h) or exclusively resulting from the termination and/or transfer of all or substantially all of the employees of Sellers and their Affiliates, neither Seller nor any Affiliate thereof (solely with respect to the Business Employees) has unsatisfied obligations of any nature to any of its former employees or independent contractors or consultants, and their termination was in compliance with all material applicable Laws and Contracts.

(i) To the Knowledge of Sellers, except as set forth in Schedule 6.8(i), no Business Employee (i) has received an offer to join a business that may be competitive with the Business, or (ii) is in violation of any term of any employment contract, invention assignment agreement, patent disclosure agreement, non-competition agreement, non-solicitation agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Sellers or any of their Affiliates because of the nature of the Business, or to the use of trade secrets or proprietary information of others.

(j) Without derogating from any of the above representations, except as set forth on Schedule 6.8(j), Sellers’ and their Affiliates’ liabilities towards the Business Employees regarding severance pay, accrued vacation and contributions to all Employees Plans are fully funded or if not required by applicable Law to be funded are accrued on Sellers’ or such Affiliates’ (as relevant) financial statements as of the date of such financial statements. Except as set forth on Schedule 6.8(j), Section 14 Arrangement was properly applied in accordance with the terms of the general permit issued by the Israeli Labor Minister regarding all former and current Business Employees of Sellers and any of their Affiliates who reside in Israel based on their full salaries and from their commencement date of employment. All amounts that Sellers or their Affiliates are legally or contractually required to either (i) deduct from the Business Employees’ salaries and

any other compensation or benefit, or to transfer to such Business Employees' Employee Plans or (ii) withhold from Business Employees' salaries and any other compensation or benefit, and to pay to any Governmental Authority as required by any applicable Law, have been duly deducted, transferred, withheld and paid, in accordance with applicable Law, and neither Seller nor any of its Affiliates (solely with respect to the Business Employees) has any outstanding obligation to make any such deduction, transfer, withholding or payment (other than routine payments, deductions or withholdings to be timely made in the Ordinary Course of Business and consistent with past practice).

(k) It is the understanding of the Sellers that the Transferred Employees employed by Sizmek Technologies sp. z.o.o., a Polish company ("Sizmek Poland") will be transferred to Purchaser or its Affiliates by operation of law as the transfer of part of a work establishment within the meaning of Art. 23¹ § 1 of the Polish Labour Code.. Sellers and their Affiliates also confirm that Sizmek Poland has no unsatisfied obligations of any nature to any of its employees being Transferred Employees.

Section 6.9 Brokers. Except for those set forth in Schedule 6.9, for whom Sellers shall be solely responsible for any fees or commissions owing, Sellers have not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Sellers which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 6.10 Permits. Sellers have all material permits, licenses, certifications, authorizations, approvals, registrations and other similar consents that are required to own, lease or operate the Purchased Assets and to conduct the Business in the Ordinary Course of Business. Schedule 6.10 sets forth a list of all such permits, licenses, certifications, authorizations, approvals, registrations and other similar consents, all of which are in full force and effect. Sellers are and at all times have been in compliance in all material respects with all permits applicable to it, or applicable to the conduct and operations of the Business, or relating to or affecting the Purchased Assets. Sellers have not received any written notice from any Governmental Authority specifically alleging (a) any actual, alleged, possible or potential material violation of, or failure to comply with, any such permits or (b) any actual, alleged, possible or potential revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any permit.

Section 6.11 Taxes; Tax Returns.

(a) Except as set forth on Schedule 6.11(a), Sellers have not received any outstanding notice of audit, and are not undergoing any audit, of Tax Returns relating to the Business and have never received any written notice of deficiency or assessment from any taxing authority with respect to liability for Taxes relating to the Business which has not been fully paid or finally settled. Except as set forth on Schedule 6.11, Sellers have complied in all material respects with all applicable Laws, rules and regulations relating to the payment and withholding of Taxes and have withheld all amounts required by law to be withheld from all payments, including the wages or salaries of employees and independent contractors of the Business and are not liable for any Taxes with respect to the employees and independent contractors of the Business for failure to comply with such laws, rules and regulations. None of the matters described on Schedule 6.11(a) contain any provision or arrangement that would reasonably be expected to have

a material and adverse effect on the transactions contemplated by this Agreement or Purchaser's ownership and operation of the Business following the Closing.

(b) Except as set forth on Schedule 6.11(b), neither Sellers, nor any of their respective Affiliates which shall transfer Purchased Assets and Assumed Liabilities pursuant to this Agreement, is deemed a resident for Tax purposes (or as having a permanent establishment) in any jurisdiction other than the jurisdiction of its incorporation.

(c) There are no Liens for Taxes upon the Purchased Assets.

(d) Neither Seller nor any Affiliate thereof has ever been side to any reorganization under Part E2 of the Ordinance nor is subject to any restrictions under Part E2 of the Ordinance. Neither Seller nor any Affiliate thereof holds any "right in real estate" or "right in real estate corporation" as defined under section 1 of the Israeli Real Estate Taxation Law (Betterment and Purchase) – 1963.

(e) Except as set forth on Schedule 6.11(e), Sellers have timely filed with the appropriate taxing authorities all material Tax Returns related to the Purchased Assets or the Business in all jurisdictions in which Tax Returns are required to be filed under applicable Laws (taking into account any valid extensions to file such Tax Returns), and such Tax Returns are correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. Except as set forth on Schedule 6.11(e), neither Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a tax assessment or deficiency or the collection of Taxes, in each case, with respect to the Purchased Assets or the Business. Except as set forth on Schedule 6.11(e), all material Taxes due and owing by Sellers (whether or not shown on any Tax Return) have been fully and timely paid. Except as set forth on Schedule 6.11(e), no claim has ever been made by an authority in a jurisdiction in which either Seller does not file a Tax Return with respect to the Purchased Assets or the Business that such Seller is or may be subject to Taxes with respect to the Purchased Assets or the Business in that jurisdiction.

Section 6.12 Compliance with Laws.

(a) Except as set forth in Schedule 6.12, Sellers and the conduct of the Business are and at all times have been in compliance in all material respects with all Laws applicable to them or to the conduct and operations of the Business or relating to the Purchased Assets. Except as set forth on Schedule 6.12, Sellers have not received any written notice to the effect that, or otherwise been advised of, and to the Knowledge of Sellers there has not occurred with respect to the Purchased Assets or the Business, (i) any actual, alleged, possible or potential violation of, or failure to comply with, any such Laws, or (ii) any actual, alleged, possible or potential obligation on the part of Sellers to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Neither Seller nor any Person acting on behalf of either Seller, has directly or indirectly, on behalf of or with respect to the Business or the Purchased Assets, violated the Foreign Corrupt Practices Act of 1977 or any anti-bribery and anticorruption laws of countries in which Sellers may operate or procure goods or services with respect to the Business, including by:

(i) making or offering to make any contributions, payments or gifts of its property to or for the private use of any governmental official, employee or agent; (ii) establishing or maintaining any unrecorded fund or asset for any purpose, or making any intentionally false or artificial entries on its books or records for any reason; (iii) making any payments to any Person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment; (iv) making any contribution, or reimbursing any political gift or contribution made by any other Person, to candidates for public office; (v) engaging in any material transaction or making or receiving any material payment which was not properly recorded on the books of Seller; or (vi) creating or using any “off-book” bank or cash account or “slush fund.”

Section 6.13 Financial Statements.

(a) Sellers have delivered to Purchaser (i) consolidated audited balance sheets and statements of profits and losses and cash flows of Parent at and for the fiscal years ended December 31, 2017 and 2016 and the accompanying notes thereto and the draft consolidated unaudited balance sheet and statements of profits and losses and cash flows of Parent as at and for the fiscal year ended December 31, 2018 (collectively, the “Parent Financial Statements”), and (ii)(A) a statement of revenue by customer of the Business for the fiscal years ended December 31, 2018, December 31, 2017 and December 31, 2016, and (B) a statement of employee salary costs for the year ended December 31, 2018 (together, the “Business Financial Statements”).

(b) The Parent Financial Statements fairly present in all material respects the financial position, results of operations, and changes in financial position of Parent on a consolidated basis as of the dates and for the periods indicated and have been prepared consistent with the books and records of Seller. The Business Financial Statements are true, correct and complete in all material respects, and have been prepared in accordance with the books and records of the Business.

(c) Except for the filing of the Bankruptcy Case, or as set forth on Schedule 6.13(c), since December 31, 2018, (i) the Business has not suffered a Material Adverse Effect and (ii) Sellers have not taken any action that would be prohibited pursuant to Section 8.1 if such action were taken following the Effective Date.

(d) Schedule 6.13(d) sets forth, as of the Effective Date, an aging of the Accounts Receivable as of the Effective Date in the aggregate and by customer of Seller, and indicates the amounts of allowances for doubtful accounts and warranty returns.

Section 6.14 Customers. Sellers have not received any written notice from any of the ten (10) largest customers of the Business for the twelve (12) months ended May 31, 2019 (the “Material Customers”) that such Material Customer intends to terminate, materially reduce, or not renew its relationship with the Business.

Section 6.15 Intellectual Property. Sellers own, or have a valid and enforceable right to use, all of the Intellectual Property, free and clear of all Liens, other than Permitted Liens and any Lien that will be extinguished at Closing (provided that any such Lien is set forth on Schedule 6.15). Sellers have paid all fees due and required by applicable Governmental Authorities to

maintain all of the Intellectual Property owned by Sellers. There is no pending Legal Proceeding against Sellers or otherwise relating to the Business, nor to the Knowledge of Sellers has any such Legal Proceeding been threatened by any Person, challenging the validity or ownership of any Intellectual Property. To the Knowledge of Sellers, (a) no third party is infringing or misappropriating any Intellectual Property owned by Sellers, and (b) the conduct of the Business is not infringing or misappropriating, and since January 1, 2016, neither Sellers nor any of their respective Affiliates has received notice from any Person of any infringement or misappropriation by the conduct of the Business of, any intellectual property rights of a third party.

Section 6.16 Contracts. Set forth on Schedule 6.16(a) is a true and complete list of all Contracts, other than Intercompany Agreements, that are material to the Business (together with the Leases, the “Material Contracts”). Except as disclosed on Schedule 6.16(b), each Material Contract is in full force and effect enforceable by Sellers or an Affiliate thereof in accordance with its terms, subject to the limitations, if any, imposed by applicable bankruptcy laws, and there has not been any cancellation or, to the Knowledge of Sellers, threatened cancellation of any such Material Contract, nor any pending or, to the Knowledge of Sellers, threatened disputes thereunder. Set forth on Schedule 6.16(c) is Sellers’ good faith estimate of the Cure Payments as of the Effective Date. Neither Sellers nor any of their respective Affiliates is (with or without the lapse of time or the giving of notice, or both) in material breach or default under any Material Contract, other than Intercompany Agreements, except for breaches or defaults (a) that would be remedied solely by the payment of Cure Payments, (b) that result exclusively from Intercompany Claims or the filing and pendency of the Bankruptcy Case or (c) as set forth on Schedule 6.16(d), and to the Knowledge of Sellers, no other party to any of the Material Contracts other than Intercompany Agreements, is (with or without the lapse of time or the giving of notice, or both) in material breach or default thereunder. Except as set forth on Schedule 6.16(e), after giving effect to the Sale Order, no consent or approval of, or notice to, any Person is necessary to sell, assign, convey, transfer and deliver to Purchaser, on the terms of this Agreement and the other Transaction Documents, any and all rights and interests of either Seller and its Affiliates in the Material Contracts, and the consummation of the transactions contemplated by this Agreement and the other Transaction Documents will not result in the termination, suspension, modification, default in any material respect under, or acceleration of any term, condition or obligation under, the Material Contracts. Sellers have provided Purchaser with true and complete copies of each written Material Contract (including all amendments thereto). No Assumed Contract is the subject of a pending nor, to the Knowledge of Sellers, threatened Motion to Reject in the Bankruptcy Case.

Section 6.17 Insurance. Schedule 6.17 sets forth a list of each insurance policy related to the Purchased Assets or the Business (including any self-insurance programs). All such insurance policies are valid and binding and in full force and effect, all premiums due thereunder have been paid in full and Sellers have not received any notice of cancellation or termination in respect of any such policy nor is either Seller nor any Affiliate thereof in default thereunder.

Section 6.18 Affiliate Arrangements. All Contracts between Sellers and any of their respective Affiliates that are related to the Business are listed on Schedule 6.18. To the Knowledge of Sellers, no Affiliate of either Seller has any direct or indirect interest in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, (a) any Person that does business with Sellers or is competitive with the Business, or (b) any Purchased Asset.

Section 6.19 Solvency. Sizmek Israel is, and after giving effect to the Transactions and the obligations incurred in connection herewith shall be, Solvent.

Section 6.20 Bulk Sales. No bulk sale/transfer statute or Law applies to the transactions contemplated by this Agreement and Purchaser will suffer no loss, cost or expense because of the non-compliance of the parties hereto with any bulk sale/transfer statute or other Law. There is no current or past creditor of Sellers to whom any Law requires the delivery of notice or from whom any form of consent is required in conjunction with undertaking the transactions contemplated by this Agreement.

Section 6.21 No Grants, Incentives or Subsidies. Neither Seller has applied for, and there are no pending and/or outstanding grants to either Seller relating directly or indirectly to the Purchased Assets or the Business; provided, however, that Sizmek Israel received certain tax benefits in connection with its research and development activities that (a) are not required to be repaid and is not subject to royalty payments and (b) do not create any ownership rights or any other restrictions (or obligations) that would apply to the Purchaser or the Purchased Assets following the Closing.

Section 6.22 Encryption and Other Restricted Technology. The Business as conducted by Sellers and the use by Sellers of the Purchased Assets do not involve the use or development of, or engagement in, encryption technology, or other technology whose development, commercialization, import or export is restricted under any Laws other than industry standard encryption technologies such as VPN, SSL VPN, IPSEC, TLS/SSL. Sellers have not developed any of its own encryption and its products and services do not contain any encryption developed by Sellers.

Section 6.23 Privacy.

(a) All information and data of any kind collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates for the operation of the Business as currently conducted, that under applicable Law (including all applicable Privacy Laws, as defined below) is considered to be personal data (including in combination with any other information available to Sellers and their Affiliates) of any customer, consumer, subscriber or other end user (including, for the avoidance of doubt, those of media content suppliers or those of customers of the Business) (“PII”), and employee data (together with the PII, “Data”), since January 1, 2018 have been collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates in compliance, in all material respects, with (i) (A) all applicable Laws (including all applicable Privacy Laws) and (B) Data processing industry standards to which Sellers and their Affiliates have committed in writing to comply with respect to the Business, (ii) Sellers’ and their Affiliates’ obligations under any Contract (any such Contracts that restrict the ability of Sellers or an Affiliate thereof to access, hold, transfer or process Data are listed on Schedule 6.23(a)), (iii) any privacy policy of Sellers and their Affiliates with respect to the Business (as set forth on Schedule 6.23(a)) and any privacy policy provided to Sellers of media content suppliers or customers of Sellers provided to Sellers under which such Data was collected, received, held, accessed, maintained, stored, processed, controlled or used (each being a “Privacy Policy”), and (iv) to the extent applicable to the Data as collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates, the PCI

Standards (clauses (i) through (iv) together, the “Data Standards”). “Data” includes, without limitation, name, street address, telephone number, e-mail address, photograph, factors specific to his/her physical, physiological, mental, economic, cultural or social identity, social security number, driver’s license number, passport number, customer number, account number, geo-location data, voice recording, video recording, internet protocol address, device identifier, or other persistent identifier, “information” as defined by the Israeli Privacy Protection Law, 1981 (whether or not such “information” constitutes “sensitive information” as defined thereunder), or any other piece of information that allows the identification of a natural Person or is otherwise considered personally identifiable information or personal data under any applicable Laws (including all applicable Privacy Laws). Sellers and their Affiliates have in place policies and operational procedures designed to ensure continued compliance with Data Standards. Further, to the Knowledge of Sellers, neither Seller nor any Affiliate thereof has violated any Privacy Law relating to or arising from its collection, receipt, possession, access, maintenance, storage, processing, control or use of Data. Sellers and their Affiliates have operated the Business materially consistent with the Privacy Policy applicable to the applicable Data. Neither Seller nor any Affiliate thereof has received any written notice from any Governmental Authority or any other Person that its access, collection, receipt, maintenance, storage, possession, processing, control or use of Data is inconsistent with or a violation of any Data Standards or otherwise constitutes a deceptive or misleading trade practice. Sellers and their Affiliates have implemented technical, administrative, organizational and physical measures, having regard to the nature of the Data held and processed by them, the state of the art of such measures, and the cost of their implementation, consistent with industry practice, and in compliance with the Data Standards (and in any case in accordance with any commitment or obligation under a Contract relating thereto), designed to store, maintain and process all Data and to protect against unauthorized access to or use of the Data. Sellers and their Affiliates are in compliance, in all material respects, with all Laws applicable (including all applicable Privacy Laws) pertaining to sales and marketing, including, without limitation, the Controlling the Assault of Non-Solicited Pornography And Marketing Act, the Telephone Consumer Protection Act, the Telemarketing Sales Rule and Canada’s Anti-Spam Law.

(b) (i) To the Knowledge of Sellers, there has been no unauthorized use, access to or disclosure of any Data while in the possession of, or under the control of, Sellers and their Affiliates, and (ii) neither Seller nor any Affiliate thereof has experienced any breach of security or otherwise unauthorized access by third parties to Data, nor to the Knowledge of Sellers has there been any attempt to do the same. To the Knowledge of Sellers, the consummation of the transactions contemplated by this Agreement will not result in any loss or impairment of Purchaser’s rights to own, process and use any Data, nor will such consummation require the consent of any Person in respect of any Data or result in the imposition of any additional or incremental restriction on Purchaser’s continued use of the Data.

(c) For purposes hereof, “Privacy Laws” means (i) each Law applicable to the protection or processing or both of Data, and includes (without limiting the foregoing) applicable e-privacy rules (regulating tracking mechanisms such as cookies and pixel tags), the General Data Protection Regulation (EU) 2016/679, Israel’s Protection of Privacy Law 5741-1981, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal

Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Children's Online Privacy Protection Act, state data security laws, state social security number protection Laws, state data breach notification Laws, state consumer protection laws, the Data Protection Directive 95/46/EC (and implementing laws adopted applicable European Union member states), applicable law relating to the transfer of protected information, and any applicable law concerning requirements for website and mobile application privacy policies and practices, call or electronic monitoring or recording or any outbound communications, and direct marketing, emails, text messages or telemarketing; (ii) binding regulations issued by a Governmental Authority that pertains to one of the laws in part (i) of this definition; and (iii) industry self-regulatory principles applicable to the protection or processing of Data, e-privacy, direct marketing, emails, text messages or telemarketing.

ARTICLE VII PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants to Sellers that the statements contained in this Article VIII are true, correct and complete as of the date of this Agreement.

Section 7.1 Organization; Qualification and Corporate Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Purchaser has all necessary power and authority to (a) own and operate its properties and carry on its business as it is now being conducted, (b) perform its obligations under this Agreement and the other Transaction Documents, and to undertake and carry out the transactions contemplated hereby and thereby, and (c) own the Purchased Assets.

Section 7.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. All necessary consents and approvals have been obtained by Purchaser for the execution and delivery of this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by Purchaser have been duly and validly authorized and approved by all necessary corporate action. Purchaser has full power, right and authority to acquire the Purchased Assets. This Agreement is, and each of the other Transaction Documents when so executed and delivered will be, a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors.

Section 7.3 Brokers. Purchaser has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Purchaser which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 7.4 No Violation of Laws or Agreements. The performance by Purchaser of its obligations contemplated hereunder and the consummation by Purchaser of the transactions contemplated herein will not (a) violate any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority; or (b) contravene, conflict with or result in a violation of any provision of any organizational documents of Purchaser, except in the cases of clause (a)

above, for such violations which would not, individually or in the aggregate, reasonably be expected to be material to Purchaser.

Section 7.5 Purchaser Experience. Purchaser is experienced and sophisticated with respect to transactions of the type contemplated by this Agreement. In consultation with experienced counsel and advisors of its choice, Purchaser has conducted its own independent review and analysis of the Purchased Assets, the Assumed Liabilities and the rights and obligations it is acquiring and assuming under the Transaction Documents. Purchaser acknowledges that it and its representatives have been permitted such access to the books and records, Contracts and other properties related to the Purchased Assets as it required to complete its review of the Business. Purchaser agrees to accept the Purchased Assets and the Assumed Liabilities in the condition they are in at the Closing without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Sellers, except as expressly set forth in this Agreement.

Section 7.6 Legal Proceedings. There is no Legal Proceeding pending or, to the knowledge of Purchaser, threatened in writing against Purchaser or any of the officers, directors or employees of Purchaser that as of the Effective Date challenges or that as of the Effective Date is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement.

Section 7.7 Adequate Assurances Regarding Closing Cash Payment. As of the Closing, Purchaser will have sufficient funds available to deliver the Closing Cash Payment to Sellers.

Section 7.8 Foreign Resident Status. Unless notified otherwise to Sellers in writing not less than five (5) days prior to Closing, neither Purchaser nor any non-Israeli Affiliate thereof acquiring Purchased Assets from Sizmek Israel, is an Israeli resident for Israeli income tax purpose, including for VAT purposes.

ARTICLE VIII SELLERS' AND PURCHASER'S COVENANTS AND AGREEMENTS

Section 8.1 Conduct of Business. Except as otherwise expressly contemplated by this Agreement or with the prior written consent of Purchaser or except as described on Schedule 8.1, from the Effective Date until the Closing Date, Sellers, solely with respect to the Business, shall use commercially reasonable efforts to (a) operate the Business in the Ordinary Course of Business, (b) preserve and maintain the Purchased Assets, (c) conduct the Business in compliance with all applicable Laws, (d) maintain all insurance policies covering the Business in full force and effect, (e) preserve all relationships with employees, customers, suppliers, vendors and other Persons having business dealings with the Business, (f) perform all obligations required to be performed by Sellers under the Assumed Contracts, (g) timely pay any and all required fees with respect to patents (if any), patent applications (if any), any trademark applications and any registered trademarks comprising the Intellectual Property, and take any and all other commercially reasonable actions as may be necessary to avoid abandonment, cancellation, or expiration of any of the Intellectual Property, and (h) timely and accurately collect all Accounts Receivable in the Ordinary Course of Business. Without limiting the generality of the foregoing, Sellers will, other than with Purchaser's written consent, refrain from doing any of the following

in respect of the Purchased Assets: (i) disposing of or transferring any Purchased Asset to any Affiliate of Sellers or to any other Person, (ii) transferring any tangible Purchased Asset to any other location to the extent that such other location is not otherwise part of the Purchased Assets, (c) except as otherwise provided or required in this Agreement, terminating, amending, modifying, rejecting or seeking to reject the material terms of any of the Assumed Contracts, (d) encumbering or entering into any material new licenses for the Intellectual Property or any part thereof, (e) taking any action, or omitting to take any action, the intent or reasonably expected consequence of which is to cause the termination of Business Employees, and (f) knowingly taking any actions that would reasonably be expected to cause any of the conditions set forth in Article IX or Article X not to be satisfied. Notwithstanding the foregoing, each Seller may take any actions expressly required by the Bankruptcy Court or pursuant to the Bankruptcy Code or required by the Ad Server APA.

Section 8.2 Mutual Covenants. The parties hereto mutually covenant (subject to the other terms of this Agreement):

(a) from the date of this Agreement to the Closing Date, to cooperate with each other in determining whether filings are required to be made or consents (including any Required Consents) are required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings promptly and in seeking to timely obtain any such consents including any Required Consents (it being understood that each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action); and

(b) from the date of this Agreement to the Closing Date, to advise the other party promptly if such party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

Section 8.3 Access to Information. Prior to and through the date on which the Closing occurs or this Agreement is terminated, Purchaser shall be permitted to discuss Purchaser's entering into this Agreement and its intent to acquire the Purchased Assets with current customers, vendors and other key stakeholders of the Business and Sellers shall, and shall cause their subsidiaries to, cooperate with Purchaser and shall give Purchaser and its representatives (including Purchaser's accountants, consultants, counsel and employees), upon reasonable notice and during normal business hours, full access to the properties, contracts, customers, vendors, leases, equipment, employees, affairs, books, documents, records and other information of Sellers to the extent relating to the Business, the Purchased Assets, the Assumed Liabilities, and any other aspect of this Agreement and shall cause their respective officers, employees, agents and representatives to furnish to Purchaser all available documents, records and other information (and copies thereof), to the extent relating to the Purchased Assets, the Assumed Liabilities, and any other aspect of this Agreement, in each case, as Purchaser may reasonably request. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers or any subsidiary of Sellers to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Sellers or any subsidiary of Sellers is bound or prohibited by Law.

Section 8.4 Public Announcement. No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, unless counsel to such party advises that such announcement or statement is required by law (such as an obligation to disclose under federal securities laws of the United States or an obligation to disclose in connection with the Bankruptcy Case) (in which case the parties hereto shall make reasonable efforts to consult with each other and consider comments from each other in good faith prior to such required announcement).

Section 8.5 Preservation of Records. From and after the Closing Date, upon request by Sellers, Purchaser will permit Sellers and their representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Purchaser, to the books and records of or related to the Purchased Assets or the Assumed Liabilities for the purposes of (a) preparing any Tax Returns, or (b) complying with the requirements of, or responding to inquiries by, any Governmental Authority; provided, however, that, for the avoidance of doubt, the foregoing shall not require Purchaser to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege or conflict with any confidentiality obligations to which Purchaser is bound, or (ii) such action could reasonably be expected to result in violation of applicable Law. Purchaser agrees to maintain the files or records which are contemplated by the first sentence of this Section 8.5 for six (6) years following the Closing Date (or such shorter period as Sellers remain in existence) and with respect to all files and records required for Israeli Tax purposes for seven (7) years following the Closing Date.

Section 8.6 Taxes.

(a) Subject to Section 3.5 and Section 8.15, each of Sellers and Purchaser shall bear the applicable Taxes imposed on such party under applicable Law.

(b) Subject to Section 3.5, each of Purchaser, on the one hand, and Sellers, on the other hand, shall be responsible for and pay for fifty percent (50%) of any sales, use, stamp, documentary stamp, filing, recording, transfer or similar fees or taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes"). To the extent that any Transfer Taxes are required to be paid by Purchaser, on the one hand, and Sellers, on the other hand (or such Transfer Taxes are assessed against any such party), the other party or parties shall promptly reimburse the first party or parties, in cash, as applicable, for fifty percent (50%) of such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes. Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

(c) The parties shall (i) for purposes of Taxes imposed under the United States Federal Unemployment Tax Act and the United States Federal Insurance Contributions Act, treat Purchaser as a "successor employer" and the applicable Seller as a "predecessor," within the meaning of Sections 3121(a)(1) and 3306(b)(1) of the Code, with respect to the Transferred Employees and (ii) implement the alternate procedure described in Section 5 of Revenue Procedure 2004-53.

(d) Sellers and Purchaser shall (i) provide such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period (which shall be maintained confidentially).

Section 8.7 Good Faith Efforts. Without limiting the specific obligations of any party hereto under any covenant or agreement hereunder, but subject to the terms of this Agreement, each party hereto shall, and shall cause its Affiliates to, use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement as soon as reasonably practicable, including, but not limited to, promptly filing the Sale Motion seeking the entry of the Sale Order; provided, however, that (a) no party hereto or its Affiliates shall be required to make any concessions that would adversely affect its business or be materially more burdensome to such party (including to amend any contract to increase the amount payable thereunder, commence any litigation, settle or compromise any matter, offer or grant any accommodation (financial or otherwise) to any third party or Governmental Authority, pay any amount or bear any other incremental economic burden to obtain any consent or order or to effect the assignment or transfer of a Purchased Asset), (b) no party hereto or its Affiliates shall incur any expense that would be payable or otherwise borne by another party hereto or such other party's Affiliates without the prior written consent of such other party, (c) Sellers shall not make any concessions or agreements (whether written or oral) that would purport to bind the Business from and after the Closing or be an Assumed Liability without the prior written consent of Purchaser, and (d) Purchaser shall not make any concessions or agreements (whether written or oral) that would purport to bind Sellers or any of its Affiliates without the prior written consent of Sellers (the conditions set forth in the foregoing clauses (a) – (d), the "Efforts Conditions").

Section 8.8 Employees. Subject to and in accordance with the provisions of this Section 8.8 and applicable Law, Purchaser shall, or shall cause one of its Affiliates to, effective upon the Closing, offer employment, on substantially the same terms and conditions as were in effect just prior to the Closing, to certain Business Employees identified in writing by Purchaser to Sellers any time on or before one (1) business day prior to the Closing Date (the "Listed Employees"); provided that the Listed Employees shall include all of the Business Employees identified on Exhibit C. Purchaser or its Affiliate, as the case may be, shall employ all of the Listed Employees who accept such offer, or who otherwise become an employee of Purchaser or its Affiliate, as the case may be, by operation of Law, for a period of no less than ninety (90) days immediately following the Closing, or as otherwise required by applicable law. Listed Employees who accept such offers or whose employment otherwise transfers by operation of Law and become either full-time or part-time employees of Purchaser, or its Affiliate, upon the Closing are hereinafter referred to as "Transferred Employees." Sellers shall use reasonable commercial efforts to assist Purchaser in securing the employment of the Listed Employees to whom Purchaser makes offers of employment. With respect to each Transferred Employee and each Contractor who enters into a Contract with Purchaser or an Affiliate thereof, Sellers shall reasonably assist Purchaser with its efforts to enter into an employment agreement, offer letter or other Contract, as applicable, with such Person prior to the Closing Date. Except as provided in this Section 8.8, or as otherwise

required by applicable Law, Purchaser shall have no obligation to make an offer of employment or engagement to any employee and/or independent contractor (including any Business Employee and/or Contractor). Effective no later than immediately prior to Closing, Sellers shall terminate in full compliance with Laws, regulations, precedents and contractual agreements (including a due process) the employment or engagement of each of the Business Employees and/or Contractors who (a) are not included within the Listed Employees, or (b) have either not accepted or declined an offer of employment with Purchaser prior to the Closing Date. Sellers will consult with Purchaser and will reasonably coordinate with Purchaser the communications to the Business Employees and/or Contractors prior to sending any notices or other communication materials to the Business Employees and/or Contractors. Sellers shall take such actions with respect to the Transferred Employees as are reasonably agreed with Purchaser and consistent with applicable Law to cause the employment of each Transferred Employee with Sellers or their Affiliates to end effective as of the Closing (or as soon as legally practicable thereafter).

Section 8.9 Further Assurances; Transition Services.

(a) From time to time after the Closing and without further consideration, Purchaser and Sellers (or their successors), at the request of the other party hereto, will, and will cause its Affiliates to, execute and deliver such other instruments of conveyance and transfer or other instruments or documents and take or arrange for such other actions, as may reasonably be required to effect any of the transactions contemplated by this Agreement or to provide any party hereto with the benefits intended to be conferred and conveyed by this Agreement; provided that, notwithstanding anything to the contrary in this Section 8.9 or any other provision of this Agreement, neither Purchaser nor Sellers nor their respective Affiliates shall be required to execute any document or take any action that would (i) increase the liability or obligation of the party of whom such document or action is requested beyond that which such party would have pursuant to the other provisions of this Agreement, (ii) require or cause the party of whom such action or document is requested to initiate, join in or otherwise become a party to any Legal Proceeding, or (iii) cause such party to incur any material cost or expense that is not already imposed upon it by another provision of this Agreement.

(b) Pursuant to the Ad Server APA, Amazon has entered into a Transition Services Agreement with Sellers, dated as of June 21, 2019 (the “Existing Transition Services Agreement”), which will be assigned to Purchaser at the Closing.

(c) Prior to Closing, Sellers and Purchaser will enter into a Transition Services Agreement as mutually agreed between Sellers and Purchaser (the “Sizmek Transition Services Agreement”).

Section 8.10 Confidentiality.

(a) Each party hereto acknowledges that it currently has and will directly or indirectly disclose Confidential Information to the other party hereto in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. For avoidance of doubt, any Confidential Information of Sellers relating to the Purchased Assets, the Assumed

Contracts, the Assumed Liabilities or the Business (other than information which may not be transferred or disclosed pursuant to contract or applicable Law) shall be deemed to be Confidential Information of Purchaser as of and following the Closing (“Deemed Purchaser Confidential Information”), notwithstanding the fact that Sellers or any of its officers, directors, employees or representatives have knowledge of such Deemed Purchaser Confidential Information obtained prior to the negotiation and performance of this Agreement. Each party hereto agrees to treat such Confidential Information with the same degree of care and security as it treats its Confidential Information and, in any event, no less degree of care and security than a reasonably prudent business person would utilize to protect from disclosure and keep confidential its Confidential Information. Each party hereto may disclose such Confidential Information only to those employees and agents who require such knowledge to perform services under this Agreement and each party hereto shall be liable for the acts of such employees and agents in breach of this Section 8.10. Except as otherwise contemplated by this Agreement, no party hereto shall disclose the Confidential Information of any other party hereto to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall (i) survive any termination of the Agreement for a period of one (1) year, and (ii) in the case of Sellers, with respect to the Deemed Purchaser Confidential Information, survive the Closing for a period of five (5) years (or such shorter period as Sellers or the last remaining Affiliate thereof remains in existence).

(b) As used herein, “Confidential Information” means all information or data relating to any party hereto and its affiliates, operations, employees, products or services, clients, customers or potential customers. Confidential Information shall include: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information: (A) is already lawfully known to the receiving party as of the Closing Date as evidenced by reasonable documentary proof, free of any restriction at the time it is obtained; (B) subsequent to the Closing Date is learned of by the receiving party from an independent third party free of any restriction and without breach of this Agreement; (C) becomes publicly available through no wrongful act of or breach of this Agreement by the receiving party; (D) is independently developed by the receiving party without reference or access to any Confidential Information of the disclosing party; or (E) is required to be disclosed by law.

Section 8.11 Survival of Representations and Warranties. None of the representations and warranties of Sellers or Purchaser contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

Section 8.12 “AS IS” Transaction; Disclaimer of Implied Warranties. Except as expressly provided in Article VI above, Purchaser hereby acknowledges and agrees that Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets including income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any personal property comprising a part of the Purchased Assets or which is the subject of any Assumed Contract, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets, the terms, amount, validity, collectability or enforceability of any Assumed Liabilities, the Assumed Contracts, the title of the Purchased Assets (or any portion thereof), the merchantability or fitness of the personal property comprising a portion of the Purchased Assets or any other portion of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets (or any portion thereof). Without in any way limiting the foregoing, except as otherwise expressly provided in Article VI above, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets.

Section 8.13 Purchaser Acknowledgement. Purchaser hereby acknowledges that Parent and its Affiliates intend to wind up after the Closing in connection with the Bankruptcy Case and other wind up procedures under the laws of their respective jurisdictions of organization and will vary from jurisdiction to jurisdiction. The parties hereby acknowledge and agree that any wind-up procedures (and the timing thereof) shall be subject to the provisions of this Agreement and the Existing Transition Services Agreement. Due to such wind-up procedures, Purchaser acknowledges that any recourse will be limited. Purchaser hereby waives any claims in connection with the matters described in Section 8.12.

Section 8.14 Non-Solicitation of Competing Bids. Until the earlier of the Closing Date or the termination of this Agreement in accordance with Article XI, Sellers shall not, and shall cause their respective Affiliates not to, directly or indirectly, through any officer, manager, director, employee, agent or representative (including investment banker) of any of them, initiate, solicit or encourage (including by way of furnishing non-public information or assistance) any Person other than Purchaser with respect to the sale of the Business or any material Purchased Assets, whether by sale of the equity securities in Sellers, a merger, arrangement or amalgamation, consolidation, business combination, sale of all or substantially all of the assets of Sellers, liquidation or similar extraordinary transaction with respect to Sellers or an Affiliate thereof (each, an “Alternative Transaction”). In the event that Sellers receive an unsolicited offer or proposal with respect to an Alternative Transaction, Sellers shall promptly (and in no event later than twenty-four (24) hours after receipt thereof) notify Purchaser thereof, which notice shall be provided orally and in writing and shall identify the Person making such offer or proposal and set forth the material terms thereof, and shall, as promptly as practicable (and in no event later than twenty-four (24) hours after receipt thereof) provide to Purchaser unredacted copies of all material correspondence and written materials (whether or not electronic) sent or provided to Sellers (or any Affiliate thereof) that describes any terms or conditions thereof, including any proposed transaction agreements (along with all schedules and exhibits thereto). Sellers shall not, in the event of the receipt by Sellers or any Affiliate thereof of a written offer or proposal with respect to an Alternative Transaction, request any delay or continuance of the Sale Hearing.

Section 8.15 Prorations.

(a) To the extent not otherwise prorated pursuant to this Agreement, all (i) water, sewer, electricity, gas and other utility charges, if any, applicable to the Business, (ii) rental charges payable or receivable and other payments or receipts applicable to the Purchased Assets, and (iii) personal property, ad valorem Taxes and similar Taxes (other than VAT which shall not be prorated and shall be borne by Purchaser and its designee(s) in accordance with Section 3.5) imposed upon the Purchased Assets (collectively, the “Proration Items”) that relate, in whole or in part, to periods prior to the Closing, shall be apportioned to the Closing on a daily basis, and representatives of Sellers and Purchaser will examine all relevant books and records of the Business as of the Closing in order to make the determination of the apportionments.

(b) The net amount of all Proration Items will be settled and paid on the Closing Date to the extent known on that date, and as soon as practicable thereafter in accordance with this Section 8.15(b) as to amounts not known on the Closing Date. In the event that the amount of any of the Proration Items is not known by Sellers and Purchaser at the Closing, the proration shall be made based upon the amount of the most recent cost of such Proration Item to Sellers. After Closing, each of Purchaser and Sellers shall provide to the other written notice two (2) business days after receipt of each third-party invoice relating to any Proration Item so estimated. Within five (5) business days thereafter, Purchaser and each Seller each shall make any payments to the other that are necessary to compensate for any difference between the proration made at the Closing and the correct proration based on the third-party invoice. For ease of administration, individual items less than One Thousand Dollars (U.S. \$1,000) will be aggregated for purposes of reimbursement.

Section 8.16 Casualty Loss. Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, any material portion of the Purchased Assets or Business is (a) condemned or taken by eminent domain or (b) damaged or destroyed by fire, flood or other casualty, or taken by theft, Sellers shall notify Purchaser promptly in writing of such fact, and (i) in the case of condemnation or taking, Sellers shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood, other casualty or theft, Sellers shall, at Purchaser’s option, either restore such damage or assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 8.16 shall not in any way modify Sellers’ representations and warranties contained in Article VI or otherwise modify the condition to Purchaser’s obligation to consummate the transactions contemplated by this Agreement in Section 9.1.

Section 8.17 Use of Trademarks. From and after the Closing, Sellers shall immediately cease and shall cause their representatives and Affiliates to immediately cease using the trademarks, network identifiers, trade-names and domain names included in the Purchased Assets, and shall as of the Closing, cease to do business under any trade name that incorporates such trademarks, network identifiers or trade names or any marks or names substantially similar or confusingly similar thereto.

Section 8.18 Change of Name. Immediately following the Closing, Sellers shall cause all applicable Affiliates to duly file with the Israeli Registrar of Companies (or any other applicable Governmental Authority) an application for the change of such applicable Affiliate’s corporate name to a name which shall not resemble or which may be deemed affiliated in any way with the name “Peer 39”. Sellers shall make all efforts to cause such name change.

Section 8.19 Reserved.

Section 8.20 Sale Motion.

(a) Sellers have filed the Sale Motion with the Bankruptcy Court, and shall use their reasonable best efforts to cause the Bankruptcy Court to hold the Sale Hearing and enter the Sale Order.

(b) In the event that the Bankruptcy Court enters an order approving an offer to purchase all or substantially all of the Purchased Assets submitted by a party other than Purchaser or an Affiliate of Purchaser (an “Alternative Purchaser”) either (i) prior to the termination of this Agreement or (ii) within thirty (30) days after the termination of this Agreement by (A) Purchaser pursuant to Sections 11.2(b) or (e), or (B) Sellers pursuant to Section 11.2(e), then no later than the closing of the sale of any Purchased Assets to an Alternative Purchaser, Sellers jointly and severally agree that they shall pay to Purchaser (or shall cause the Alternative Purchaser to pay to Purchaser) from the proceeds of such sale the Break-Up Fee and the Expense Reimbursement Amount. In the event that Purchaser incurs any legal fees in connection with its enforcement of this Section 8.20(b) and a court of competent jurisdiction determines that Purchaser is entitled to all or any part of the Break-Up Fee and/or the Expense Reimbursement Amount, then Purchaser shall be entitled to recover from Sellers (jointly and severally), in addition to the Break-Up Fee and the Expense Reimbursement Amount, an amount equal to such legal fees incurred by Purchaser, which legal fees shall, with respect to Parent and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. Purchaser’s right to receive the one-time payment of the Break-Up Fee and the Expense Reimbursement Amount (as the case may be) from Sellers as provided in this Section 8.20(b), shall (x) be the sole and exclusive remedy available to Purchaser against Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or representatives with respect to this Agreement and the transactions contemplated hereby in the event that this Agreement is validly terminated under circumstances in which the Break-Up Fee and the Expense Reimbursement Amount are due and payable, and (y) upon receipt by Purchaser of the Break-Up Fee and/or the Expense Reimbursement Amount, none of Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or representatives shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, nothing in this Section 8.20(b) shall preclude Purchaser from (1) submitting a revised offer to purchase all or substantially all of the Purchased Assets following submission by an Alternative Purchaser of an offer or proposal with respect to an Alternative Transaction, or (2) prior to a valid termination of this Agreement in accordance with Article XI, seeking an injunction and/or specific performance of this Agreement in accordance with Section 12.13.

(c) Sellers shall provide notice to Purchaser of any Sale Hearing or any other matter before the Bankruptcy Court relating to this Agreement or the Transaction Documents, in each case as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York or as otherwise ordered by the Bankruptcy Court.

(d) Purchaser agrees that it will take such actions as are reasonably requested by Sellers to assist in obtaining entry by the Bankruptcy Court of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of: (i) demonstrating that Purchaser is a “good faith” purchaser; and (ii) establishing “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code.

Section 8.21 Certain Bankruptcy Undertakings by Sellers and Purchaser.

(a) Except as ordered by the Bankruptcy Court or to the extent each Seller’s board of directors or equivalent governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law, Sellers shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to (i) prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement, or (ii) result in (A) the reversal, avoidance, revocation, vacating or modification (in any manner that would reasonably be expected to materially and adversely affect Purchaser’s rights hereunder) of the Sale Order, or (B) the entry of a stay pending appeal. Furthermore, Purchaser shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

(b) If the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), Sellers, with the cooperation and support of Purchaser, shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and shall endeavor to obtain an expedited resolution of such appeal.

Section 8.22 Assets Held by Affiliates of Sellers. To the extent that any other Person that is an Affiliate of a Seller owns or has rights to any asset (including any Assumed Contract) that is or would be a Purchased Asset if a Seller owned or had rights to such asset, Sellers shall cause such Person to promptly transfer such asset to a Seller, and upon such transfer, such asset shall be deemed to be a Purchased Asset under this Agreement for all purposes as if owned by Sellers on and as of the Effective Date the allocable portion of the Purchase Price (determined in accordance with Section 3.7 mutatis mutandis) shall be transferred to such Affiliate.

Section 8.23 Debtors-in-Possession. From the commencement of the Bankruptcy Case through the Closing, Parent shall continue to operate its business as a debtor-in-possession pursuant to the Bankruptcy Code.

Section 8.24 Bankruptcy Court Filings. Sellers shall consult with Purchaser concerning the Sale Order and any other orders of the Bankruptcy Court relating to the transactions contemplated herein, and the bankruptcy proceedings in connection therewith, and make commercially reasonable efforts to provide Purchaser with copies of any material applications, pleadings, notices, proposed orders and other documents to be filed by Sellers in the Bankruptcy Case that relate in any way to this Agreement or the other Transaction Documents, the transactions

contemplated herein or therein, or Purchaser at least forty-eight (48) hours prior to the making of any such filing or submission to the Bankruptcy Court. Sellers shall provide Purchaser with prompt notice of (a) the filing or any objection to (or any threat or notice of intention of any Person to file any objection to) this Agreement or the other Transaction Documents, the transactions contemplated herein or therein, or Purchaser, or (b) the commencement of (or any threat or notice of intention of any Person to commence), any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, that relates in any way to this Agreement or the other Transaction Documents, the transactions contemplated herein or therein, or Purchaser.

Section 8.25 Required Consents. Sellers shall use commercially reasonable best efforts to obtain all Required Consents set forth on Schedule 8.25 hereto, including an estoppel provision from each Person set forth on Schedule 8.25 in substantially the form set forth on Schedule 8.25.

ARTICLE IX CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION TO CLOSE

The obligation of Purchaser to consummate the purchase of the Purchased Assets under this Agreement shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Purchaser:

Section 9.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Sellers shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Sellers shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 9.2 Officer's Certificate. Sellers shall have delivered to Purchaser a certificate executed by an executive officer of Sellers (including incumbency certificates) as Purchaser may reasonably request in order to evidence compliance with the conditions set forth in Section 9.1.

Section 9.3 Bill of Sale; Assumption Agreement; Intellectual Property Assignment Agreement. Sellers shall have delivered to Purchaser an executed Bill of Sale, Assumption Agreement, Intellectual Property Assignment Agreement and Assumed Contract Assignment Agreement(s), as applicable, pursuant to Section 4.1 and Section 4.2 hereof.

Section 9.4 [Reserved]

Section 9.5 No Material Adverse Effect. Since the date of this Agreement, there shall have been no Material Adverse Effect on the Purchased Assets or the Business.

Section 9.6 Existing Transition Services Agreement. Sellers shall have assigned to Purchaser the Existing Transition Services Agreement.

Section 9.7 Sizmek Transition Services Agreement. Sellers shall have delivered to Purchaser an executed copy of the Sizmek Transition Services Agreement.

Section 9.8 Authorizing Resolutions. Sellers shall have delivered to Purchaser copies of the authorizing resolutions of their respective Boards of Directors (or other governing body) authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 9.9 No Injunctions. There shall not be in effect or exist any Law issued by any Governmental Authority restraining or prohibiting the consummation of, or imposing material modifications on the transactions contemplated by, this Agreement or the other Transaction Documents, or any pending or threatened litigation by any Governmental Authority or other third party seeking to restrain, prohibit or impose material modifications on the consummation of the transactions contemplated by this Agreement or the other Transaction Documents.

Section 9.10 Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court. Such order must be in effect and must not have been reversed, vacated, stayed or modified in any material respect; provided, that the parties agree that the entry of a Sale Order approving the sale of the Purchased Assets to Purchaser (or its Affiliate) which does not approve the Break-Up Fee and/or Expense Reimbursement shall not constitute a material modification of the Sale Order or result in non-fulfillment of this Section 9.10.

Section 9.11 Escrow Agreement. Sellers shall have delivered to Purchaser a copy of the Escrow Agreement executed by Sellers and the Escrow Agent.

Section 9.12 Additional Assets of the Business. On or prior to the Closing, Sellers shall deliver to Purchaser (a) one or more Bills of Sale in form and substance reasonably satisfactory to Purchaser, and (b) all such other good and sufficient instruments of sale, transfer and conveyance reasonably satisfactory to Purchaser and consistent with the terms and provisions of this Agreement, and any other assignments as shall be reasonably necessary to transfer to Purchaser any assets relating to the Business owned by Sizmek UK, Sizmek Poland, Sizmek Hong Kong Limited or any other Affiliate of Sellers.

Section 9.13 Source Code. Sellers shall have (a) separated source code relating to the Business (the “Peer 39 Code”) within SVN and GitLab repositories prior to or as of the Closing Date and provided Purchaser with access to such Peer 39 Code, or (b) otherwise provided access to Purchaser to such repositories in a manner that enables Purchaser to separate the Peer 39 Code within such repositories and retain a copy thereof.

ARTICLE X CONDITIONS PRECEDENT TO SELLERS’ OBLIGATION TO CLOSE

The obligations of Sellers to consummate the sale of the Purchased Assets under this Agreement shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Sellers:

Section 10.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Purchaser in this Agreement shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a material adverse effect on the ability of Purchaser to timely consummate the transactions contemplated hereunder. Purchaser shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 10.2 Officer's Certificate. Purchaser shall have delivered to Sellers a certificate executed by an executive officer of Purchaser (including incumbency certificates) as Sellers may reasonably request in order to evidence compliance with the conditions set forth in Section 10.1.

Section 10.3 Authorizing Resolutions. Purchaser shall have delivered to Sellers copies of the authorizing resolutions of its Board of Directors (or other governing body) authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 10.4 Assumption Agreement. Purchaser shall have delivered to Sellers an executed Assumption Agreement pursuant to Section 4.2 hereof.

Section 10.5 Sizmek Transition Services Agreement. Purchaser shall have delivered to Sellers an executed copy of the Sizmek Transition Services Agreement.

Section 10.6 Escrow Agreement. Purchaser shall have delivered to Sellers a copy of the Escrow Agreement executed by Purchaser and the Escrow Agent.

ARTICLE XI TERMINATION

Section 11.1 Breaches and Defaults; Opportunity to Cure. Prior to the exercise by a party of any termination rights afforded under Section 11.2 (b) or Section 11.2(c) of this Agreement, if any party (the "Non-Breaching Party") believes any other party (the "Breaching Party") to be in breach hereunder, the Non-Breaching Party shall provide the Breaching Party with written notice specifying in reasonable detail the nature of such breach, whereupon if such breach is curable the Breaching Party shall have five (5) calendar days from the receipt of such notice to cure such breach to the reasonable satisfaction of the Non-Breaching Party. If the breach is not cured within such time period, then the Non-Breaching Party's sole remedy shall be to terminate this Agreement if the breach is such that the condition set forth in Section 9.1 or Section 10.1, as applicable, shall not be satisfied (as provided in Section 11.2); provided, however, that the Non-Breaching Party shall not be entitled to terminate this Agreement if it is in material breach of this Agreement. Notwithstanding the foregoing, nothing in this Section 11.1 shall preclude Purchaser from seeking an injunction and/or specific performance of this Agreement in accordance with Section 12.13.

Section 11.2 Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto, at any time prior to the Closing:

(a) by mutual written consent of Sellers and Purchaser;

(b) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date, by Purchaser if Sellers are in breach of any covenant, representation, undertaking or warranty such that the condition set forth in Section 9.1 shall not be satisfied, and Purchaser has not waived such condition in writing on or before the Closing Date or (ii) by Purchaser, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Sellers fail to consummate the Closing within five (5) business days following the date such conditions have been so satisfied or waived;

(c) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date by Sellers if Purchaser is in breach of any covenant, representation or warranty such that the condition set forth in Section 10.1 shall not be satisfied, and Sellers have not waived such condition in writing on or before the Closing Date or (ii) by Sellers, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Purchaser fails to consummate the Closing within five (5) business days following the date such conditions have been so satisfied or waived;

(d) [Reserved]

(e) at or prior to the Sale Hearing, by either Sellers or Purchaser, if the Bankruptcy Court enters an order approving an offer to purchase all or substantially all of the Purchased Assets submitted by an Alternative Purchaser or enters into an order confirming a plan of reorganization of Sellers (other than a plan under which Purchaser or an Affiliate of Purchaser acquires the Purchased Assets on or before the Closing Date); or

(f) by Sellers or Purchaser if the Closing shall not have occurred on or before September 16, 2019, unless the failure to have the Closing shall be due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it or them at or prior to the Closing.

Section 11.3 Effect of Termination. In the event of termination of this Agreement pursuant to Section 11.2, this Agreement shall become null and void and, subject to Section 3.2, there shall be no liability on the part of any party hereto or any of its partners, officers, directors or shareholders; provided that, subject to Section 3.2, no termination will relieve Purchaser or Sellers, as applicable, from any liability for damages, losses, costs or expenses (including reasonable legal fees and expenses) resulting from any breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser or Sellers to consummate the Closing if and when it is obligated to do so hereunder).

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by electronic mail, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Purchaser:

P39 Tech LLC
3 Columbus Circle, Suite 1420
New York, NY 10019
Attention: Jeremy Ozen
E-mail: jozen@o3indus.com

with a required copy to:

Jones Walker, LLP
201 St. Charles Avenue, Suite 5100
New Orleans, LA 70170
Attention: Daniella G. Silberstein
E-mail: dsilberstein@joneswalker.com

If to Sellers:

c/o Sizmek, Inc.
401 Park Avenue South
5th Floor
New York, NY 10016

with a required copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
Attention: Steven J. Reisman and Evan Borenstein
Email: sreisman@kattenlaw.com; evan.borenstein@kattenlaw.com;
sizmekteam@katten.com

Notices delivered personally shall be effective upon delivery against receipt. Notices transmitted by telecopy shall be effective when received, provided that the burden of proving notice when notice is transmitted by telecopy shall be the responsibility of the party providing such notice. Notices transmitted by electronic mail (with no automatic “bounceback” transmission) shall be effective when sent. Notices delivered by overnight mail shall be effective when received.

Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or seventy-two (72) hours after mailing, whichever is earlier.

Section 12.2 Expenses. Except to the extent that Purchaser is otherwise entitled thereto in accordance with the provisions of this Agreement, each party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby.

Section 12.3 Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Agreement, each of Sellers and Purchaser hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of Sellers and Purchaser irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.4 Assignment. This Agreement binds and benefits the parties hereto and their respective successors and assignees. Purchaser shall not have the right to assign any of its rights under this Agreement or delegate any performance of its obligations under this Agreement without the prior written consent of Sellers and the First Lien Agent; provided, that Purchaser shall be permitted to assign its rights under this Agreement to Purchaser's Affiliate or as may be required for the purposes of granting Purchaser's senior lenders a security interest in the Purchased Assets without Seller's or the First Lien Agent's prior written consent. Either Seller may freely assign its rights, but not its obligations, hereunder without the consent of (but with notice to) Purchaser, but such assignment shall be subject to the prior written consent of the First Lien Agent.

Section 12.5 Successors and Assigns. All agreements made and entered into in connection with this Transaction shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

Section 12.6 Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the parties hereto and the First Lien Agent. Except as otherwise expressly set forth herein, no failure or delay by any party hereto or the First Lien Agent in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties hereto) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 12.7 Entire Agreement. This Agreement (including the Exhibits and Disclosure Schedules which are hereby incorporated by reference into and made a part of this Agreement for all purposes) merges all previous negotiations and agreements between the parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement. It is expressly agreed that this Agreement shall supersede and replace that certain Asset Purchase Agreement, dated July 3, 2019, by and among Sellers and Purchaser (the "Original APA"), and that the Original APA is hereby terminated and shall have no further force or effect.

Section 12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile and/or PDF signatures shall be deemed original signatures.

Section 12.9 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any Person.

Section 12.10 Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.11 Interpretation. As all parties hereto have participated in the drafting of this Agreement, any ambiguity shall not be construed against any party as the drafter. Unless the context of this Agreement clearly requires otherwise, (a) "or" has the inclusive meaning frequently identified with the phrase "and/or," (b) "including" has the inclusive meaning frequently identified with the phrase "including, but not limited to," (c) references to "hereof," "hereunder" or "herein" or words of similar import relate to this Agreement, (d) all references to "\$" and dollars shall be deemed to refer to United States currency unless otherwise specifically provided, (e) all references to a day or days shall be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided, (f) any reference to any Contract referenced herein or in the Disclosure Schedules shall be a reference to such Contract, as amended, modified, supplemented or waived, (g) references to any Person shall include the successors and permitted assigns of that Person, and (h) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if".

Section 12.12 Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any Person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement, except the First Lien Agent shall be a third party beneficiary of this Agreement.

Section 12.13 Specific Performance. The parties hereto agree that irreparable damage would occur and that the parties hereto and the First Lien Agent would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in

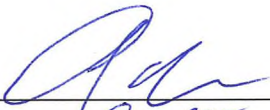
accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto and the First Lien Agent shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement (and, to the fullest extent permitted by Law, each party hereto hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to each such party is entitled at law or in equity.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

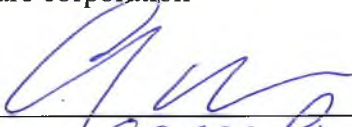
IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the day and year first above written.

SELLERS:

SIZMEK TECHNOLOGIES LTD., an Israeli company

By: 
Name: GEORGE PAPPACHEN
Title: DIRECTOR

SIZMEK TECHNOLOGIES INC., a Delaware corporation

By: 
Name: GEORGE PAPPACHEN
Title: CORPORATE SECRETARY

PURCHASER:

P39 TECH LLC


By: 
Name: Jeremy O'Connell
Title: Director

Exhibit A

Form of Sale Order

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of July 3, 2019 (the “Effective Date”) by and among Sizmek Technologies Ltd., an Israeli company (“Sizmek Israel”), and Sizmek Technologies, Inc., a Delaware corporation (“Parent” and together with Sizmek Israel, “Sellers” and each, a “Seller”), and P39 Tech LLC, a Delaware limited liability company (or one of its direct or indirect subsidiaries) (“Purchaser”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in Article I of this Agreement.

RECITALS

WHEREAS, Sellers are collectively engaged in the business of pre bid data provision for programmatic buying (such business, as presently conducted by Sellers, shall be referred to herein as the “Business”);

WHEREAS, Sizmek Israel is a wholly owned subsidiary of Parent;

WHEREAS, on March 29, 2019, Parent and several of its affiliates commenced Case No. 19-10971 (jointly administered) (the “Bankruptcy Case”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, in connection therewith, Sellers wish to sell, transfer, convey, assign and deliver to Purchaser all of the Purchased Assets (defined below), together with the Assumed Liabilities (defined below) of Sellers upon the terms and subject to the conditions set forth in this Agreement (hereinafter collectively referred to as the “Transaction”);

WHEREAS, Purchaser wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions set forth in this Agreement;

WHEREAS, the Purchased Assets owned by Parent shall be sold pursuant to a Sale Order of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale Order shall include the assumption and assignment of certain executory contracts and service agreements, unexpired leases of equipment and liabilities thereunder, under Section 365 of the Bankruptcy Code and pursuant to the terms and conditions of this Agreement; and

WHEREAS, all of the obligations of Parent hereunder are conditioned upon the approval of the Bankruptcy Court in accordance with the terms hereof, it being understood that the obligations of Sizmek Israel require no further authorization.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 For purposes of this Agreement (including the Disclosure Schedules hereto) the terms defined in this Agreement shall have the respective meanings specified herein, and, in addition, the following terms shall have the following meanings:

“Accounts Payable” means, with respect to Sellers and a particular date, any and all trade accounts payable of Sellers to third parties relating to or arising in connection with the operation and conduct of the Business, less any credits or rebates owed to Sellers with respect to such account (but solely to the extent such credits or rebates are not included in the definition of Accounts Receivable); provided, however, that Accounts Payable shall exclude for all purposes Intercompany Claims.

“Accounts Receivable” means, with respect to Sellers and a particular date, (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to Sellers relating to, or arising in connection with, the operation and conduct of, the Business or otherwise and any other similar rights of Sellers to payment from third parties whether or not invoiced as of such date, and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of services rendered, in each case owing to Sellers; (ii) all other accounts or notes receivable of Sellers and the full benefit of all security for such accounts or notes receivable; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding such date or have not been written off or sent to collection prior to the close of business on the day immediately preceding such date (it being understood that the receipt of a check prior to the close of business on the day immediately preceding such date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby), in each case of clauses (i) through (iii), less any credits or rebates owed to any third party with respect to such account or other right (but solely to the extent such credits or rebates are not included in the definition of Accounts Payable); provided, however, that Accounts Receivable shall exclude for all purposes Intercompany Claims.

“Ad Server APA” means that certain Asset Purchase Agreement, dated as of May 31, 2019, by and among Parent, Sizmek Technologies Ltd, a United Kingdom company (“Sizmek UK”) and Amazon.com, Inc. (“Amazon”) filed as Exhibit 1 to Exhibit A to Debtors’ Motion for an Order Authorizing and Approving a Private Sale of Debtor Seller’s Portion of the Ad Server Business Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief Doc. No. 210, In re Sizmek, Inc., Case No. 19-10971 (SMB) (Bankr. S.D.N.Y. June 3, ~~3019~~2019), as amended, modified, supplemented or replaced from time to time.

“Ad Server Assets” means the “Purchased Assets” as such term is defined in the Ad Server APA.

“Affiliate” means, as to any Person, any other Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control”

(including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other direct or indirect ownership interest, by Contract or otherwise.

“Bankruptcy Code” means 11 U.S.C. Section 101, et. seq., and any amendments thereof.

“Break-Up Fee” means, in consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the other Transaction Documents, and the negotiation thereof, and the identification and quantification of assets to be included in the Purchased Assets, and regardless of whether or not Purchaser makes any matching or competing offers, an amount equal to Three Hundred Ninety Thousand U.S. Dollars (\$390,000), which amount, as to Parent, shall and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be payable as set forth in Section 8.20(b) hereof.

“Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash but excluding any checks that remain uncashed or uncleared prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.

“Closing Net Working Capital” means the Net Working Capital as of the Closing Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Cure Payments” means, (i) with respect to Parent, “cure payments” required to be made under Section 365 of the Bankruptcy Code in connection with any assumption and assignment of an Assumed Contract to Purchaser, and (ii) with respect to any other Seller, any outstanding Accounts Payable required to be paid in connection with the assignment of any Assumed Contract to Purchaser.

“Contract” means any written or oral contract, agreement, lease, license, financial instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Disclosure Schedules” means the schedules delivered by Sellers to Purchaser as of the Effective Date setting forth the exceptions to the representations and warranties contained in Article VI and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to the corresponding numbered schedule that is included in the Disclosure Schedules (unless, and to the extent, the relevance to other representations and warranties is readily apparent from the actual text of the disclosures).

“Employee Plans” means any employment, consulting, pension, severance or other similar contract, plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured

arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits or for deferred compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which is entered into, maintained, contributed to or required to be contributed to, by Sellers or under which Sellers could reasonably be expected to incur any liability including under any employee pension benefit plan and any employee welfare benefit plan which Sellers maintain, administer, contribute to or are required to contribute to, or have maintained, administered, contributed to or were required to contribute to, or under which Sellers could reasonably be expected to incur any liability.

“Escrow Agent” means Citibank, N.A., or its successor, in its capacity as such pursuant to the Escrow Agreement.

“Expense Reimbursement Amount” means the aggregate amount of all reasonable and documented out-of-pocket costs, expenses and fees incurred by Purchaser and its Affiliates in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the other Transaction Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by Purchaser and its Affiliates in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including the Bankruptcy Case and other judicial and regulatory proceedings related to such transactions, up to a maximum of Three Hundred Fifty Thousand U.S. Dollars (\$350,000), which amount shall as to Parent and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be payable as set forth in Section 8.20(b) hereof.

“First Lien Agent” means Cerberus Business Finance, LLC, in its capacity as administrative agent and collateral agent under that certain Financing Agreement, dated as of September 6, 2017, by and among Parent, as borrower, Solomon Acquisition Corp. and the other guarantors party or joined thereto and the lenders from time to time party thereto, as amended by the First Amendment to Financing Agreement, dated as of April 2, 2018, as amended by the Second Amendment to Financing Agreement, dated as of April 27, 2018, as amended by the Third Amendment to Financing Agreement, dated as of May 30, 2018, as amended by the Fourth Amendment to Financing Agreement, dated as of June 29, 2018, as amended by the Fifth Amendment to Financing Agreement, dated as of July 19, 2018, as amended by the Sixth Amendment to Financing Agreement, dated as of August 6, 2018, and as further amended, amended and restated, supplemented or otherwise modified from time to time.

“Governmental Authority” means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“Intercompany Agreements” means all contracts and agreements between or among a Seller and/or its Affiliates and another Seller and/or its Affiliates or between any of their respective Affiliates.

“Intercompany Claims” means all claims, liabilities, loans and receivables between or among one of the Sellers and any of their respective Affiliates, including, without limitation, the Intercompany Note and the items set forth on Schedule 1.1.

“Intercompany Note” means that certain Amended and Restated Promissory Note dated October 27, 2016 owed by Sizmek Israel to Parent.

“ITA” means the Israeli tax authority.

“Knowledge” means in the case of Sellers, the actual knowledge of Markus Plattner, Sascha Wittler, Mark Grether, George Pappachen and Volker Hatz, after reasonable inquiry.

“Laws” means any federal, state, provincial, local, domestic or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law, and any final decree, judgment or injunction of any Governmental Authority.

“Legal Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Liability” means any liability, indebtedness, obligation, expense, claim, loss, cost, damage, obligation, responsibility, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, whether or not secured.

“Liens” means any security interests, mortgages, interests, liens, pledges, charges, defects of title, options and other rights of third parties, rights of first refusal, claims or any other encumbrance or restriction on ownership.

“Material Adverse Effect” means any event or change or circumstance, in respect of the operation of the Business and Purchased Assets that, individually or when aggregated with any one or more of the other such changes, events or circumstances, has had or could reasonably be expected to have a material adverse effect on the Purchased Assets or the Business, taken as a whole; provided, however, that none of the following events, changes or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be deemed to be or constitute a Material Adverse Effect, and none of the following changes, events or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be taken into account when determining whether a Material Adverse Effect has occurred: (i) war, acts of nature, general strikes, acts of terror or acts of hostilities, including but not limited to, military engagements and shelling of civilian areas, (ii) general economic, market or political changes or conditions, (iii) events, changes or circumstances which generally affect the industries in which Sellers conduct the Business, (iv) changes in Laws, unless such Laws or conditions apply solely or principally to the Business or Sellers, (v) the filing and the pendency of the Bankruptcy Case, (vi) actions or omissions taken or not taken by or on behalf of Sellers in compliance with a specific request from or consented to in writing by Purchaser following the execution of this Agreement and (vii)

events, changes or circumstances attributable to the announcement of this Agreement; provided, however, that, with respect to clauses (i) through (iv), effects resulting from any event, change or circumstance that has had a materially disproportionate adverse effect on Sellers or the Business compared to other businesses operating in the industries in which Sellers and the Business operate may be considered for purposes of determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur, but only to the extent of the incremental material disproportionate impact.

“Net Working Capital” means, as of a particular date, (i) all Accounts Receivable as of such date, minus (ii) all Accounts Payable as of such date.

“Ordinance” means the Israeli Income Tax Ordinance (New Version), 1961, as amended, and all rules and regulations promulgated thereunder, as may be amended from time to time, including any publications and clarifications issued by the ITA.

“Ordinary Course of Business” means, in connection with the Business, the ordinary course of business of Sellers consistent with past practices of Sellers (including with respect to quantity and frequency), taking into account (i) Parent’s current financial condition and financial distress, (ii) any direct effects of the Bankruptcy Case and (iii) the requirements set forth in the Ad Server APA and the effects of the sale of the Ad Server Assets.

“Permitted Liens” means (i) statutory Liens of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the ordinary course of business (A) for amounts not yet overdue or (B) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty (30) days) are being contested in good faith, (ii) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings, (iii) pledges or deposits under worker’s compensation, unemployment insurance and social security laws to the extent required by applicable Law, (iv) rights of third parties pursuant to ground leases, leases, subleases, licenses, concessions or similar agreements that have been disclosed to Purchaser in writing, (v) Liens directly caused by or directly resulting from the acts of Purchaser or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees, (vi) Liens arising by operation of Law under Article 2 of any state’s Uniform Commercial Code (or successor statute or any similar foreign Law) in favor of a seller of goods or buyer of goods, (vii) Liens arising by operation of law in either Seller’s jurisdiction of incorporation and (viii) restrictions or requirements set forth in the Sale Order relating to the Purchased Assets owned by Parent.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Authority (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

“PwC” shall mean PricewaterhouseCoopers Advisory Ltd.

“Sale Motion” means the motion to be filed with the Bankruptcy Court by Parent, in form and substance satisfactory to the First Lien Agent and Purchaser (in their respective reasonable discretion), seeking (i) approval of the applicable terms and conditions of the Transaction

Documents, (ii) authorization for the sale of the applicable Purchased Assets by Parent pursuant to Section 363 of the Bankruptcy Code and the assumption and assignment of the Purchased Assets of Parent that are executory contracts pursuant to Section 365 of the Bankruptcy Code, free and clear of all Liens, (iii) approval of the Break-Up Fee and the Expense Reimbursement Amount, and (iv) authorization to hold the Sale Hearing on an expedited basis of not more than twenty-one (21) days from the filing of the Sale Motion, and all as provided in the Sale Order.

“Sale Hearing” means the hearing on the Sale Motion conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement and the other Transaction Documents.

“Sale Order” means the order of the Bankruptcy Court, substantially in the form attached as Exhibit A (which Exhibit A has been reviewed by and is satisfactory to the First Lien Agent), that has not been stayed, vacated or stayed pending appeal, authorizing and approving the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts to Purchaser (or an Affiliate thereof) on the terms and conditions set forth in this Agreement.

“Solvent” means, with respect to any Person on a particular date, that on such date (i) the present fair salable value of the property and assets of such Person exceeds the debts and liabilities, including contingent liabilities, of such Person, (ii) the present fair salable value of the property and assets of such Person is greater than the amount that shall be required to pay the probable liability of such Person on its debts and other liabilities, including contingent liabilities, as such debts and other liabilities become absolute and matured, (iii) such Person does not intend to incur, or believe (nor should it reasonably believe) that it shall incur, debts and liabilities, including contingent liabilities, beyond its ability to pay such debts and liabilities as they become absolute and matured, and (iv) such Person does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted; provided, however, for purposes of this definition, all Intercompany Claims shall be disregarded. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Target Net Working Capital” means \$3,250,000.

“Taxes” mean any federal, state, local or foreign (non-US, including Israeli) tax, including income, capital gains, land betterment, purchase, companies', gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property (including general and special real estate taxes and assessments, special service area charges, tax increment financing, charges, payments in lieu of taxes and similar charges and assessments), windfall profits, environmental (including tax under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, foreign or domestic withholding, social security (or similar), national insurance, health, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, governmental fee, governmental assessment or governmental charge of a similar nature, whether

computed on a separate or consolidated, unitary or combined basis or in any other manner including any interest, penalties or additions to Tax or additional amounts with respect to the foregoing.

“Tax Return” means any return, report, information return or other document (including any related or supporting information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any Laws, regulations or administrative requirements relating to any Taxes.

“Valid Certificate” means a valid certificate, ruling or any other written instructions regarding Tax withholdings, issued by the ITA in customary form and substance reasonably satisfactory to Purchaser (which for the avoidance of doubt includes Purchaser’s opportunity to review any application to, and correspondence with, the ITA with respect to the Transaction), that is applicable to the payments to be made to any Person pursuant to this Agreement stating that no withholding, or reduced withholding, of any Israeli Tax is required with respect to such payment or providing any other instructions regarding Tax withholdings. For avoidance of doubt, a generic valid exemption with respect to “Services and Assets,” which is unlimited in its amount, shall be deemed a “Valid Certificate,” solely with respect to consideration paid to Sizmek Israel for its assets and if in force at the time of the actual payment.

“VAT” means value added tax.

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement and, with respect to the assets of Parent, the timing and process contemplated by the Sale Order, at the Closing, Sellers shall, and shall cause their Affiliates to, sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery from Sellers and their Affiliates, all of Sellers’ and their Affiliates’ right and title to and interest in and to the following assets, properties, and rights (contractual or otherwise) owned by Sellers and their Affiliates, in each case, which primarily relate to, or are primarily used or held for use in connection with, the Business (collectively, the “Purchased Assets”), free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of Sellers or any other party, other than Permitted Liens:

(a) the equipment, machinery or other tangible personal property, specifically listed or described in Schedule 2.1(a) hereto and any warranty rights or claims associated therewith;

(b) the contracts, agreements, contract rights, leases of real property, leases of equipment, machinery or other tangible personal property license agreements, customer contracts, purchase and sales orders (if any), financial instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which either Seller or any Affiliate thereof is a party (whether or not legally bound thereby) and which relate to the Purchased Assets and the operation of the Business, specifically listed or

described in Schedule 2.1(b) hereto as such schedule may be amended pursuant to Section 2.3(c) below (the “Assumed Contracts”);

(c) the permits specifically listed or described in Schedule 2.1(c) to the extent transferable to Purchaser pursuant to their terms and in accordance with applicable Laws;

(d) all intellectual property and intellectual property rights which primarily relate to, or are primarily used or held for use, in connection with, the Business (the “Intellectual Property”), including the Intellectual Property listed or described in Schedule 2.1(d) hereto;

(e) the prepaid items and expenses specifically listed or described in Schedule 2.1(e) hereto;

(f) the books and records including customer or client lists, files, documentation, records and the related documentation related to the Purchased Assets or Assumed Liabilities other than those described in Section 2.2(e);

(g) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) related to the Purchased Assets or the Assumed Liabilities other than those described in Sections 2.2(f), 2.2(h), 2.2(k), 2.2(l) and 2.2(m);

(h) all Accounts Receivable payable to Sellers or their Affiliates by customers of the Business;

(i) the deposits and prepayments held by third parties pursuant to any Assumed Contract;

(j) all goodwill, going concern value and similar assets, other intangible property, and rights of any kind as against others (whether by contract or otherwise) relating to any of the Purchased Assets (including the Intellectual Property), the Assumed Liabilities or the Business; and

(k) other than as specifically set forth in Section 2.2, Sellers’ and their Affiliates’ right, title and interest in and to all other assets, whether real or personal, tangible or intangible, which primarily relate to, or are primarily used or held for use in connection with, the operation of the Business.

Section 2.2 Excluded Assets. Notwithstanding the foregoing, the following assets, properties and rights of Sellers are specifically excluded from the definition of Purchased Assets (collectively, the “Excluded Assets”):

(a) all Cash and Cash Equivalents;

(b) the Closing Cash Payment;

(c) any permit to the extent not transferable pursuant to its terms and in accordance with applicable Laws;

(d) any Contracts that are not Assumed Contracts listed on Schedule 2.1(b) hereto (the “Excluded Contracts”);

(e) any of the following books and records: corporate seals, organizational documents, corporate governance agreements, minute books, stock books, books of account or other records having to do with the corporate organization or governance of Sellers, all employee-related or employee benefit-related files or records (other than summary compensation charts for Israeli Transferred Employees and personnel files of all other Transferred Employees), and any other books and records which Sellers are prohibited from transferring to Purchaser under applicable Law and is required by applicable Law to retain;

(f) all insurance policies of Sellers and all rights to applicable claims and proceeds thereunder;

(g) equity securities or other ownership interests of Sellers and any of either Seller’s direct or indirect subsidiaries;

(h) Sellers’ claims for and rights to receive Tax refunds with respect to taxable periods (or portions thereof) ending prior to the Closing Date, and Tax Returns with respect to taxable periods (or portions thereof) ending prior to the Closing Date, and any notes, worksheets, files or documents relating thereto;

(i) Sellers’ bank accounts;

(j) Sellers’ rights under this Agreement, including rights relating to the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered between Sellers and Purchaser in connection with the transactions contemplated hereby, and any other agreement between Sellers and Purchaser entered into on or after the Effective Date;

(k) all avoidance claims or causes of action available to Parent under Chapter 5 of the Bankruptcy Code or any similar actions under any other applicable Law;

(l) all claims or causes of action against Sellers’ Affiliates, directors and officers;

(m) all Intercompany Claims;

(n) all claims or causes of action against Alphabet Inc. or its Affiliates related to or in connection with illegitimate websites;

(o) any assets, rights or properties (including Contracts) that are not primarily used in or related to the Business;

(p) the Ad Server Assets; and

(q) those assets set forth on Schedule 2.3(o) hereto.

Section 2.3 Assumed Liabilities; Excluded Liabilities.

(a) At the Closing, Purchaser shall assume and agree to perform and discharge only the following Liabilities of Sellers to the extent not previously performed or discharged, and no others (collectively, the “Assumed Liabilities”):

(i) all Liabilities of Sellers which first accrue and are to be performed from and after the Closing under the Assumed Contracts, and which relate solely to periods of time on or after the Closing;

(ii) all Liabilities and obligations relating to and arising from the operation, possession or ownership of or interest in the Purchased Assets which first accrue, or relate solely to periods of time, on or after the Closing;

(iii) all Accounts Payable as of the Closing Date;

(iv) all Liabilities including wages and commissions relating to the employment of the Transferred Employees which first accrue on or after the Closing (it being acknowledged that Sellers shall be liable for the payroll and wages that accrue on or prior to the Closing Date); provided, however, that notwithstanding anything to the contrary contained in this Agreement, Purchaser or its Affiliates shall be solely responsible for any Liabilities arising as a result of the termination of employment by Purchaser or an Affiliate thereof of any Transferred Employee at any time after the Closing;

(v) the Cure Payments; and

(vi) all Liabilities directly arising from or directly related to a breach or default by Purchaser of this Agreement or any agreement delivered hereunder.

(b) Other than the Assumed Liabilities, Purchaser shall not assume (or be deemed to have assumed) or be bound by or be obligated or responsible for any duties, responsibilities, services, commitments, expenses, obligations or liabilities of Sellers or their Affiliates or relating to the Purchased Assets or the Business (or which may be asserted against or imposed upon Purchaser as a successor or transferee of Sellers as an acquirer of the Purchased Assets as a matter of law) of any kind or nature, fixed or contingent, known or unknown, including, without limitation, the following (collectively, the “Excluded Liabilities”):

(i) any Liability of Sellers or their Affiliates in respect of any Taxes, other than any Assumed Liability described in Section 2.3(a)(iv);

(ii) any Liability of Sellers or their Affiliates under any Excluded Contract or Excluded Asset;

(iii) any Liability of Sellers or their Affiliates relating to or arising from Sellers’ or their Affiliates’ operation, possession or ownership of or interest in the Purchased

Assets or the Business prior to the Closing Date, other than any Assumed Liability described in Sections 2.3(a)(iii) and 2.3(a)(v);

(iv) any Liability of Sellers or their Affiliates arising out of or resulting from its compliance or noncompliance with any Law;

(v) any Liability of Sellers or their Affiliates relating to any Legal Proceeding arising out of or in connection with the conduct of the Business or any other conduct of Sellers or their Affiliates or any of their respective officers, directors, employees, consultants, agents or advisors, in each case, prior to the Closing Date (other than the Assumed Liabilities and any Liabilities to the extent arising from or related to a breach or default by Purchaser of this Agreement);

(vi) any Liabilities of Sellers or their Affiliates arising under or in connection with any Employee Plans of, or maintained or required to be maintained by, Sellers or their Affiliates, other than any Assumed Liability described in Section 2.3(a)(iii);

(vii) any Liability of Sellers or their Affiliates to pay any fees or commissions to any broker or finder in connection with the transactions contemplated by this Agreement;

(viii) any Liability of Sellers or their Affiliates relating to employees arising from acts or omissions prior to or at the Closing, including Liabilities relating to any Legal Proceeding by any such employee and any Liability arising from or relating to layoffs or terminations of employees by Sellers or their Affiliates prior to or on the Closing Date;

(ix) any Intercompany Claims;

(x) any Liability arising from the infringement, misappropriation or violation of any intellectual property of any other Person arising from or relating to the operation of the Business prior to the Closing; and

(xi) any other Liability of Sellers or their Affiliates that is not an Assumed Liability.

(c) Purchaser may amend the Schedules setting forth the Assumed Contracts and the Excluded Contracts attached hereto at any time on or before one (1) business day prior to the Closing Date in order to exclude from the definition of Assumed Contract, and include in the definition of Excluded Contract, any Contract not otherwise excluded in the definition thereof; provided, however, the prior written consent of the First Lien Agent and Sellers (which shall not be unreasonably withheld) shall be required in order to remove Contracts from the Schedule of Assumed Contracts and include them on the Schedule of Excluded Contracts if any such Contracts would, if excluded as an Excluded Contract, reasonably be expected to cause or result in Liability to Sellers in the form of rejection damages in excess of \$5,000 per Contract or \$25,000 for all such Contracts. The parties hereto, with the consent of the First Lien Agent with respect to Contracts of Parent, may amend Schedule 2.1(b) at any time on or before one (1) business day prior to the Closing Date in order to include in the definition of Assumed Contract any Contract of Parent not already included therein.

(d) The Assumed Contracts of Parent shall be assumed by Parent and assigned to Purchaser in accordance with the requirements of Section 365 of the Bankruptcy Code and the Sale Order.

Section 2.4 Required Consents.

(a) Notwithstanding anything to the contrary contained herein, but subject to Section 9.4 and Section 9.10, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to Purchaser of any Purchased Asset (i) is prohibited by any applicable Law or (ii) would require the consent of any third party or any Governmental Authority (including pursuant to the Sale Motion) (all such required consents of third parties which are necessary for the consummation of the transactions contemplated hereby, the “Required Consents”) and shall otherwise not have been obtained prior to Closing and the Closing nevertheless occurs, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery, or an attempted sale, conveyance, transfer, assignment or delivery of such Purchased Asset (a “Deferred Asset”) and the provisions set forth below in Section 2.4(b) shall govern.

(b) Following the Closing Date (for so long as Sellers remain in existence), the parties hereto shall have a continuing obligation to use their respective commercially reasonable efforts to cooperate with each other and to obtain, at Purchaser’s sole cost and expense, all Required Consents and each party hereto shall provide all of the assistance that is reasonably requested by the other party hereto in connection with securing such Required Consents; provided, however, that the parties’ obligations under this Section 2.4(b) shall be subject to the Efforts Conditions. To the extent that any Required Consents are not obtained prior to the Closing, Sellers and Purchaser shall cooperate with each other in good faith to establish, to the extent practicable, arrangements that are reasonable and lawful as to Sellers and Purchaser, and which result in the benefits and obligations under the applicable Deferred Asset, including enforcement for the benefit of Purchaser of any and all rights of Sellers against a third party thereto arising out of the breach or cancellation thereof by such third party; provided that Purchaser shall undertake to pay or satisfy the corresponding Liabilities for the enjoyment of such benefit to the extent that Purchaser would have been responsible therefor hereunder as Assumed Liabilities if such Required Consent had been obtained prior to Closing.

(c) If, for a period of up to ninety (90) days following the Closing Date (or such shorter period as Sellers are in existence), (i) Purchaser identifies any asset of Sellers relating to the Business that it believes is both material and necessary to purchase that is not a Purchased Asset pursuant to Section 2.1 or identified as an Excluded Asset pursuant to Section 2.2, (ii) Sellers (and the First Lien Agent, with respect to assets of Parent) agree in writing that such asset should be a Purchased Asset (which determination shall be made in good faith by Sellers), and (iii) such asset is still owned by either Seller, then such asset shall be deemed to be a Purchased Asset for all purposes of this Agreement, and Sellers shall use their commercially reasonable efforts to convey such asset to Purchaser. For the avoidance of doubt, to the extent any Contract is deemed to be a Purchased Asset pursuant to this Section 2.4(c), such Contract shall be deemed to be an Assumed Contract for all purposes of this Agreement.

(d) Notwithstanding anything else contained herein, nothing in this Section 2.4 shall be deemed a waiver by Purchaser of its right to have received on or before the Closing an effective assignment of all of the Purchased Assets, nor will this Section 2.4 be deemed to constitute an agreement to exclude from the Purchased Assets any of the assets described in Section 2.1.

ARTICLE III PURCHASE PRICE; ALLOCATION

Section 3.1 Purchase Price.

(a) In exchange for the sale, assignment, transfer, conveyance and delivery from Sellers of the Purchased Assets, Purchaser shall provide consideration (collectively, the “Purchase Price”), consisting of:

(i) assumption of the Assumed Liabilities pursuant to this Agreement;
and

(ii) cash in an amount equal to ~~Thirteen~~Eighteen Million U.S. Dollars (~~\$13,000,000~~18,000,000) (the “Initial Purchase Price”), subject to adjustment in accordance with Section 3.1(b)(ii) and Section 3.3, which shall be allocated among the Sellers based on the relative value of the respective Purchased Assets sold by them hereunder (which allocation shall be substantially in accordance with the PwC report, a copy of which has been provided to Purchaser.

(b) At the Closing, Purchaser shall pay to Sellers (or their designee(s)) (in accordance with Section 3.1(a)(ii)) an amount of cash (the “Closing Cash Payment”) equal to:

(i) the Initial Purchase Price;

(ii) plus the amount, if any, by which the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)) exceeds the Target Net Working Capital, or minus the amount, if any, by which the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)) is less than the Target Net Working Capital; and

(iii) minus Five Hundred Thousand U.S. Dollars (\$500,000) (the “Escrow Amount”).

(c) At the Closing, Purchaser shall deposit the Escrow Amount into an escrow account (the “Escrow Account”) established by the Escrow Agent pursuant to an escrow agreement in substantially the form attached hereto as Exhibit B (the “Escrow Agreement”) to be released in accordance with Section 3.3(e).

Section 3.2 Deposit. ~~Concurrently with~~Prior to the execution of this Agreement ~~but not later than one (1) business day thereafter~~, Purchaser has provided ~~(or shall provide) in good faith~~ a cash deposit in the amount of One Million Three Hundred Thousand U.S. Dollars (\$1,300,000), which amount ~~shall be~~was deposited and is being held in escrow with the Escrow Agent (the “Deposit”) pursuant to the Escrow Agreement. If the Closing occurs, the Deposit shall

be released to Sellers (or their designee(s)), subject to any Tax withholding obligation, and credited towards the Closing Cash Payment in the proportions set forth in Section 3.1(a)(ii). If the Closing does not occur, then the Deposit shall be disbursed as follows: (a) in the event of a termination of this Agreement by Sellers pursuant to Section 11.2(c), the Deposit shall be released, subject to any Tax withholding obligation, to Parent (or its designee(s)) as liquidated damages, and (b) in the event of a termination of this Agreement for any reason other than those specified in clause (a) above, the Deposit shall be returned to Purchaser. If Sellers deliver to the Escrow Agent, no later than one (1) business day prior to the release and payment of any Deposit funds by the Escrow Agent as set forth in this Section 3.2, a Valid Certificate, then the deduction and withholding of any Israeli Taxes shall be made in accordance with the provisions of such Valid Certificate.

Section 3.3 Purchase Price Adjustment.

(a) At least five (5) business days prior to the Closing Date, Sellers shall prepare and deliver to Purchaser a good faith estimate of the Closing Net Working Capital ("Estimated Closing Net Working Capital"), including a reasonably detailed schedule showing Sellers' calculation thereof, without giving effect to any purchase accounting adjustments arising from the transactions contemplated by this Agreement. Sellers and their representatives shall, upon Purchaser's request, provide Purchaser with reasonable access to the Persons involved in calculating Closing Net Working Capital and to any relevant document or information reasonably requested by Purchaser and within Sellers' possession for purposes of Purchaser's review and verification thereof (it being understood that Sellers shall not be required to create any new document or information in response to any such request). If Purchaser has any objections to Sellers' calculation of Estimated Closing Net Working Capital, within such five (5) Business Day Period prior to the Closing Date, Purchaser may prepare and deliver to Sellers a written notice, executed by an officer of Purchaser, setting forth (x) in reasonable detail Purchaser's good faith objection(s) to Sellers' calculation of Estimated Closing Net Working Capital and (y) Purchaser's proposed calculation of Estimated Closing Net Working Capital. Purchaser and Sellers shall work together in good faith to resolve any such objections. If Purchaser and Sellers are unable to resolve any such objections, subject to the proviso at the end of this sentence, the Estimated Closing Net Working Capital shall be modified and deemed to be the average of (i) Sellers' proposed calculation of Estimated Closing Net Working Capital, and (ii) Purchaser's proposed calculation of Estimated Closing Net Working Capital, in each case as modified based on their discussions during such five (5) Business Day period (the "Average Estimate"); provided, that, if the Average Estimate is lower than Sellers' proposed calculation of Estimated Closing Net Working Capital by more than the Escrow Amount, the Estimated Closing Net Working Capital shall be modified and deemed to be (A) Sellers' proposed calculation of Estimated Closing Net Working Capital, minus (B) the Escrow Amount.

(b) No later than sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Sellers a statement setting forth Purchaser's calculation of Closing Net Working Capital (the "Final Closing Net Working Capital"), including a reasonably detailed schedule showing Purchaser's calculation thereof. For a period of forty-five (45) days after delivery of Purchaser's calculation of the Final Closing Net Working Capital (the "Review Period"), Purchaser shall provide Sellers and their representatives, upon request, with reasonable access during normal business hours to the Persons who prepared the Final Closing Net Working

Capital, and to any relevant document or information reasonably requested by Sellers and within Purchaser's possession for purposes of Sellers' review and verification thereof (it being understood that Purchaser shall not be required to create any new document or information in response to any such request).

(c) If Sellers disagree with Purchaser's calculation of the Final Closing Net Working Capital, Sellers shall, prior to the expiration of the Review Period, notify Purchaser in writing of such disagreement by setting forth Sellers' basis for such disagreement (an "Objection Notice"). If Sellers timely deliver an Objection Notice to Purchaser, then Purchaser and Sellers shall negotiate in good faith to resolve their disagreements with respect to the computation of the Final Net Working Capital. In the event that Purchaser and Sellers are unable to resolve all such disagreements within thirty (30) days after Purchaser's receipt of such Objection Notice, Purchaser and Sellers shall submit such remaining disagreements (the "Disputed Items") to Andersen Tax LLC or, if Andersen Tax LLC is unable or unwilling to serve, another nationally recognized accounting firm as is mutually acceptable to Purchaser and Sellers (the "Accounting Firm"). Purchaser and Sellers will instruct the Accounting Firm to render its determination with respect to the Disputed Items in a written report that specifies the conclusions of the Accounting Firm as to each such Disputed Item; provided, however, that the Accounting Firm will render a determination only as to the Disputed Items. Purchaser and Sellers will each use their commercially reasonable efforts to cause the Accounting Firm to render its determination within thirty (30) days after referral of the Disputed Items to such firm or as soon thereafter as reasonably practicable. The Accounting Firm's determination of the Disputed Items will be final and binding on the parties for purposes of this Agreement; provided, however, that the Accounting Firm may not assign a value to any Disputed Item that is greater than the greatest value, or less than the smallest value, claimed for such Disputed Item by Purchaser and Sellers. Purchaser will revise the calculation of Final Closing Net Working Capital as appropriate to reflect the resolution of the Disputed Items pursuant to this Section 3.3(c). The fees and expenses of the Accounting Firm will be paid by Purchaser, on the one hand, and Sellers, on the other hand, in inverse proportion to the relative amounts of the Disputed Items determined to be for the account of Purchaser and Sellers, respectively (such that if 25% of the Disputed Items are determined to be for the account of the first party, and 75% of the Disputed Items are determined to be for the account of the second party, the first party will pay 75% of the fees and expenses of the Independent Accounting Firm and the second party will pay 25%).

(d) For purposes of complying with this Section 3.3, Purchaser and Sellers will furnish to each other and to the Accounting Firm such work papers and other documents and information relating to the Disputed Items as the Accounting Firm may request and are available to that party (or its independent public accountants). Purchaser may require that the Independent Accounting Firm enter into a customary form of confidentiality agreement with respect to the work papers and other documents and information relating to the Business provided to the Accounting Firm pursuant to this Section 3.3.

(e) If the Final Closing Net Working Capital as finally determined pursuant to this Section 3.3 is less than the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)), then Purchaser and Sellers will provide joint written instructions to the Escrow Agent instructing the Escrow Agent to release the amount of such difference to Purchaser from the Escrow Account in accordance with the terms of the Escrow Agreement and any remainder

thereof to Sellers in accordance with the allocation percentages set forth in Section 3.1(a)(ii). If the Final Closing Net Working Capital as finally determined pursuant to this Section 3.3 is greater than the Estimated Closing Net Working Capital (as determined pursuant to Section 3.3(a)), then Purchaser will pay to Sellers (in accordance with the allocation percentages set forth in Section 3.1(a)(ii)) the amount of such difference in cash and Purchaser and Sellers will provide joint written instructions to the Escrow Agent instructing the Escrow Agent to release the balance of the Escrow Account to Sellers in accordance with the terms of the Escrow Agreement. Any payment made pursuant to this Section 3.3 will be treated by the parties for all purposes as an adjustment to the Purchase Price and will not be subject to offset for any reason. The Escrow Account shall be Purchaser's sole and exclusive remedy with respect to claims pursuant to this Section 3.3 or otherwise relating to Net Working Capital.

(f) Notwithstanding the foregoing, it is expressly understood among the parties that if neither Seller remains in existence at any time at which the Final Closing Net Working Capital has not been finally determined in accordance with this Section 3.3, then, subject to the terms of the Escrow Agreement, all references in this Section 3.3 to "Sellers" or either "Seller" shall be deemed references to the "First Lien Agent."

Section 3.4 Tax Withholding.

(a) Notwithstanding anything to the contrary in this Agreement, Purchaser, any of its Affiliates that shall acquire Purchased Assets or assume Assumed Liabilities, or any agent or other Person acting on their behalf (each, a "Payor"), shall be entitled to deduct and withhold from any consideration or payment payable or otherwise deliverable pursuant to this Agreement such amounts that are required to be deducted and withheld therefrom under applicable Law (including, for the avoidance of doubt, the Ordinance). Any amounts so deducted and withheld shall be remitted to the applicable Tax authority and 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 (the "Payee").

(b) If any Payee delivers, no later than three (3) business days prior to the Closing Date or the date of the applicable payment, as the case may be, a Valid Certificate to Purchaser and the applicable Payor, then the deduction and withholding of any Israeli Taxes shall be made in accordance with the provisions of such Valid Certificate (subject to withholding on account of non-Israeli Taxes, if applicable).

Section 3.5 VAT. The Purchase Price is exclusive of VAT, and to the extent that VAT payments are required with respect to any portion thereof under applicable Law, Purchaser shall add such amount to the applicable payment such that the VAT shall be borne and paid by Purchaser or its designee; provided that Purchaser or its designee shall only be required to make any such payments against provision of a valid VAT invoice by Sellers or their respective Affiliate. Notwithstanding anything herein to the contrary, the Purchase Price (together with the Assumed Liabilities) will be allocated among the Purchased Assets and Assumed Liabilities acquired from Sizmek Israel by any Israeli Affiliate(s) of Purchaser (the "Israeli Purchased Assets"), on the one hand, and the Purchased Assets and Assumed Liabilities acquired from Sizmek Israel by Purchaser and non-Israeli Affiliates of Purchaser (the "Non-Israeli Purchased Assets" and "Non-Israeli Purchased Assets Price", respectively), on the other hand, substantially

in accordance with the PwC report, a copy of which has been provided to Purchaser; provided, however, that such allocation shall be provided to Purchaser for its review and comment, and Sellers shall consider Purchaser's comments in good faith and discuss them with PwC. The parties agree that the sale of the Non-Israeli Purchased Assets at the Non-Israeli Purchased Assets Price to Purchaser or its designee will be subject to zero rate VAT in accordance with Section 30 of the Israeli Value Added Tax Law-1975 and Purchaser hereby represents and warrants that it (and any applicable non-Israeli Affiliate or designee of Purchaser) is a foreign resident for purposes of Section 30 of the Israeli VAT Law, 1975. The parties shall take all required steps to file any Tax reports consistent with the above characterizations. For the avoidance of doubt, it is agreed that Purchased Assets (and Assumed Liabilities) which are transferred from any Seller other than Sizmek Israel shall not be subject to any VAT.

Section 3.6 Direct Payment to Selling Entity. Notwithstanding anything herein to the contrary, the portion of the consideration that is allocable to the Purchased Assets and Assumed Liabilities of either Seller or an Affiliate thereof (each, a "Selling Entity"), as set forth in Section 3.1(a)(ii), shall be paid directly to such Selling Entity.

Section 3.7 Allocation of Purchase Price. The parties agree to allocate for Tax purposes (and, as applicable, to cause their respective Affiliates to allocate for Tax purposes) the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets in accordance with the following procedures and, to the extent applicable, in accordance with Section 1060 of the Code, and the Treasury Regulations promulgated thereunder and with respect to Purchased Assets acquired from Sizmek Israel, in accordance with applicable Israeli Tax laws; provided, however, that the allocation among the various Sellers shall be consistent with the allocation of the Closing Cash Payment among Sellers as provided in Section 3.1(a)(ii) and between Israeli Purchased Assets and Non-Israeli Purchased Assets as provided in Section 3.5. Within ninety (90) days after the Closing Date, Purchaser shall deliver to Parent a proposed allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes as of the Closing Date (the "Purchaser's Allocation"). No later than thirty (30) days following the delivery of the Purchaser's Allocation, Sellers may deliver to Purchaser a statement setting forth in reasonable detail any objections thereto, the basis for such objections, and Parent's proposed allocation ("Sellers' Allocation Notice"). If a Seller timely delivers to Purchaser a Sellers' Allocation Notice, Sellers and Purchaser shall, during the twenty (20) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts. The Purchaser's Allocation, if no Sellers' Allocation Notice is timely delivered, or as adjusted pursuant to any agreement between Sellers and Purchaser during the twenty (20) day period following the timely delivery of Sellers' Allocation Notice, shall be final and binding on the parties. If Sellers' Allocation Notice is timely delivered and Sellers and Purchaser are unable to reach agreement within such twenty (20) day period, Purchaser and Sellers shall submit such remaining disagreements to the Accounting Firm. Purchaser and Sellers shall submit, in writing, to the Accounting Firm their briefs detailing their views as to the appropriate allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets, and the Accounting Firm shall make a written determination as to the appropriate allocation of the Purchase Price and any other such amounts among the Purchased Assets, which determination shall be final and binding on the parties for all purposes hereunder. Purchaser and Sellers will each use their commercially reasonable efforts to cause the

Accounting Firm to render its determination within thirty (30) days or as soon thereafter as reasonably practicable. Each of Purchaser and Sellers shall bear fifty percent (50%) of the fees and expenses of the Accounting Firm incurred in connection with this Section 3.7. The allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets, as finally determined pursuant to this Section 3.7, is referred to herein as the “Allocation.” Each of the parties (a) shall (and shall cause its Affiliates to) prepare and file all Tax Returns (and Internal Revenue Service Forms 8594) in a manner consistent with the Allocation and (b) shall not (and shall cause its Affiliates not to) take any position on any Tax Return or in connection with any Tax proceeding inconsistent with the Allocation, in each case, except to the extent otherwise required by a “determination” within the meaning of Section 1313(a) of the Code (or any analogous provision of applicable state, local or non-U.S. Law). Notwithstanding the above, for the avoidance of doubt, any reporting for Tax purposes of the parties shall be consistent with the allocation of the Closing Cash Payment among Sellers as provided in Section 3.1(b) and between Israeli Purchased Assets and Non-Israeli Purchased Assets as provided in Section 3.5.

ARTICLE IV INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 4.1 Transfer Documents. At the Closing, Sellers will deliver to Purchaser (a) one or more Bills of Sale in form and substance reasonably satisfactory to Purchaser and Sellers (the “Bill of Sale”), and (b) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including, without limitation, an assignment of the Intellectual Property in form and substance reasonably satisfactory to Purchaser and Sellers (the “Intellectual Property Assignment Agreement”), assignments of the Assumed Contracts that are not included within the Sale Order in form and substance reasonably satisfactory to Purchaser and Sellers (the “Assumed Contract Assignment Agreement”) and any other assignments as shall be reasonably necessary or appropriate to vest in Purchaser all of Sellers’ right and title to, and interest in, the Purchased Assets (other than, to the extent applicable, any Deferred Assets). If, in accordance with Section 2.4, any Deferred Asset is not sold, conveyed, transferred, assigned and delivered to Purchaser at the Closing, then promptly following receipt of any applicable Required Consent following the Closing, Sellers shall deliver to Purchaser a Bill of Sale, Intellectual Property Assignment Agreement and/or Assumed Contract Assignment Agreement, as applicable, and any other assignments as shall be reasonably necessary or appropriate to vest in Purchaser all of Sellers’ right and title to, and interest in, the applicable Deferred Asset.

Section 4.2 Assignment and Assumption Documents. At the Closing, Purchaser and Sellers, as applicable, will execute and deliver an Assignment and Assumption Agreement in form and substance reasonably satisfactory to Purchaser and Sellers (the “Assumption Agreement”) in order to effect the assignment and assumption of the Assumed Liabilities.

ARTICLE V CLOSING

Section 5.1 Closing Date. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place via the

electronic exchange of signatures, at the offices of Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, NY 10022, or at such other location as may be mutually agreed upon among the parties hereto on (a) ~~the fifteenth (15) day following the Effective Date July 31, 2019~~ (the “Anticipated Closing Date”), or if all of the conditions to Closing set forth in Articles IX and X have not been satisfied (or waived) on or prior to the Anticipated Closing Date, then on the date which is not later than the date that is twoone (21) business daysday after the date on which all conditions to Closing set forth in Articles IX and X have been satisfied (or waived) or (b) such later date as the parties mutually agree in writing (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. Eastern Time on the Closing Date.

ARTICLE VI SELLERS’ REPRESENTATIONS AND WARRANTIES

Sellers jointly and severally represent and warrant to Purchaser that the statements contained in this Article VI are true and correct as of the date of this Agreement, subject to the disclosures and exceptions set forth in the Disclosure Schedules attached hereto:

Section 6.1 Organization, Qualification and Corporate Power. Sizmek Israel is a company duly organized and validly existing under the Laws of Israel and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not reasonably be expected to be material to the Business as a whole. Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not reasonably be expected to be material to the Business as a whole. Subject, only in the case of Parent, to obtaining the Sale Order, Sellers have (a) all necessary power and authority to own and operate their properties and to carry on the Business as it is now being conducted, (b) the power and authority to execute and deliver and perform their obligations under this Agreement and the other Transaction Documents, and (c) to consummate the transactions contemplated hereby and thereby. As used herein, the term “Transaction Documents” means this Agreement and all other agreements, documents and instruments executed in connection herewith or required to be executed and/or delivered by Sellers in accordance with the provisions of this Agreement. For the avoidance of doubt, none of the representations and warranties set forth in this Section 6.2 with respect to Sizmek Israel are in any way dependent upon obtaining the Sale Order.

Section 6.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject, only in the case of Parent, to obtaining the Sale Order, (a) the execution, delivery and performance of this Agreement and the other Transaction Documents by Sellers and the transfer or assignment of the Purchased Assets to Purchaser have been duly and validly authorized and approved by all necessary corporate action, (b) this Agreement and the other Transaction Documents constitute valid and binding obligations of Sellers, enforceable against Sellers in accordance with their terms and (c) Sellers have full power, right and authority to sell and convey to Purchaser the Purchased Assets. For the avoidance of doubt, none of the representations and warranties set forth in this Section 6.2 with respect to Sizmek Israel are in any way dependent upon obtaining the Sale Order.

Section 6.3 Title to Assets; Subsidiaries. Subject to obtaining the Sale Order, Sellers have good and marketable title to, or a valid leasehold interest in, all of the properties and assets included in the Purchased Assets, and upon the consummation of the transactions contemplated hereby and by the Transaction Documents, Purchaser will acquire good and marketable title to, or a valid leasehold interest in, all of the Purchased Assets, in each case free and clear of all Liens other than Permitted Liens. The Purchased Assets constitute all of the properties and assets used in or necessary to conduct the Business in substantially the same manner as conducted by Sellers on the Effective Date, subject to (a) any Excluded Contracts that Purchaser elects not to acquire as provided in Section 2.3(c) and (b) any services provided under the Transition Services Agreement.

Section 6.4 Legal Proceedings. Except for the Bankruptcy Case or as set forth on Schedule 6.4, there is no Legal Proceeding pending or, to the Knowledge of Sellers, threatened in writing against Sellers, the Purchased Assets or the Business (or to the Knowledge of Sellers, pending or threatened, against any of the Business Employees or any other officers or directors of Sellers with respect to their business activities related to the Purchased Assets or the Business) that (a) as of the Effective Date challenges or that as of the Effective Date is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement; or (b) is related to the Purchased Assets, the Assumed Liabilities or the Business.

Section 6.5 Real Property. Sellers do not own any real property. Schedule 6.5 sets forth the street addresses of all real property used or held for use in the Business which Sellers or an Affiliate thereof leases, operates, occupies or subleases in connection with the Business or upon which any tangible Purchased Assets are located and all instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in Sellers or an Affiliate thereof or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable) (collectively, the “Leases”).

Section 6.6 No Violation of Laws or Agreements. Subject to obtaining the Sale Order, the execution and delivery by Sellers of this Agreement and the Transaction Documents contemplated hereby, the performance by Sellers of their obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated herein and therein will not (a) violate any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority to which Sellers are subject; (b) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the Purchased Assets, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which either Seller is a party and which relates to any of the Purchased Assets or the Business (except, with respect to Parent, for breaches due solely to the filing of the Bankruptcy Case, which shall include failures to make payments or changes in financial condition); or (c) contravene, conflict with or result in a violation of any provision of any organizational documents of Sellers, except in the cases of clauses (a) and (b) above, for such violations which would not, individually or in the aggregate, reasonably be expected to be material to the Business as a whole. Other than the Sale Order and the consents set forth on Schedule 6.6, no consent, waiver, approval or order of or from, or filing with or notification to, any Person (including any Governmental Authority) is required in

connection with the execution, delivery and performance of this Agreement or the other Transaction Documents by Sellers.

Section 6.7 Employee Benefits. Sellers have made available to Purchaser summaries of all material written or unwritten Employee Plans covering Business Employees, Contractors and former employees, directors or consultants in, or related to, the Business. Sellers have made available to Purchaser true and complete summaries of all such material written or unwritten Employee Plans, including summaries of written descriptions thereof which have been distributed to Business Employees and for which any Seller or any Affiliate thereof has copies, all annuity contracts or other funding instruments relating thereto, and a summary description of all Employee Plans which are not in writing. Neither Seller nor any of their respective Affiliates is liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Business Employees (other than routine payments to be made in the Ordinary Course of Business). Except as set forth on Schedule 6.7, there are no pending claims against either Seller or any of their respective Affiliates under any workers' compensation plan or policy or for short or long term disability, other than routine sick leave entitlements, in each case with respect to any Business Employees, Contractors or former employees, directors or consultants in, or related to, the Business.

Section 6.8 Labor Matters.

(a) Schedule 6.8(a)-1 sets forth a true, correct and complete list of all employees of Sellers and their Affiliates engaged in the Business (the "Business Employees") and includes each Business Employee's name and title, work location, date of hire or engagement, status, actual scope of employment (*i.e.*, full-time, part-time or temporary), overtime classification (*i.e.*, exempt or non-exempt), prior notice entitlement, salary and any other compensation and benefits, payable, maintained or contributed to or with respect to which any potential liability is borne by Sellers or any Affiliate thereof to each of the Business Employees and including but not limited to the following entitlements: bonus (including type of bonus, calculation method and amounts received in the last financial year), deferred compensation, commissions (including calculation method and amounts paid during the last financial year), overtime payment, vacation entitlement and accrued vacation, travel entitlement (including any travel pay, car, leased car arrangement and car maintenance payments), sick leave entitlement and accrual, shares and any other incentive payments, recuperation pay entitlement and accrual, pension arrangement or any other provident fund (including managers' insurance and further education fund), their respective contribution rates and the salary basis for such contributions, whether such Business Employee, is subject to Section 14 Arrangement under the Israeli Severance Pay Law - 1963 ("Section 14 Arrangement") (and, to the extent such Business Employee is subject to the Section 14 Arrangement, an indication of whether such Section 14 Arrangement has been applied to such person from the commencement date of his or her employment and on the basis of his or her entire salary), last compensation increase to date including the amount thereof, and whether the Business Employee is on leave (and if so, the category of leave, the date on which such leave commenced and the date of expected return to work). Other than their salaries, the Business Employees are not entitled to any payment or benefit that may be reclassified as part of their determining salary for any purpose, including for calculating any social contributions. No Business Employee is entitled (whether by virtue of any

Contract or policy of Sellers or any of their Affiliates) to any benefits, entitlement or compensation that is not listed on Schedule 6.8(a)-1. Neither Seller nor any Affiliate of either Seller has made any promises or commitments to any Business Employees or any former employees engaged in the Business, whether in writing or not, with respect to any future changes or additions to their compensation or benefits, as listed on Schedule 6.8(a)-1. Other than as listed on Schedule 6.8(a)-1, (i) there are no other employees employed by either Seller or any Affiliate thereof engaged in the Business, and (ii) all Business Employees and all former employees of Sellers and their Affiliates engaged in the Business have signed an employment agreement substantially in one of the forms delivered or made available to Purchaser prior to the Effective Date. Details of any person who has accepted an offer of employment made by Sellers or any of their Affiliates with respect to the Business, but whose employment has not yet started and any Business Employee who was provided with or who received a notice of termination of his or her employment in the twelve (12) months prior to the Effective Date are set forth on Schedule 6.8(a)-2.

(b) Schedule 6.8(b)-1 sets forth a true and complete list of all present independent contractors and consultants to Sellers and their Affiliates with respect to the Business (“Contractors”), and includes each Contractor’s name, date of commencement, and rate of all regular compensation and benefits, bonus or any other compensation payable. Except as set forth on Schedule 6.8(b)-2, all Contractors can be terminated on notice of thirty (30) days or less to the Contractor. Except as set forth on Schedule 6.8(b)-3, all Contractors are and all former independent contractors and consultants of the Business were rightly classified as independent contractors and would not reasonably be expected to be reclassified by any Governmental Authority as employees of Sellers or any of their Affiliates, for any propose whatsoever and all Contractors and all former independent contractors and consultants have received all their rights to which they are and were entitled to according to any applicable Law or Contract with Sellers or their Affiliates. Neither Sellers nor any of their Affiliates are engaged with any personnel through manpower agencies with respect to the Business.

(c) Except as set forth on Schedule 6.8(c) and except for “at-will” offer letters that do not contain post-termination obligation on Sellers and their Affiliates, there are no employment, consulting, severance or indemnification contracts between Sellers (or any Affiliate thereof) and any U.S. Business Employees. Except as set forth on Schedule 6.8(c), (i) neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) is nor has been party to or bound by any collective bargaining or similar agreement with any labor organization; (ii) neither Seller nor any Affiliate of either Seller has Business Employees or had any former employees engaged in the Business that are represented by any labor organization nor is any labor organizations purporting to represent or seeking to represent any Business Employees, and there are no representation proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or other labor relations tribunal; and (iii) to the Knowledge of Sellers, there is no union organizing activities among the Business Employees. Neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) is or has ever been a member of any employers’ association or organization. Neither Seller nor any Affiliate of either Seller (solely with respect to the Business Employees) has paid, been required to pay or been requested to pay any payment (including professional organizational handling charges) to any employers’ association or organization. Except for extension orders which generally apply to all employees

in Israel, no extension orders apply to either Seller or any Affiliate of either Seller (solely with respect to the Business Employees) and no Business Employee benefits from any such extension orders.

(d) Other than as may become due by Sellers as a result of termination of Business Employees effective as of Closing, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will with respect to the Business Employees (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation due, to any current or former officer, director or employee (or their respective beneficiaries) of Sellers, (ii) increase any benefits otherwise payable under any Employee Plan, or (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits.

(e) There are no pending or, to the Knowledge of Sellers, threatened, lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, claims, or proceedings (including any administrative investigations, charges, claims, actions, or proceedings), against Sellers brought by or on behalf of any applicant for Business employment, any current or former employee, representative, agent, consultant, independent contractor, subcontractor or leased employee, volunteer or “temp” of Sellers in each case with respect to the Business, or any group or class of the foregoing, or any Governmental Authority, or alleging violation of any labor or employment Laws, breach of any express or implied contract of employment, wrongful termination of employment, or any other discriminatory, wrongful, or tortious conduct in connection with the employment relationship with respect to the Business.

(f) Neither Seller nor any Affiliate thereof (solely with respect to the Business Employees) has received notice of complaints, charges or claims against such Seller or any such Affiliate, and Sellers do not have any Knowledge of any such complaints, charges or claims being threatened, by or before any Governmental Authority or based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by Sellers or any of their Affiliates (solely with respect to the Business), of any individual.

(g) Sellers and their Affiliates (solely with respect to the Business Employees and the Contractors) are and have been in compliance in all material respects with all Laws relating to employees, employment and labor issues.

(h) Except as set forth on Schedule 6.8(h) or exclusively resulting from the termination and/or transfer of all or substantially all of the employees of Sellers and their Affiliates, neither Seller nor any Affiliate thereof (solely with respect to the Business Employees) has unsatisfied obligations of any nature to any of its former employees or independent contractors or consultants, and their termination was in compliance with all material applicable Laws and Contracts.

(i) To the Knowledge of Sellers, except as set forth in Schedule 6.8(i), no Business Employee (i) has received an offer to join a business that may be competitive with the Business, or (ii) is in violation of any term of any employment contract, invention assignment agreement, patent disclosure agreement, non-competition agreement, non-solicitation agreement,

or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Sellers or any of their Affiliates because of the nature of the Business, or to the use of trade secrets or proprietary information of others.

(j) Without derogating from any of the above representations, except as set forth on Schedule 6.8(j), Sellers' and their Affiliates' liabilities towards the Business Employees regarding severance pay, accrued vacation and contributions to all Employees Plans are fully funded or if not required by applicable Law to be funded are accrued on Sellers' or such Affiliates' (as relevant) financial statements as of the date of such financial statements. Except as set forth on Schedule 6.8(j), Section 14 Arrangement was properly applied in accordance with the terms of the general permit issued by the Israeli Labor Minister regarding all former and current Business Employees of Sellers and any of their Affiliates who reside in Israel based on their full salaries and from their commencement date of employment. All amounts that Sellers or their Affiliates are legally or contractually required to either (i) deduct from the Business Employees' salaries and any other compensation or benefit, or to transfer to such Business Employees' Employee Plans or (ii) withhold from Business Employees' salaries and any other compensation or benefit, and to pay to any Governmental Authority as required by any applicable Law, have been duly deducted, transferred, withheld and paid, in accordance with applicable Law, and neither Seller nor any of its Affiliates (solely with respect to the Business Employees) has any outstanding obligation to make any such deduction, transfer, withholding or payment (other than routine payments, deductions or withholdings to be timely made in the Ordinary Course of Business and consistent with past practice).

(k) It is the understanding of the Sellers that the Transferred Employees employed by Sizmek Technologies sp. z.o.o., a Polish company ("Sizmek Poland") will be transferred to Purchaser or its Affiliates by operation of law as the transfer of part of a work establishment within the meaning of Art. 23¹ § 1 of the Polish Labour Code.. Sellers and their Affiliates also confirm that Sizmek Poland has no unsatisfied obligations of any nature to any of its employees being Transferred Employees.

Section 6.9 Brokers. Except for those set forth in Schedule 6.9, for whom Sellers shall be solely responsible for any fees or commissions owing, Sellers have not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Sellers which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 6.10 Permits. Sellers have all material permits, licenses, certifications, authorizations, approvals, registrations and other similar consents that are required to own, lease or operate the Purchased Assets and to conduct the Business in the Ordinary Course of Business. Schedule 6.10 sets forth a list of all such permits, licenses, certifications, authorizations, approvals, registrations and other similar consents, all of which are in full force and effect. Sellers are and at all times have been in compliance in all material respects with all permits applicable to it, or applicable to the conduct and operations of the Business, or relating to or affecting the Purchased Assets. Sellers have not received any written notice from any Governmental Authority specifically alleging (a) any actual, alleged, possible or potential material violation of, or failure to comply with, any such permits or (b) any actual, alleged,

possible or potential revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any permit.

Section 6.11 Taxes; Tax Returns.

(a) Except as set forth on Schedule 6.11(a), Sellers have not received any outstanding notice of audit, and are not undergoing any audit, of Tax Returns relating to the Business and have never received any written notice of deficiency or assessment from any taxing authority with respect to liability for Taxes relating to the Business which has not been fully paid or finally settled. Except as set forth on Schedule 6.11, Sellers have complied in all material respects with all applicable Laws, rules and regulations relating to the payment and withholding of Taxes and have withheld all amounts required by law to be withheld from all payments, including the wages or salaries of employees and independent contractors of the Business and are not liable for any Taxes with respect to the employees and independent contractors of the Business for failure to comply with such laws, rules and regulations. None of the matters described on Schedule 6.11(a) contain any provision or arrangement that would reasonably be expected to have a material and adverse effect on the transactions contemplated by this Agreement or Purchaser's ownership and operation of the Business following the Closing.

(b) Except as set forth on Schedule 6.11(b), neither Sellers, nor any of their respective Affiliates which shall transfer Purchased Assets and Assumed Liabilities pursuant to this Agreement, is deemed a resident for Tax purposes (or as having a permanent establishment) in any jurisdiction other than the jurisdiction of its incorporation.

(c) There are no Liens for Taxes upon the Purchased Assets.

(d) Neither Seller nor any Affiliate thereof has ever been side to any reorganization under Part E2 of the Ordinance nor is subject to any restrictions under Part E2 of the Ordinance. Neither Seller nor any Affiliate thereof holds any "right in real estate" or "right in real estate corporation" as defined under section 1 of the Israeli Real Estate Taxation Law (Betterment and Purchase) – 1963.

(e) Except as set forth on Schedule 6.11(e), Sellers have timely filed with the appropriate taxing authorities all material Tax Returns related to the Purchased Assets or the Business in all jurisdictions in which Tax Returns are required to be filed under applicable Laws (taking into account any valid extensions to file such Tax Returns), and such Tax Returns are correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. Except as set forth on Schedule 6.11(e), neither Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a tax assessment or deficiency or the collection of Taxes, in each case, with respect to the Purchased Assets or the Business. Except as set forth on Schedule 6.11(e), all material Taxes due and owing by Sellers (whether or not shown on any Tax Return) have been fully and timely paid. Except as set forth on Schedule 6.11(e), no claim has ever been made by an authority in a jurisdiction in which either Seller does not file a Tax Return with respect to the Purchased Assets or the Business that such Seller is or may be subject to Taxes with respect to the Purchased Assets or the Business in that jurisdiction.

Section 6.12 Compliance with Laws.

(a) Except as set forth in Schedule 6.12, Sellers and the conduct of the Business are and at all times have been in compliance in all material respects with all Laws applicable to them or to the conduct and operations of the Business or relating to the Purchased Assets. Except as set forth on Schedule 6.12, Sellers have not received any written notice to the effect that, or otherwise been advised of, and to the Knowledge of Sellers there has not occurred with respect to the Purchased Assets or the Business, (i) any actual, alleged, possible or potential violation of, or failure to comply with, any such Laws, or (ii) any actual, alleged, possible or potential obligation on the part of Sellers to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Neither Seller nor any Person acting on behalf of either Seller, has directly or indirectly, on behalf of or with respect to the Business or the Purchased Assets, violated the Foreign Corrupt Practices Act of 1977 or any anti-bribery and anticorruption laws of countries in which Sellers may operate or procure goods or services with respect to the Business, including by: (i) making or offering to make any contributions, payments or gifts of its property to or for the private use of any governmental official, employee or agent; (ii) establishing or maintaining any unrecorded fund or asset for any purpose, or making any intentionally false or artificial entries on its books or records for any reason; (iii) making any payments to any Person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment; (iv) making any contribution, or reimbursing any political gift or contribution made by any other Person, to candidates for public office; (v) engaging in any material transaction or making or receiving any material payment which was not properly recorded on the books of Seller; or (vi) creating or using any “off-book” bank or cash account or “slush fund.”

Section 6.13 Financial Statements.

(a) Sellers have delivered to Purchaser (i) consolidated audited balance sheets and statements of profits and losses and cash flows of Parent at and for the fiscal years ended December 31, 2017 and 2016 and the accompanying notes thereto and the draft consolidated unaudited balance sheet and statements of profits and losses and cash flows of Parent as at and for the fiscal year ended December 31, 2018 (collectively, the “Parent Financial Statements”), and (ii)(A) a statement of revenue by customer of the Business for the fiscal years ended December 31, 2018, December 31, 2017 and December 31, 2016, and (B) a statement of employee salary costs for the year ended December 31, 2018 (together, the “Business Financial Statements”).

(b) The Parent Financial Statements fairly present in all material respects the financial position, results of operations, and changes in financial position of Parent on a consolidated basis as of the dates and for the periods indicated and have been prepared consistent with the books and records of Seller. The Business Financial Statements are true, correct and complete in all material respects, and have been prepared in accordance with the books and records of the Business.

(c) Except for the filing of the Bankruptcy Case, or as set forth on Schedule 6.13(c), since December 31, 2018, (i) the Business has not suffered a Material Adverse Effect and (ii) Sellers have not taken any action that would be prohibited pursuant to Section 8.1 if such action were taken following the Effective Date.

(d) Schedule 6.13(d) sets forth, as of the Effective Date, an aging of the Accounts Receivable as of the Effective Date in the aggregate and by customer of Seller, and indicates the amounts of allowances for doubtful accounts and warranty returns.

Section 6.14 Customers. Sellers have not received any written notice from any of the ten (10) largest customers of the Business for the twelve (12) months ended May 31, 2019 (the "Material Customers") that such Material Customer intends to terminate, materially reduce, or not renew its relationship with the Business.

Section 6.15 Intellectual Property. Sellers own, or have a valid and enforceable right to use, all of the Intellectual Property, free and clear of all Liens, other than Permitted Liens and any Lien that will be extinguished at Closing (provided that any such Lien is set forth on Schedule 6.15). Sellers have paid all fees due and required by applicable Governmental Authorities to maintain all of the Intellectual Property owned by Sellers. There is no pending Legal Proceeding against Sellers or otherwise relating to the Business, nor to the Knowledge of Sellers has any such Legal Proceeding been threatened by any Person, challenging the validity or ownership of any Intellectual Property. To the Knowledge of Sellers, (a) no third party is infringing or misappropriating any Intellectual Property owned by Sellers, and (b) the conduct of the Business is not infringing or misappropriating, and since January 1, 2016, neither Sellers nor any of their respective Affiliates has received notice from any Person of any infringement or misappropriation by the conduct of the Business of, any intellectual property rights of a third party.

Section 6.16 Contracts. Set forth on Schedule 6.16(a) is a true and complete list of all Contracts, other than Intercompany Agreements, that are material to the Business (together with the Leases, the "Material Contracts"). Except as disclosed on Schedule 6.16(b), each Material Contract is in full force and effect enforceable by Sellers or an Affiliate thereof in accordance with its terms, subject to the limitations, if any, imposed by applicable bankruptcy laws, and there has not been any cancellation or, to the Knowledge of Sellers, threatened cancellation of any such Material Contract, nor any pending or, to the Knowledge of Sellers, threatened disputes thereunder. Set forth on Schedule 6.16(c) is Sellers' good faith estimate of the Cure Payments as of the Effective Date. Neither Sellers nor any of their respective Affiliates is (with or without the lapse of time or the giving of notice, or both) in material breach or default under any Material Contract, other than Intercompany Agreements, except for breaches or defaults (a) that would be remedied solely by the payment of Cure Payments, (b) that result exclusively from Intercompany Claims or the filing and pendency of the Bankruptcy Case or (c) as set forth on Schedule 6.16(d), and to the Knowledge of Sellers, no other party to any of the Material Contracts other than Intercompany Agreements, is (with or without the lapse of time or the giving of notice, or both) in material breach or default thereunder. Except as set forth on Schedule 6.16(e), after giving effect to the Sale Order, no consent or approval of, or notice to, any Person is necessary to sell, assign, convey, transfer and deliver to Purchaser, on the terms of this Agreement and the other Transaction Documents, any and all rights and interests of either Seller and its Affiliates in the

Material Contracts, and the consummation of the transactions contemplated by this Agreement and the other Transaction Documents will not result in the termination, suspension, modification, default in any material respect under, or acceleration of any term, condition or obligation under, the Material Contracts. Sellers have provided Purchaser with true and complete copies of each written Material Contract (including all amendments thereto). No Assumed Contract is the subject of a pending nor, to the Knowledge of Sellers, threatened Motion to Reject in the Bankruptcy Case.

Section 6.17 Insurance. Schedule 6.17 sets forth a list of each insurance policy related to the Purchased Assets or the Business (including any self-insurance programs). All such insurance policies are valid and binding and in full force and effect, all premiums due thereunder have been paid in full and Sellers have not received any notice of cancellation or termination in respect of any such policy nor is either Seller nor any Affiliate thereof in default thereunder.

Section 6.18 Affiliate Arrangements. All Contracts between Sellers and any of their respective Affiliates that are related to the Business are listed on Schedule 6.18. To the Knowledge of Sellers, no Affiliate of either Seller has any direct or indirect interest in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, (a) any Person that does business with Sellers or is competitive with the Business, or (b) any Purchased Asset.

Section 6.19 Solvency. Sizmek Israel is, and after giving effect to the Transactions and the obligations incurred in connection herewith shall be, Solvent.

Section 6.20 Bulk Sales. No bulk sale/transfer statute or Law applies to the transactions contemplated by this Agreement and Purchaser will suffer no loss, cost or expense because of the non-compliance of the parties hereto with any bulk sale/transfer statute or other Law. There is no current or past creditor of Sellers to whom any Law requires the delivery of notice or from whom any form of consent is required in conjunction with undertaking the transactions contemplated by this Agreement.

Section 6.21 No Grants, Incentives or Subsidies. Neither Seller has applied for, and there are no pending and/or outstanding grants to either Seller relating directly or indirectly to the Purchased Assets or the Business; provided, however, that Sizmek Israel received certain tax benefits in connection with its research and development activities that (a) are not required to be repaid and is not subject to royalty payments and (b) do not create any ownership rights or any other restrictions (or obligations) that would apply to the Purchaser or the Purchased Assets following the Closing.

Section 6.22 Encryption and Other Restricted Technology. The Business as conducted by Sellers and the use by Sellers of the Purchased Assets do not involve the use or development of, or engagement in, encryption technology, or other technology whose development, commercialization, import or export is restricted under any Laws other than industry standard encryption technologies such as VPN, SSL VPN, IPSEC, TLS/SSL. Sellers have not developed any of its own encryption and its products and services do not contain any encryption developed by Sellers.

Section 6.23 Privacy.

(a) All information and data of any kind collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates for the operation of the Business as currently conducted, that under applicable Law (including all applicable Privacy Laws, as defined below) is considered to be personal data (including in combination with any other information available to Sellers and their Affiliates) of any customer, consumer, subscriber or other end user (including, for the avoidance of doubt, those of media content suppliers or those of customers of the Business) (“PII”), and employee data (together with the PII, “Data”), since January 1, 2018 have been collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates in compliance, in all material respects, with (i) (A) all applicable Laws (including all applicable Privacy Laws) and (B) Data processing industry standards to which Sellers and their Affiliates have committed in writing to comply with respect to the Business, (ii) Sellers’ and their Affiliates’ obligations under any Contract (any such Contracts that restrict the ability of Sellers or an Affiliate thereof to access, hold, transfer or process Data are listed on Schedule 6.23(a)), (iii) any privacy policy of Sellers and their Affiliates with respect to the Business (as set forth on Schedule 6.23(a)) and any privacy policy provided to Sellers of media content suppliers or customers of Sellers provided to Sellers under which such Data was collected, received, held, accessed, maintained, stored, processed, controlled or used (each being a “Privacy Policy”), and (iv) to the extent applicable to the Data as collected, received, held, accessed, maintained, stored, processed, controlled or used by Sellers and their Affiliates, the PCI Standards (clauses (i) through (iv) together, the “Data Standards”). “Data” includes, without limitation, name, street address, telephone number, e-mail address, photograph, factors specific to his/her physical, physiological, mental, economic, cultural or social identity, social security number, driver’s license number, passport number, customer number, account number, geo-location data, voice recording, video recording, internet protocol address, device identifier, or other persistent identifier, “information” as defined by the Israeli Privacy Protection Law, 1981 (whether or not such “information” constitutes “sensitive information” as defined thereunder), or any other piece of information that allows the identification of a natural Person or is otherwise considered personally identifiable information or personal data under any applicable Laws (including all applicable Privacy Laws). Sellers and their Affiliates have in place policies and operational procedures designed to ensure continued compliance with Data Standards. Further, to the Knowledge of Sellers, neither Seller nor any Affiliate thereof has violated any Privacy Law relating to or arising from its collection, receipt, possession, access, maintenance, storage, processing, control or use of Data. Sellers and their Affiliates have operated the Business materially consistent with the Privacy Policy applicable to the applicable Data. Neither Seller nor any Affiliate thereof has received any written notice from any Governmental Authority or any other Person that its access, collection, receipt, maintenance, storage, possession, processing, control or use of Data is inconsistent with or a violation of any Data Standards or otherwise constitutes a deceptive or misleading trade practice. Sellers and their Affiliates have implemented technical, administrative, organizational and physical measures, having regard to the nature of the Data held and processed by them, the state of the art of such measures, and the cost of their implementation, consistent with industry practice, and in compliance with the Data Standards (and in any case in accordance with any commitment or obligation under a Contract relating thereto), designed to store, maintain and process all Data and to protect against unauthorized access to or use of the Data. Sellers and their Affiliates are in compliance, in all material respects, with all Laws applicable (including all

applicable Privacy Laws) pertaining to sales and marketing, including, without limitation, the Controlling the Assault of Non-Solicited Pornography And Marketing Act, the Telephone Consumer Protection Act, the Telemarketing Sales Rule and Canada's Anti-Spam Law.

(b) (i) To the Knowledge of Sellers, there has been no unauthorized use, access to or disclosure of any Data while in the possession of, or under the control of, Sellers and their Affiliates, and (ii) neither Seller nor any Affiliate thereof has experienced any breach of security or otherwise unauthorized access by third parties to Data, nor to the Knowledge of Sellers has there been any attempt to do the same. To the Knowledge of Sellers, the consummation of the transactions contemplated by this Agreement will not result in any loss or impairment of Purchaser's rights to own, process and use any Data, nor will such consummation require the consent of any Person in respect of any Data or result in the imposition of any additional or incremental restriction on Purchaser's continued use of the Data.

(c) For purposes hereof, "Privacy Laws" means (i) each Law applicable to the protection or processing or both of Data, and includes (without limiting the foregoing) applicable e-privacy rules (regulating tracking mechanisms such as cookies and pixel tags), the General Data Protection Regulation (EU) 2016/679, Israel's Protection of Privacy Law 5741-1981, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Children's Online Privacy Protection Act, state data security laws, state social security number protection Laws, state data breach notification Laws, state consumer protection laws, the Data Protection Directive 95/46/EC (and implementing laws adopted applicable European Union member states), applicable law relating to the transfer of protected information, and any applicable law concerning requirements for website and mobile application privacy policies and practices, call or electronic monitoring or recording or any outbound communications, and direct marketing, emails, text messages or telemarketing; (ii) binding regulations issued by a Governmental Authority that pertains to one of the laws in part (i) of this definition; and (iii) industry self-regulatory principles applicable to the protection or processing of Data, e-privacy, direct marketing, emails, text messages or telemarketing.

ARTICLE VII PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants to Sellers that the statements contained in this Article VIII are true, correct and complete as of the date of this Agreement.

Section 7.1 Organization; Qualification and Corporate Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Purchaser has all necessary power and authority to (a) own and operate its properties and carry on its business as it is now being conducted, (b) perform its obligations under this Agreement and the other Transaction Documents, and to undertake and carry out the transactions contemplated hereby and thereby, and (c) own the Purchased Assets.

Section 7.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. All necessary consents and approvals have been obtained by Purchaser for the execution and delivery of this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by Purchaser have been duly and validly authorized and approved by all necessary corporate action. Purchaser has full power, right and authority to acquire the Purchased Assets. This Agreement is, and each of the other Transaction Documents when so executed and delivered will be, a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors.

Section 7.3 Brokers. Purchaser has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Purchaser which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 7.4 No Violation of Laws or Agreements. The performance by Purchaser of its obligations contemplated hereunder and the consummation by Purchaser of the transactions contemplated herein will not (a) violate any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority; or (b) contravene, conflict with or result in a violation of any provision of any organizational documents of Purchaser, except in the cases of clause (a) above, for such violations which would not, individually or in the aggregate, reasonably be expected to be material to Purchaser.

Section 7.5 Purchaser Experience. Purchaser is experienced and sophisticated with respect to transactions of the type contemplated by this Agreement. In consultation with experienced counsel and advisors of its choice, Purchaser has conducted its own independent review and analysis of the Purchased Assets, the Assumed Liabilities and the rights and obligations it is acquiring and assuming under the Transaction Documents. Purchaser acknowledges that it and its representatives have been permitted such access to the books and records, Contracts and other properties related to the Purchased Assets as it required to complete its review of the Business. Purchaser agrees to accept the Purchased Assets and the Assumed Liabilities in the condition they are in at the Closing without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Sellers, except as expressly set forth in this Agreement.

Section 7.6 Legal Proceedings. There is no Legal Proceeding pending or, to the knowledge of Purchaser, threatened in writing against Purchaser or any of the officers, directors or employees of Purchaser that as of the Effective Date challenges or that as of the Effective Date is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement.

Section 7.7 Adequate Assurances Regarding Closing Cash Payment. As of the Closing, Purchaser will have sufficient funds available to deliver the Closing Cash Payment to Sellers.

Section 7.8 Foreign Resident Status. Unless notified otherwise to Sellers in writing not less than five (5) days prior to Closing, neither Purchaser nor any non-Israeli Affiliate thereof acquiring Purchased Assets from Sizmek Israel, is an Israeli resident for Israeli income tax purpose, including for VAT purposes.

ARTICLE VIII SELLERS' AND PURCHASER'S COVENANTS AND AGREEMENTS

Section 8.1 Conduct of Business. Except as otherwise expressly contemplated by this Agreement or with the prior written consent of Purchaser or except as described on Schedule 8.1, from the Effective Date until the Closing Date, Sellers, solely with respect to the Business, shall use commercially reasonable efforts to (a) operate the Business in the Ordinary Course of Business, (b) preserve and maintain the Purchased Assets, (c) conduct the Business in compliance with all applicable Laws, (d) maintain all insurance policies covering the Business in full force and effect, (e) preserve all relationships with employees, customers, suppliers, vendors and other Persons having business dealings with the Business, (f) perform all obligations required to be performed by Sellers under the Assumed Contracts, (g) timely pay any and all required fees with respect to patents (if any), patent applications (if any), any trademark applications and any registered trademarks comprising the Intellectual Property, and take any and all other commercially reasonable actions as may be necessary to avoid abandonment, cancellation, or expiration of any of the Intellectual Property, and (h) timely and accurately collect all Accounts Receivable in the Ordinary Course of Business. Without limiting the generality of the foregoing, Sellers will, other than with Purchaser's written consent, refrain from doing any of the following in respect of the Purchased Assets: (i) disposing of or transferring any Purchased Asset to any Affiliate of Sellers or to any other Person, (ii) transferring any tangible Purchased Asset to any other location to the extent that such other location is not otherwise part of the Purchased Assets, (c) except as otherwise provided or required in this Agreement, terminating, amending, modifying, rejecting or seeking to reject the material terms of any of the Assumed Contracts, (d) encumbering or entering into any material new licenses for the Intellectual Property or any part thereof, (e) taking any action, or omitting to take any action, the intent or reasonably expected consequence of which is to cause the termination of Business Employees, and (f) knowingly taking any actions that would reasonably be expected to cause any of the conditions set forth in Article IX or Article X not to be satisfied. Notwithstanding the foregoing, each Seller may take any actions expressly required by the Bankruptcy Court or pursuant to the Bankruptcy Code or required by the Ad Server APA.

Section 8.2 Mutual Covenants. The parties hereto mutually covenant (subject to the other terms of this Agreement):

(a) from the date of this Agreement to the Closing Date, to cooperate with each other in determining whether filings are required to be made or consents (including any Required Consents) are required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings promptly and in seeking to timely obtain any such consents including any Required Consents (it being understood that each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action); and

(b) from the date of this Agreement to the Closing Date, to advise the other party promptly if such party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

Section 8.3 Access to Information. Prior to and through the date on which the Closing occurs or this Agreement is terminated, Purchaser shall be permitted to discuss Purchaser's entering into this Agreement and its intent to acquire the Purchased Assets with current customers, vendors and other key stakeholders of the Business and Sellers shall, and shall cause their subsidiaries to, cooperate with Purchaser and shall give Purchaser and its representatives (including Purchaser's accountants, consultants, counsel and employees), upon reasonable notice and during normal business hours, full access to the properties, contracts, customers, vendors, leases, equipment, employees, affairs, books, documents, records and other information of Sellers to the extent relating to the Business, the Purchased Assets, the Assumed Liabilities, and any other aspect of this Agreement and shall cause their respective officers, employees, agents and representatives to furnish to Purchaser all available documents, records and other information (and copies thereof), to the extent relating to the Purchased Assets, the Assumed Liabilities, and any other aspect of this Agreement, in each case, as Purchaser may reasonably request. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers or any subsidiary of Sellers to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Sellers or any subsidiary of Sellers is bound or prohibited by Law.

Section 8.4 Public Announcement. No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, unless counsel to such party advises that such announcement or statement is required by law (such as an obligation to disclose under federal securities laws of the United States or an obligation to disclose in connection with the Bankruptcy Case) (in which case the parties hereto shall make reasonable efforts to consult with each other and consider comments from each other in good faith prior to such required announcement).

Section 8.5 Preservation of Records. From and after the Closing Date, upon request by Sellers, Purchaser will permit Sellers and their representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Purchaser, to the books and records of or related to the Purchased Assets or the Assumed Liabilities for the purposes of (a) preparing any Tax Returns, or (b) complying with the requirements of, or responding to inquiries by, any Governmental Authority; provided, however, that, for the avoidance of doubt, the foregoing shall not require Purchaser to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege or conflict with any confidentiality obligations to which Purchaser is bound, or (ii) such action could reasonably be expected to result in violation of applicable Law. Purchaser agrees to maintain the files or records which are contemplated by the first sentence of this Section 8.5 for six (6) years following the Closing Date (or such shorter period as Sellers remain in existence) and with respect to all files and records required for Israeli Tax purposes for seven (7) years following the Closing Date.

Section 8.6 Taxes.

(a) Subject to Section 3.5 and Section 8.15, each of Sellers and Purchaser shall bear the applicable Taxes imposed on such party under applicable Law.

(b) Subject to Section 3.5, each of Purchaser, on the one hand, and Sellers, on the other hand, shall be responsible for and pay for fifty percent (50%) of any sales, use, stamp, documentary stamp, filing, recording, transfer or similar fees or taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement (“Transfer Taxes”). To the extent that any Transfer Taxes are required to be paid by Purchaser, on the one hand, and Sellers, on the other hand (or such Transfer Taxes are assessed against any such party), the other party or parties shall promptly reimburse the first party or parties, in cash, as applicable, for fifty percent (50%) of such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes. Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

(c) The parties shall (i) for purposes of Taxes imposed under the United States Federal Unemployment Tax Act and the United States Federal Insurance Contributions Act, treat Purchaser as a “successor employer” and the applicable Seller as a “predecessor,” within the meaning of Sections 3121(a)(1) and 3306(b)(1) of the Code, with respect to the Transferred Employees and (ii) implement the alternate procedure described in Section 5 of Revenue Procedure 2004-53.

(d) Sellers and Purchaser shall (i) provide such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period (which shall be maintained confidentially).

Section 8.7 Good Faith Efforts. Without limiting the specific obligations of any party hereto under any covenant or agreement hereunder, but subject to the terms of this Agreement, each party hereto shall, and shall cause its Affiliates to, use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement as soon as reasonably practicable, including, but not limited to, promptly filing the Sale Motion seeking the entry of the Sale Order; provided, however, that (a) no party hereto or its Affiliates shall be required to make any concessions that would adversely affect its business or be materially more burdensome to such party (including to amend any contract to increase the amount payable thereunder, commence any litigation, settle or compromise any matter, offer or grant any accommodation (financial or otherwise) to any third party or Governmental Authority, pay any amount or bear any other incremental economic burden to obtain any consent or order or to effect the assignment or transfer of a Purchased Asset), (b) no party hereto or its Affiliates shall incur any expense that would be payable or otherwise borne by another party hereto or such other party’s Affiliates without the prior written consent of such other party, (c) Sellers shall not make any concessions or agreements (whether written or oral) that would purport to bind the Business from and after the Closing or be an Assumed Liability without the prior written consent

of Purchaser, and (d) Purchaser shall not make any concessions or agreements (whether written or oral) that would purport to bind Sellers or any of its Affiliates without the prior written consent of Sellers (the conditions set forth in the foregoing clauses (a) – (d), the “Efforts Conditions”).

Section 8.8 Employees. Subject to and in accordance with the provisions of this **Section 8.8** and applicable Law, Purchaser shall, or shall cause one of its Affiliates to, effective upon the Closing, offer employment, on substantially the same terms and conditions as were in effect just prior to the Closing, to certain Business Employees identified in writing by Purchaser to Sellers any time on or before one (1) business day prior to the Closing Date (the “Listed Employees”); provided that the Listed Employees shall include all of the Business Employees identified on **Exhibit C**. Purchaser or its Affiliate, as the case may be, shall employ all of the Listed Employees who accept such offer, or who otherwise become an employee of Purchaser or its Affiliate, as the case may be, by operation of Law, for a period of no less than ninety (90) days immediately following the Closing, or as otherwise required by applicable law. Listed Employees who accept such offers or whose employment otherwise transfers by operation of Law and become either full-time or part-time employees of Purchaser, or its Affiliate, upon the Closing are hereinafter referred to as “Transferred Employees.” Sellers shall use reasonable commercial efforts to assist Purchaser in securing the employment of the Listed Employees to whom Purchaser makes offers of employment. With respect to each Transferred Employee and each Contractor who enters into a Contract with Purchaser or an Affiliate thereof, Sellers shall reasonably assist Purchaser with its efforts to enter into an employment agreement, offer letter or other Contract, as applicable, with such Person prior to the Closing Date. Except as provided in this **Section 8.8**, or as otherwise required by applicable Law, Purchaser shall have no obligation to make an offer of employment or engagement to any employee and/or independent contractor (including any Business Employee and/or Contractor). Effective no later than immediately prior to Closing, Sellers shall terminate in full compliance with Laws, regulations, precedents and contractual agreements (including a due process) the employment or engagement of each of the Business Employees and/or Contractors who (a) are not included within the Listed Employees, or (b) have either not accepted or declined an offer of employment with Purchaser prior to the Closing Date. Sellers will consult with Purchaser and will reasonably coordinate with Purchaser the communications to the Business Employees and/or Contractors prior to sending any notices or other communication materials to the Business Employees and/or Contractors. Sellers shall take such actions with respect to the Transferred Employees as are reasonably agreed with Purchaser and consistent with applicable Law to cause the employment of each Transferred Employee with Sellers or their Affiliates to end effective as of the Closing (or as soon as legally practicable thereafter).

Section 8.9 Further Assurances; Transition Services.

(a) From time to time after the Closing and without further consideration, Purchaser and Sellers (or their successors), at the request of the other party hereto, will, and will cause its Affiliates to, execute and deliver such other instruments of conveyance and transfer or other instruments or documents and take or arrange for such other actions, as may reasonably be required to effect any of the transactions contemplated by this Agreement or to provide any party hereto with the benefits intended to be conferred and conveyed by this Agreement; provided that, notwithstanding anything to the contrary in this **Section 8.9** or any other provision of this

Agreement, neither Purchaser nor Sellers nor their respective Affiliates shall be required to execute any document or take any action that would (i) increase the liability or obligation of the party of whom such document or action is requested beyond that which such party would have pursuant to the other provisions of this Agreement, (ii) require or cause the party of whom such action or document is requested to initiate, join in or otherwise become a party to any Legal Proceeding, or (iii) cause such party to incur any material cost or expense that is not already imposed upon it by another provision of this Agreement.

(b) Pursuant to the Ad Server APA, Amazon has entered into a Transition Services Agreement with Sellers, dated as of June 21, 2019 (the "Existing Transition Services Agreement"). ~~Prior to the Closing, Sellers, Purchaser and Amazon will negotiate in good faith and agree upon an amended and restated Transition Services Agreement, in form and substance reasonably satisfactory to Purchaser, which shall include (i) the services contained in the Existing Transition Services Agreement (unless mutually agreed between Purchaser and Amazon), (ii) the services described on Schedule I attached hereto, and (iii) any other services agreed upon between Purchaser and Amazon (the "Amended and Restated Transition Services Agreement").~~ which will be assigned to Purchaser at the Closing.

(c) Prior to Closing, Sellers and Purchaser will enter into a Transition Services Agreement as mutually agreed between Sellers and Purchaser (the "Sizmek Transition Services Agreement").

Section 8.10 Confidentiality.

(a) Each party hereto acknowledges that it currently has and will directly or indirectly disclose Confidential Information to the other party hereto in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. For avoidance of doubt, any Confidential Information of Sellers relating to the Purchased Assets, the Assumed Contracts, the Assumed Liabilities or the Business (other than information which may not be transferred or disclosed pursuant to contract or applicable Law) shall be deemed to be Confidential Information of Purchaser as of and following the Closing ("Deemed Purchaser Confidential Information"), notwithstanding the fact that Sellers or any of its officers, directors, employees or representatives have knowledge of such Deemed Purchaser Confidential Information obtained prior to the negotiation and performance of this Agreement. Each party hereto agrees to treat such Confidential Information with the same degree of care and security as it treats its Confidential Information and, in any event, no less degree of care and security than a reasonably prudent business person would utilize to protect from disclosure and keep confidential its Confidential Information. Each party hereto may disclose such Confidential Information only to those employees and agents who require such knowledge to perform services under this Agreement and each party hereto shall be liable for the acts of such employees and agents in breach of this Section 8.10. Except as otherwise contemplated by this Agreement, no party hereto shall disclose the Confidential Information of any other party hereto to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall (i) survive any termination of the Agreement for a period of one (1) year, and (ii) in the case of Sellers, with respect to the Deemed Purchaser Confidential

Information, survive the Closing for a period of five (5) years (or such shorter period as Sellers or the last remaining Affiliate thereof remains in existence).

(b) As used herein, “Confidential Information” means all information or data relating to any party hereto and its affiliates, operations, employees, products or services, clients, customers or potential customers. Confidential Information shall include: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations and their confidential information; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information: (A) is already lawfully known to the receiving party as of the Closing Date as evidenced by reasonable documentary proof, free of any restriction at the time it is obtained; (B) subsequent to the Closing Date is learned of by the receiving party from an independent third party free of any restriction and without breach of this Agreement; (C) becomes publicly available through no wrongful act of or breach of this Agreement by the receiving party; (D) is independently developed by the receiving party without reference or access to any Confidential Information of the disclosing party; or (E) is required to be disclosed by law.

Section 8.11 Survival of Representations and Warranties. None of the representations and warranties of Sellers or Purchaser contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

Section 8.12 “AS IS” Transaction; Disclaimer of Implied Warranties. Except as expressly provided in Article VI above, Purchaser hereby acknowledges and agrees that Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets including income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any personal property comprising a part of the Purchased Assets or which is the subject of any Assumed Contract, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets, the terms, amount, validity, collectability or enforceability of any Assumed Liabilities, the Assumed Contracts, the title of the Purchased Assets (or any portion thereof), the merchantability or fitness of the personal property comprising a portion of the Purchased Assets or any other portion of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets (or any portion thereof). Without in any way limiting the foregoing, except as otherwise expressly provided in Article VI above, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets.

Section 8.13 Purchaser Acknowledgement. Purchaser hereby acknowledges that Parent and its Affiliates intend to wind up after the Closing in connection with the Bankruptcy Case and other wind up procedures under the laws of their respective jurisdictions of organization and will vary from jurisdiction to jurisdiction. The parties hereby acknowledge and agree that any wind-up procedures (and the timing thereof) shall be subject to the provisions of this Agreement and the ~~Amended and Restated~~Existing Transition Services Agreement. Due to such wind-up procedures, Purchaser acknowledges that any recourse will be limited. Purchaser hereby waives any claims in connection with the matters described in Section 8.12.

Section 8.14 Non-Solicitation of Competing Bids. Until the earlier of the Closing Date or the termination of this Agreement in accordance with Article XI, Sellers shall not, and shall cause their respective Affiliates not to, directly or indirectly, through any officer, manager, director, employee, agent or representative (including investment banker) of any of them, initiate, solicit or encourage (including by way of furnishing non-public information or assistance) any Person other than Purchaser with respect to the sale of the Business or any material Purchased Assets, whether by sale of the equity securities in Sellers, a merger, arrangement or amalgamation, consolidation, business combination, sale of all or substantially all of the assets of Sellers, liquidation or similar extraordinary transaction with respect to Sellers or an Affiliate thereof (each, an “Alternative Transaction”); ~~provided that, notwithstanding anything contained in this Section 8.14 to the contrary, prior to (but not after) entry of the Sale Order, Sellers shall be permitted to entertain, discuss and enter into negotiations in connection with an unsolicited bona fide written. In the event that Sellers receive an unsolicited~~ offer or proposal with respect to an Alternative Transaction ~~if, and only if, (a) in the reasonable judgment of Sellers or their respective boards of directors (or similar governing body), such offer or proposal would result in a purchase price for the Purchased Assets, which, together with other consideration or value to be recognized or retained by Sellers in connection therewith (including in the form of additional liabilities or other obligations to be performed or assumed by the potential buyer or the retention of Accounts Receivable or other assets) that is higher than the sum of (i) the Initial Purchase Price, plus (ii) the Break Up Fee, plus (iii) the Expense Reimbursement Amount, plus (iv) Twenty Five Thousand U.S. Dollars (\$25,000) (collectively, the “Purchase Price Threshold”), (b) Sellers, Sellers shall~~ promptly (and in no event later than twenty-four (24) hours after receipt thereof) notify Purchaser thereof, which notice shall be provided orally and in writing and shall identify the Person making such offer or proposal and set forth the material terms thereof, ~~(c) Sellers shall keep Purchaser reasonably and promptly informed of the status and material terms of (including with respect to changes to the status or material terms of) any such offer or proposal, and (d) Sellers~~and shall, as promptly as practicable (and in no event later than twenty-four (24) hours after receipt thereof) provide to Purchaser unredacted copies of all material correspondence and written materials (whether or not electronic) sent or provided to Sellers (or any Affiliate thereof) that describes any terms or conditions thereof, including any proposed transaction agreements (along with all schedules and exhibits thereto). Sellers shall not, in the event of the receipt by Sellers or any Affiliate thereof of a written offer or proposal with respect to an Alternative Transaction, request any delay or continuance of the Sale Hearing.

Section 8.15 Prorations.

(a) To the extent not otherwise prorated pursuant to this Agreement, all (i) water, sewer, electricity, gas and other utility charges, if any, applicable to the Business, (ii)

rental charges payable or receivable and other payments or receipts applicable to the Purchased Assets, and (iii) personal property, ad valorem Taxes and similar Taxes (other than VAT which shall not be prorated and shall be borne by Purchaser and its designee(s) in accordance with Section 3.5) imposed upon the Purchased Assets (collectively, the “Proration Items”) that relate, in whole or in part, to periods prior to the Closing, shall be apportioned to the Closing on a daily basis, and representatives of Sellers and Purchaser will examine all relevant books and records of the Business as of the Closing in order to make the determination of the apportionments.

(b) The net amount of all Proration Items will be settled and paid on the Closing Date to the extent known on that date, and as soon as practicable thereafter in accordance with this Section 8.15(b) as to amounts not known on the Closing Date. In the event that the amount of any of the Proration Items is not known by Sellers and Purchaser at the Closing, the proration shall be made based upon the amount of the most recent cost of such Proration Item to Sellers. After Closing, each of Purchaser and Sellers shall provide to the other written notice two (2) business days after receipt of each third-party invoice relating to any Proration Item so estimated. Within five (5) business days thereafter, Purchaser and each Seller each shall make any payments to the other that are necessary to compensate for any difference between the proration made at the Closing and the correct proration based on the third-party invoice. For ease of administration, individual items less than One Thousand Dollars (U.S. \$1,000) will be aggregated for purposes of reimbursement.

Section 8.16 Casualty Loss. Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, any material portion of the Purchased Assets or Business is (a) condemned or taken by eminent domain or (b) damaged or destroyed by fire, flood or other casualty, or taken by theft, Sellers shall notify Purchaser promptly in writing of such fact, and (i) in the case of condemnation or taking, Sellers shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood, other casualty or theft, Sellers shall, at Purchaser’s option, either restore such damage or assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 8.16 shall not in any way modify Sellers’ representations and warranties contained in Article VI or otherwise modify the condition to Purchaser’s obligation to consummate the transactions contemplated by this Agreement in Section 9.1.

Section 8.17 Use of Trademarks. From and after the Closing, Sellers shall immediately cease and shall cause their representatives and Affiliates to immediately cease using the trademarks, network identifiers, trade-names and domain names included in the Purchased Assets, and shall as of the Closing, cease to do business under any trade name that incorporates such trademarks, network identifiers or trade names or any marks or names substantially similar or confusingly similar thereto.

Section 8.18 Change of Name. Immediately following the Closing, Sellers shall cause all applicable Affiliates to duly file with the Israeli Registrar of Companies (or any other applicable Governmental Authority) an application for the change of such applicable Affiliate’s corporate name to a name which shall not resemble or which may be deemed affiliated in any way with the name “Peer 39”. Sellers shall make all efforts to cause such name change.

Section 8.19 Reserved.

Section 8.20 Sale Motion.

(a) ~~Within two (2) Business Days following the date hereof,~~ Sellers shall ~~file~~ have filed the Sale Motion with the Bankruptcy Court, and shall ~~thereafter~~ use their reasonable best efforts to cause the Bankruptcy Court to hold the Sale Hearing and enter the Sale Order.

(b) In the event that the Bankruptcy Court enters an order approving an offer to purchase all or substantially all of the Purchased Assets submitted by a party other than Purchaser or an Affiliate of Purchaser (an “Alternative Purchaser”) either (i) prior to the termination of this Agreement or (ii) within thirty (30) days after the termination of this Agreement by (A) Purchaser pursuant to Sections 11.2(b) or (e), or (B) Sellers pursuant to Section 11.2(d) or (e), then no later than the closing of the sale of any Purchased Assets to an Alternative Purchaser, Sellers jointly and severally agree that they shall pay to Purchaser (or shall cause the Alternative Purchaser to pay to Purchaser) from the proceeds of such sale the Break-Up Fee and the Expense Reimbursement Amount. In the event that Purchaser incurs any legal fees in connection with its enforcement of this Section 8.20(b) and a court of competent jurisdiction determines that Purchaser is entitled to all or any part of the Break-Up Fee and/or the Expense Reimbursement Amount, then Purchaser shall be entitled to recover from Sellers (jointly and severally), in addition to the Break-Up Fee and the Expense Reimbursement Amount, an amount equal to such legal fees incurred by Purchaser, which legal fees shall, with respect to Parent and subject to Bankruptcy Court approval, constitute an administrative expense priority claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. Purchaser’s right to receive the one-time payment of the Break-Up Fee and the Expense Reimbursement Amount (as the case may be) from Sellers as provided in this Section 8.20(b), shall (x) be the sole and exclusive remedy available to Purchaser against Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or representatives with respect to this Agreement and the transactions contemplated hereby in the event that this Agreement is validly terminated under circumstances in which the Break-Up Fee and the Expense Reimbursement Amount are due and payable, and (y) upon receipt by Purchaser of the Break-Up Fee and/or the Expense Reimbursement Amount, none of Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or representatives shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, nothing in this Section 8.20(b) shall preclude Purchaser from (1) submitting a revised offer to purchase all or substantially all of the Purchased Assets following submission by an Alternative Purchaser of an offer or proposal with respect to an Alternative Transaction, or (2) prior to a valid termination of this Agreement in accordance with Article XI, seeking an injunction and/or specific performance of this Agreement in accordance with Section 12.13.

(c) Sellers shall provide notice to Purchaser of any Sale Hearing or any other matter before the Bankruptcy Court relating to this Agreement or the Transaction Documents, in each case as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York or as otherwise ordered by the Bankruptcy Court.

(d) Purchaser agrees that it will take such actions as are reasonably requested by Sellers to assist in obtaining entry by the Bankruptcy Court of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of: (i) demonstrating that Purchaser is a “good faith” purchaser; and (ii) establishing “adequate assurance of future performance” within the meaning of section 365 of the Bankruptcy Code.

Section 8.21 Certain Bankruptcy Undertakings by Sellers and Purchaser.

(a) Except as ordered by the Bankruptcy Court or to the extent each Seller’s board of directors or equivalent governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law, Sellers shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to (i) prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement, or (ii) result in (A) the reversal, avoidance, revocation, vacating or modification (in any manner that would reasonably be expected to materially and adversely affect Purchaser’s rights hereunder) of the Sale Order, or (B) the entry of a stay pending appeal. Furthermore, Purchaser shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

(b) If the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), Sellers, with the cooperation and support of Purchaser, shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and shall endeavor to obtain an expedited resolution of such appeal.

Section 8.22 Assets Held by Affiliates of Sellers. To the extent that any other Person that is an Affiliate of a Seller owns or has rights to any asset (including any Assumed Contract) that is or would be a Purchased Asset if a Seller owned or had rights to such asset, Sellers shall cause such Person to promptly transfer such asset to a Seller, and upon such transfer, such asset shall be deemed to be a Purchased Asset under this Agreement for all purposes as if owned by Sellers on and as of the Effective Date the allocable portion of the Purchase Price (determined in accordance with Section 3.7 mutatis mutandis) shall be transferred to such Affiliate.

Section 8.23 Debtors-in-Possession. From the commencement of the Bankruptcy Case through the Closing, Parent shall continue to operate its business as a debtor-in-possession pursuant to the Bankruptcy Code.

Section 8.24 Bankruptcy Court Filings. Sellers shall consult with Purchaser concerning the Sale Order and any other orders of the Bankruptcy Court relating to the transactions contemplated herein, and the bankruptcy proceedings in connection therewith, and make commercially reasonable efforts to provide Purchaser with copies of any material applications, pleadings, notices, proposed orders and other documents to be filed by Sellers in the Bankruptcy

Case that relate in any way to this Agreement or the other Transaction Documents, the transactions contemplated herein or therein, or Purchaser at least forty-eight (48) hours prior to the making of any such filing or submission to the Bankruptcy Court. Sellers shall provide Purchaser with prompt notice of (a) the filing or any objection to (or any threat or notice of intention of any Person to file any objection to) this Agreement or the other Transaction Documents, the transactions contemplated herein or therein, or Purchaser, or (b) the commencement of (or any threat or notice of intention of any Person to commence), any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, that relates in any way to this Agreement or the other Transaction Documents, the transactions contemplated herein or therein, or Purchaser.

Section 8.25 Required Consents. Sellers shall use commercially reasonable best efforts to obtain all Required Consents set forth on Schedule 8.25 hereto, including an estoppel provision from each Person set forth on Schedule 8.25 in substantially the form set forth on Schedule 8.25.

ARTICLE IX CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION TO CLOSE

The obligation of Purchaser to consummate the purchase of the Purchased Assets under this Agreement shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Purchaser:

Section 9.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Sellers shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Sellers shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 9.2 Officer's Certificate. Sellers shall have delivered to Purchaser a certificate executed by an executive officer of Sellers (including incumbency certificates) as Purchaser may reasonably request in order to evidence compliance with the conditions set forth in Section 9.1.

Section 9.3 Bill of Sale; Assumption Agreement; Intellectual Property Assignment Agreement. Sellers shall have delivered to Purchaser an executed Bill of Sale, Assumption Agreement, Intellectual Property Assignment Agreement and Assumed Contract Assignment Agreement(s), as applicable, pursuant to Section 4.1 and Section 4.2 hereof.

Section 9.4 ~~Consent. Sellers shall have received consent to the Transaction from the counterparty to the Peer39 Service Agreement with Avocet Systems, Limited, dated September 5, 2017.~~ [Reserved]

Section 9.5 No Material Adverse Effect. Since the date of this Agreement, there shall have been no Material Adverse Effect on the Purchased Assets or the Business.

Section 9.6 ~~Amended and Restated Existing~~ Existing Transition Services Agreement. Sellers shall have assigned to Purchaser the Existing Transition Services Agreement, ~~and Purchaser and Amazon shall have entered into the Amended and Restated Transition Services Agreement in a form satisfactory to Purchaser.~~

Section 9.7 Sizmek Transition Services Agreement. Sellers shall have delivered to Purchaser an executed copy of the Sizmek Transition Services Agreement.

Section 9.8 Authorizing Resolutions. Sellers shall have delivered to Purchaser copies of the authorizing resolutions of their respective Boards of Directors (or other governing body) authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 9.9 No Injunctions. There shall not be in effect or exist any Law issued by any Governmental Authority restraining or prohibiting the consummation of, or imposing material modifications on the transactions contemplated by, this Agreement or the other Transaction Documents, or any pending or threatened litigation by any Governmental Authority or other third party seeking to restrain, prohibit or impose material modifications on the consummation of the transactions contemplated by this Agreement or the other Transaction Documents.

Section 9.10 Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court. Such order must be in effect and must not have been reversed, vacated, stayed or modified in any material respect; provided, that the parties agree that the entry of a Sale Order approving the sale of the Purchased Assets to Purchaser (or its Affiliate) which does not approve the Break-Up Fee and/or Expense Reimbursement shall not constitute a material modification of the Sale Order or result in non-fulfillment of this Section 9.10.

Section 9.11 Escrow Agreement. Sellers shall have delivered to Purchaser a copy of the Escrow Agreement executed by Sellers and the Escrow Agent.

Section 9.12 Additional Assets of the Business. On or prior to the Closing, Sellers shall deliver to Purchaser (a) one or more Bills of Sale in form and substance reasonably satisfactory to Purchaser, and (b) all such other good and sufficient instruments of sale, transfer and conveyance reasonably satisfactory to Purchaser and consistent with the terms and provisions of this Agreement, and any other assignments as shall be reasonably necessary to transfer to Purchaser any assets relating to the Business owned by Sizmek UK, Sizmek Poland, Sizmek Hong Kong Limited or any other Affiliate of Sellers.

Section 9.13 Source Code. Sellers shall have (a) separated source code relating to the Business (the "Peer 39 Code") within SVN and GitLab repositories prior to or as of the Closing Date and provided Purchaser with access to such Peer 39 Code, or (b) otherwise provided access to Purchaser to such repositories in a manner that enables Purchaser to separate the Peer 39 Code within such repositories and retain a copy thereof.

ARTICLE X CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE

The obligations of Sellers to consummate the sale of the Purchased Assets under this Agreement shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Sellers:

Section 10.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Purchaser in this Agreement shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a material adverse effect on the ability of Purchaser to timely consummate the transactions contemplated hereunder. Purchaser shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 10.2 Officer's Certificate. Purchaser shall have delivered to Sellers a certificate executed by an executive officer of Purchaser (including incumbency certificates) as Sellers may reasonably request in order to evidence compliance with the conditions set forth in Section 10.1.

Section 10.3 Authorizing Resolutions. Purchaser shall have delivered to Sellers copies of the authorizing resolutions of its Board of Directors (or other governing body) authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 10.4 Assumption Agreement. Purchaser shall have delivered to Sellers an executed Assumption Agreement pursuant to Section 4.2 hereof.

~~Section 10.5 Amended and Restated Transition Services Agreement. Purchaser shall have delivered to Sellers a copy of the Amended and Restated Transition Services Agreement executed by Purchaser.~~

Section 10.5 ~~Section 10.6~~ Sizmek Transition Services Agreement. Purchaser shall have delivered to Sellers an executed copy of the Sizmek Transition Services Agreement.

Section 10.6 ~~Section 10.7~~ Escrow Agreement. Purchaser shall have delivered to Sellers a copy of the Escrow Agreement executed by Purchaser and the Escrow Agent.

ARTICLE XI TERMINATION

Section 11.1 Breaches and Defaults; Opportunity to Cure. Prior to the exercise by a party of any termination rights afforded under Section 11.2 (b) or Section 11.2(c) of this Agreement, if any party (the "Non-Breaching Party") believes any other party (the "Breaching Party") to be in breach hereunder, the Non-Breaching Party shall provide the Breaching Party

with written notice specifying in reasonable detail the nature of such breach, whereupon if such breach is curable the Breaching Party shall have five (5) calendar days from the receipt of such notice to cure such breach to the reasonable satisfaction of the Non-Breaching Party. If the breach is not cured within such time period, then the Non-Breaching Party's sole remedy shall be to terminate this Agreement if the breach is such that the condition set forth in Section 9.1 or Section 10.1, as applicable, shall not be satisfied (as provided in Section 11.2); provided, however, that the Non-Breaching Party shall not be entitled to terminate this Agreement if it is in material breach of this Agreement. Notwithstanding the foregoing, nothing in this Section 11.1 shall preclude Purchaser from seeking an injunction and/or specific performance of this Agreement in accordance with Section 12.13.

Section 11.2 Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto, at any time prior to the Closing:

(a) by mutual written consent of Sellers and Purchaser;

(b) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date, by Purchaser if Sellers are in breach of any covenant, representation, undertaking or warranty such that the condition set forth in Section 9.1 shall not be satisfied, and Purchaser has not waived such condition in writing on or before the Closing Date or (ii) by Purchaser, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Sellers fail to consummate the Closing within five (5) business days following the date such conditions have been so satisfied or waived;

(c) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date by Sellers if Purchaser is in breach of any covenant, representation or warranty such that the condition set forth in Section 10.1 shall not be satisfied, and Sellers have not waived such condition in writing on or before the Closing Date or (ii) by Sellers, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Purchaser fails to consummate the Closing within five (5) business days following the date such conditions have been so satisfied or waived;

~~(d) by written notice from Sellers to Purchaser, if Sellers or their respective boards of directors (or similar governing body) determine that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties; provided that (i) Sellers expressly acknowledge that their respective boards of directors (or similar governing body) have determined that it would not be inconsistent with any such Person's or body's fiduciary duties to reject an offer to purchase all or any portion of the Purchased Assets submitted by an Alternative Purchaser unless such offer includes a purchase price for the Purchased Assets in an amount that is at least equal to the Purchase Price Threshold (when taken together with other consideration or value to be recognized or retained by Sellers in connection therewith (including in the form of additional liabilities or other obligations to be performed or assumed by the potential buyer or the retention of Accounts Receivable or other assets)), and (ii) before taking any such action, Sellers~~

~~have provided Purchaser with written notice thereof in accordance with Section 8.14 and have given Purchaser at least four (4) business days to propose revisions to the terms of this Agreement (or to make another proposal) and during such period have made their representatives reasonably available to negotiate with Purchaser (to the extent Purchaser wishes to negotiate) with respect to such proposed revisions or other proposal, if any; [Reserved]~~

(e) at or prior to the Sale Hearing, by either Sellers or Purchaser, if the Bankruptcy Court enters an order approving an offer to purchase all or substantially all of the Purchased Assets submitted by an Alternative Purchaser or enters into an order confirming a plan of reorganization of Sellers (other than a plan under which Purchaser or an Affiliate of Purchaser acquires the Purchased Assets on or before the Closing Date); or

(f) by Sellers or Purchaser if the Closing shall not have occurred on or before ~~August 15,~~September 16, 2019, unless the failure to have the Closing shall be due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it or them at or prior to the Closing.

Section 11.3 Effect of Termination. In the event of termination of this Agreement pursuant to Section 11.2, this Agreement shall become null and void and, subject to Section 3.2, there shall be no liability on the part of any party hereto or any of its partners, officers, directors or shareholders; provided that, subject to Section 3.2, no termination will relieve Purchaser or Sellers, as applicable, from any liability for damages, losses, costs or expenses (including reasonable legal fees and expenses) resulting from any breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser or Sellers to consummate the Closing if and when it is obligated to do so hereunder).

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by electronic mail, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Purchaser:

P39 Tech LLC
3 Columbus Circle, Suite 1420
New York, NY 10019
Attention: Jeremy Ozen
E-mail: jozen@o3indus.com

with a required copy to:

Jones Walker, LLP
201 St. Charles Avenue, Suite 5100
New Orleans, LA 70170

Attention: Daniella G. Silberstein
E-mail: dsilberstein@joneswalker.com

If to Sellers:

c/o Sizmek, Inc.
401 Park Avenue South
5th Floor
New York, NY 10016

with a required copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
Attention: Steven J. Reisman and Evan Borenstein
Email: sreisman@kattenlaw.com; evan.borenstein@kattenlaw.com;
sizmekteam@katten.com

Notices delivered personally shall be effective upon delivery against receipt. Notices transmitted by telecopy shall be effective when received, provided that the burden of proving notice when notice is transmitted by telecopy shall be the responsibility of the party providing such notice. Notices transmitted by electronic mail (with no automatic “bounceback” transmission) shall be effective when sent. Notices delivered by overnight mail shall be effective when received. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or seventy-two (72) hours after mailing, whichever is earlier.

Section 12.2 Expenses. Except to the extent that Purchaser is otherwise entitled thereto in accordance with the provisions of this Agreement, each party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby.

Section 12.3 Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Agreement, each of Sellers and Purchaser hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of Sellers and Purchaser irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS

SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.4 Assignment. This Agreement binds and benefits the parties hereto and their respective successors and assignees. Purchaser shall not have the right to assign any of its rights under this Agreement or delegate any performance of its obligations under this Agreement without the prior written consent of Sellers and the First Lien Agent; provided, that Purchaser shall be permitted to assign its rights under this Agreement to Purchaser's Affiliate or as may be required for the purposes of granting Purchaser's senior lenders a security interest in the Purchased Assets without Seller's or the First Lien Agent's prior written consent. Either Seller may freely assign its rights, but not its obligations, hereunder without the consent of (but with notice to) Purchaser, but such assignment shall be subject to the prior written consent of the First Lien Agent.

Section 12.5 Successors and Assigns. All agreements made and entered into in connection with this Transaction shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

Section 12.6 Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the parties hereto and the First Lien Agent. Except as otherwise expressly set forth herein, no failure or delay by any party hereto or the First Lien Agent in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties hereto) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 12.7 Entire Agreement. This Agreement (including the Exhibits and Disclosure Schedules which are hereby incorporated by reference into and made a part of this Agreement for all purposes) merges all previous negotiations and agreements between the parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement. It is expressly agreed that this Agreement shall supersede and replace that certain Asset Purchase Agreement, dated July 3, 2019, by and among Sellers and Purchaser (the "Original APA"), and that the Original APA is hereby terminated and shall have no further force or effect.

Section 12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile and/or PDF signatures shall be deemed original signatures.

Section 12.9 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not

materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any Person.

Section 12.10 Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.11 Interpretation. As all parties hereto have participated in the drafting of this Agreement, any ambiguity shall not be construed against any party as the drafter. Unless the context of this Agreement clearly requires otherwise, (a) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (b) “including” has the inclusive meaning frequently identified with the phrase “including, but not limited to,” (c) references to “hereof,” “hereunder” or “herein” or words of similar import relate to this Agreement, (d) all references to “\$” and dollars shall be deemed to refer to United States currency unless otherwise specifically provided, (e) all references to a day or days shall be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided, (f) any reference to any Contract referenced herein or in the Disclosure Schedules shall be a reference to such Contract, as amended, modified, supplemented or waived, (g) references to any Person shall include the successors and permitted assigns of that Person, and (h) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if “.

Section 12.12 Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any Person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement, except the First Lien Agent shall be a third party beneficiary of this Agreement.

Section 12.13 Specific Performance. The parties hereto agree that irreparable damage would occur and that the parties hereto and the First Lien Agent would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto and the First Lien Agent shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement (and, to the fullest extent permitted by Law, each party hereto hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to each such party is entitled at law or in equity.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the day and year first above written.

SELLERS:

SIZMEK TECHNOLOGIES LTD., an Israeli company

By: _____
Name: _____
Title: _____

SIZMEK TECHNOLOGIES INC., a Delaware corporation

By: _____
Name: _____
Title: _____

PURCHASER:

P39 TECH LLC

By: _____

Name: _____

Title: _____

Schedule I

Description of Additional Services to be Provided by Amazon to Purchaser

~~The parties shall use commercially reasonable efforts to negotiate the Amended and Restated Transition Services Agreement with Amazon to reflect the following additional services:~~

- ~~• Allow use of data center infrastructure under existing contracts to support the Peer 39 business.~~
 - ~~• Support Peer39 buyer in the separation of the computing, storage, and network environments of their business applications from other Sizmek services.~~
 - ~~• Provide system generated trailing 7 day viewability report in its current structure. Peer39 uses AdServer viewability report in order to generate their viewable categories:
 - ~~-Quality : AdStats_Ad Viewability~~
 - ~~-Quality : AdStats_Ad Viewability : High~~
 - ~~-Quality : AdStats_Ad Viewability : Low~~
 - ~~-Quality : AdStats_Ad Viewability : Medium~~
 - ~~-Quality : AdStats_Ad Viewability : Very Low~~The structure of the report:
 - ~~-Date range~~
 - ~~-Top domain~~
 - ~~-Total impressions~~
 - ~~-Total measurable impressions~~
 - ~~-Total viewable impressions~~~~
- ~~• Provide files with all relevant Peer 39 impressions including:
 - ~~1. Row_Type~~
 - ~~2. URLs, separated by comma~~
 - ~~3. Session_ID~~
 - ~~4. Interaction_Name~~
 - ~~5. Mobile_App_ID~~~~
- ~~• Support billing for Azure cloud services until Peer 39 buyer has built their own infrastructure. Admin Access will be provided so Peer39 can duplicate and move its data.~~
 - ~~• Provide continued Tableau access for Peer 39 users. Admin Access will be provided so Peer39 can duplicate and move its data. General usage access will be limited to the data and functionality necessary to continue business operations.~~
 - ~~• Provide continued PulseBI history access for 1 Peer 39 user. Scope of access will be limited to the data and functionality necessary to continue business operations.~~
 - ~~• Allow continued SAS user access for Peer 39 employees and clients with limited permissions to access CCB UI and Peer39 Availabilities. Support Peer39 employees with partner management if necessary, they will not be permissioned for that.~~
 - ~~• Remit any cash received by Amazon that should have been paid to Peer39.~~
 - ~~• Provide continued GSuite access for existing Peer 39 users (as of 06/21/19, --22 user accounts).~~
 - ~~• Enable sizmek.com email address forwarding for Peer 39 employees.~~
 - ~~• Provide continued Salesforce history until Peer 39 buyer has built their own infrastructure. Access will be enabled such that Peer39 can copy its relevant data to set up its own infrastructure. Peer39 will use only 1 seat.~~

- Provide continued Confluence / Jira access for Peer 39 users for billing and NOC support until Peer39 buyer has built their own infrastructure. Admin Access will be provided so Peer39 can duplicate and move its data. General usage access will be limited to the data and functionality necessary to continue business operations (as of 06/21/19, ~18 user accounts).
- Provide continued Zendesk access for Peer 39 users until Peer 39 buyer has built their own infrastructure. Admin access will be provided so Peer39 can duplicate and move its data.
- Provide access to Couchbase license until Peer 39 has moved to its own contract or migrated off of Couchbase. Scope of access will be limited to the data and functionality necessary to continue business operations.
- Run Payroll for Polish, Serbian, and UK based employees.
- Provide continued access to Akamai services.
- Provide continued access to Cisco Anyconnect.
- Provide continued access to Gitlab. Admin access will be provided so Peer39 can duplicate and move its data.
- Provide continued access to SVN. Admin access will be provided so Peer39 can duplicate and move its data.
- Provide continued access to Jenkins so that we are able to move our data.
- Provide continued access to ActiveMQ.
- Provide continued access to RabbitMQ.
- Provide continued access to Artifactory.
- Provide continued access to Graphite and Graphana.
- Provide continued access to Bing.
- Enable continued operation under existing SSL certificates.
- Provide continued access to Nagios.
- Provide continued operations under existing VMware and or HyperV licenses. Allow us to copy and migrate any Peer39 related VMs.
- Provide continued access to cacti. Admin access will be provided so Peer39 can duplicate and move its data.
- Provide continued operations under existing ScyllaDB licenses.
- Provide continued access to all storage systems containing Peer39 data.
- Provide continued access to Forticlient.

Exhibit A

Form of Sale Order

Exhibit B

Form of Escrow Agreement

Exhibit C

Employees

Name
Irit Goren
Moriya Weinberg
Amit Alexander Lev-Brinker
Eti Freifeld
Adi Cholev
Julia Simanovsky
Nadav Neshet
Udi Ofer
Noa Greenberger
Nikky Hudson
Michelle Feliciano
Kimia Alnouri
Aleksandar Sinadinovic
Vladimir Kovarsky
Patrycja Dzienisik
Oleksandr Boiko
Oleksii Potekhin
Andrii Plokhotnyuk
Andrii Veselovsky
Elena Bagrii
Przemyslaw Walski
Lukasz Jagiela

Document comparison by Workshare 9.5 on Wednesday, July 24, 2019 8:09:08 PM

Input:	
Document 1 ID	interwovenSite://LOCAL/US/139498274/16
Description	#139498274v16<US> - Peer39 - Asset Purchase Agreement (O3)
Document 2 ID	interwovenSite://LOCAL/US/139498274/20
Description	#139498274v20<US> - Peer39 - Form APA
Rendering set	Firm Word - Adds Double Underline, Delete Strikethrough

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	28
Deletions	67
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	95

Exhibit B

Form of Escrow Agreement

Exhibit C

Employees

Name
Irit Goren
Moriya Weinberg
Amit Alexander Lev-Brinker
Eti Freifeld
Adi Cholev
Julia Simanovsky
Nadav Neshet
Udi Ofer
Noa Greenberger
Nikky Hudson
Michelle Feliciano
Kimia Alnouri
Aleksandar Sinadinovic
Vladimir Kovarsky
Patrycja Dzienisik
Oleksandr Boiko
Oleksii Potekhin
Andrii Plokhotnyuk
Andrii Veselovsky
Elena Bagrii
Przemyslaw Walski
Lukasz Jagiela

Exhibit 2 to the Sale Order

Redline of Asset Purchase Agreement

Exhibit 3 to the Sale Order

Assigned Contracts and Cure Payment Amounts¹

¹ In accordance with the Sale Motion, for the avoidance of doubt, the inclusion of any Contract or Lease on Exhibit 3 does not constitute an admission that a particular Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract or Lease ultimately will be assumed or assigned. All rights of Debtors and Buyer with respect thereto are reserved.

Exhibit 3 to the Sale Order

Assigned Contracts and Cure Payment Amounts⁷

⁷ In accordance with the Sale Motion, for the avoidance of doubt, the inclusion of any Contract or Lease on Exhibit 3 does not constitute an admission that a particular Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract or Lease ultimately will be assumed or assigned. All rights of Debtors and Buyer with respect thereto are reserved.

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
1.	1000Mercis	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	2/18/2015	1000Mercis 28 rue de Chateaudun 75009 Paris France	\$0.00
2.	A1 Platform Co, Ltd	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/20/2015	A1 Platform Co, Ltd Yurim Building, 5th Floor, 157-10 Samsung Dong Kangnam-Gu Seoul South Korea	\$0.00
3.	Accordant Media, LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/10/2010	Accordant Media, LLC 41 E. 11st St., 11th Floor New York, NY 10003	\$0.00
4.	Adconion UK Limited	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/13/2012	Adconion UK Limited 180 Great Portland Street London W1W 8QZ United Kingdom	\$0.00
5.	AdIntegral UK Limited	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	8/8/2015	AdIntegral UK Limited 2 Wellington Place Leeds United Kingdom	\$0.00
6.	AdInti BV	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	1/4/2013	AdInti BV Plein 1945, nr.27 1251 MA IJsselstein Netherlands	\$0.00
7.	Adlantic Online Advertising B.V.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	10/7/2015	Vinkenburgstraat 2a finance@adlantic.nl	\$0.00
8.	Adverline SAS	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/3/2015	Adverline SAS 5 rue de la Terrasse 75017 Paris	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
					France compta@adverline.com	
9.	Aeris Weather (Media Logic Group, LLC)	Sizmek Technologies, Inc.	Services Agreement	3/17/2014	Aeris Weather (Media Logic Group, LLC) 6569 City West Parkway Eden Prairie, MN 55344	\$0.00
10.	Affectv	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/16/2014	Affectv 33-34 Alfred Place London WC1E 7DP United Kingdom	\$0.00
11.	Agenda Media	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/25/2014	Agenda Media The Margolis Building 37 Turner Street Manchester, UK M4 1DW	\$0.00
12.	Air France	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/2/2014	Air France 45, rue de Paris / 95747 Roissy CDG Cedex	\$0.00
13.	Altitude Digital, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	7/20/2015	Altitude Digital, Inc. 1037 Broadway, Unit B Denver CO 80203	\$0.00
14.	Amazon Corporate LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Master Data Services Agreement	7/23/2013	Amazon Corporate LLC 410 Terry Avenue North Seattle, WA 98109-5210 Attn: General Counsel contracts-legal@amazon.com	\$0.00
15.	A9.com, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Service Order No. 1	7/24/2013	Amazon Corporate LLC 410 Terry Avenue North Seattle, WA 98109-5210 Attn: General Counsel contracts-legal@amazon.com	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
16.	Amazon Luxembourg S.a.r.l.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Service Order No. 2	7/25/2013	Amazon Corporate LLC 410 Terry Avenue North Seattle, WA 98109-5210 Attn: General Counsel contracts-legal@amazon.com	\$0.00
17.	Amazon Services International, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Service Order No. 3	7/27/2013	Amazon Corporate LLC 410 Terry Avenue North Seattle, WA 98109-5210 Attn: General Counsel contracts-legal@amazon.com	\$0.00
18.	Amazon.com Int'l Sales, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Service Order No. 4	7/25/2013	Amazon Corporate LLC 410 Terry Avenue North Seattle, WA 98109-5210 Attn: General Counsel contracts-legal@amazon.com	\$0.00
19.	Amnet EMEA	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	7/15/2016	Amnet EMEA 10 Triton Street London, NW1 3BF United Kingdom	\$0.00
20.	Amobee (fka Turn)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Turn Audience Platform Contextual Data Vendor Agreement	9/30/2011	Amobee Inc. 901 Marshall St., Suite 200 Redwood City, CA 94063 Attn: Chief Financial Officer	\$0.00
21.	Amobee (fka Turn)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	5/18/2011	Amobee Inc. 901 Marshall St., Suite 200 Redwood City, CA 94063 Attn: Chief Financial Officer	\$0.00
22.	AppNexus Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	License Agreement	10/7/2010	AppNexus Inc. 28 W. 23rd St., 4th Floor New York, NY 10010 Attn: Legal notices@appnexus.com	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
23.	AppNexus Inc.	Sizmek Technologies, Inc.	Data Provider Services Agreement	11/7/2016	AppNexus Inc. 28 W. 23rd St., 4th Floor New York, NY 10010 Attn: Legal notices@appnexus.com	\$0.00
24.	Basis (Centro (as successor to SiteScout))	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	8/6/2013	Centro Inc. Sullivan Center 11 E. Madison St., 6th Floor Chicago, IL 60602	\$0.00
25.	Basis (Centro)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Affiliate Adopting Agreement (adopting SiteScout agreement)	8/6/2013	Centro Inc. Sullivan Center 11 E. Madison St., 6th Floor Chicago, IL 60602	\$0.00
26.	Captify Technologies Limited	Sizmek Technologies, Inc.	MSA and Order	6/1/2018	Captify Technologies Limited 5 Langley Street London, WC2H 9JA United Kingdom	\$0.00
27.	Conversant - Dotomi, LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	5/11/2010	Conversant 101 N. Wacker, 23rd Floor Chicago, IL 60606	\$0.00
28.	Coresite (LA2)	Sizmek Technologies, Inc.	Order # 00004012	12/17/2013	Coresite Data Center, 900 N. Alameda St. Los Angeles, CA 90012	\$14,978.00
29.	CPX Interactive	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/15/2010	CPX Interactive 1600 Stewart Avenue, #401 Westbury, NY 11590	\$0.00
30.	Crimtan Holdings Ltd	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	5/11/2016	Crimtan Holdings Ltd 1-2 Castle Lane London SW1E 6DR United Kingdom	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
31.	Crunch DMC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	5/27/2015	Crunch DMC Suite 17 J-shed, Kings Road Swansea, SA1 8PL United Kingdom	\$0.00
32.	Cyren Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	7/27/2015	Cyren Inc. 7925 Jones Branch Dr., Suite 520 McLean, VA 22102	\$0.00
33.	Dealer Dot Com, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	7/23/2014	Dealer Dot Com, Inc. 1 Howard Street Burlington, VT 05401	\$0.00
34.	District M	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/18/2014	District M 7160 Boulevard St. Laurent #102 Montreal, QC, H2S 3E2 Canada	\$0.00
35.	eBay Enterprise, Inc. (fka Fetchback)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	6/20/2013	eBay Enterprise, Inc. 100 W. University Dr., Suite 101 Tempe, AZ 85281	\$0.00
36.	EQ Ads	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	8/29/2012	EQ Ads 1255 Bay Street, Suite 400 Toronto, ON M5R 2A9 Canada	\$0.00
37.	EQ Ads	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	10/15/2013	EQ Ads 1255 Bay Street, Suite 400 Toronto, ON M5R 2A9 Canada	\$0.00
38.	Foursquare Labs, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/3/2015	Foursquare Labs, Inc. 568 Broadway, 10th Floor New York, NY 10012	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
39.	GotChosen, Inc.	Sizmek Technologies, Inc.	Peer39 Service Agreement	2/16/2017	GotChosen, Inc. 12472 Lake Underhill Road, #397 Orlando, FL 32828	\$0.00
40.	GroupM	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	2/27/2015	GroupM Worldwide, LLC Privozni 2a Prague 170 00, Czech Republic Joe.barnes@groupm.com	\$0.00
41.	GroupM UK	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/19/2014	GroupM UK 26 Red Lion Square London WC1R 4HQ United Kingdom	\$0.00
42.	GumGum, Inc.	Sizmek Technologies, Inc.	Peer39 Service Agreement	3/1/2017	GumGum, Inc. 1314 7th Street, 5th Floor Santa Monica, CA 90401	\$0.00
43.	Havas (AFFIPERF)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	12/17/2014	AFFIPERF LIMITED Havas House Hermitage Court, Hermitage Lane Maidstone, Kent, ME16 9NT United Kingdom	\$0.00
44.	Havas (AFFIPERF SARL)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	12/17/2014	AFFIPERF SARL 29-30, Qual de Dion Bouton 92800 Puteaux France	\$0.00
45.	Hi-Media / Ad-Dsp	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	4/15/2016	Hi-Media / Ad-Dsp 6 place du colonel Bourgoin 75012 Paris France	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
46.	Innity	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	7/13/2015	Innity C501-502, Kelana Square 17, Jalan SS7/26 Kelana Jaya, 47301 Petaling Jaya Malaysia	\$0.00
47.	Integrated Media Solutions Partners, LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	6/1/2012	Integrated Media Solutions Partners, LLC 650 5th Avenue, 35th Floor New York, NY 10019	\$0.00
48.	Intercept Interactive Inc. dba Undertone	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	11/16/2011	Undertone 340 Madison Avenue, 8th Floor New York, NY 10173	\$0.00
49.	IronSource Technologies Ltd.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	Undated	IronSource Technologies Ltd. 17 Bluxome Street, San Francisco, California	\$0.00
50.	Just Media, Inc.	Sizmek Technologies, Inc.	MSA and Order	10/1/2018	Just Media, Inc. 6001 Shellmound Street, Suite 700 Emeryville, CA 94608	\$0.00
51.	Kargo Global, Inc.	Sizmek Technologies, Inc.	Peer39 Service Agreement	1/1/2017	Kargo Global, Inc. 826 Broadway New York, NY 10003	\$0.00
52.	LinkSmart, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	4/24/2014	LinkSmart, Inc. 1805 11th Street, Unit C Boulder, CO 80302	\$0.00
53.	Local World Ltd	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	10/6/2015	Local World Ltd Northcliffe House 2 Derry Street London, W8 5TT United Kingdom	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
54.	Ludius Media Ltd.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/9/2015	Ludius Media Ltd. Prof. Yehezkel Kaufman St. 6 Tel Aviv Israel	\$0.00
55.	MediaMath, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 MSA	12/17/2010	MediaMath, Inc. 4 World Trade Center 150 Greenwich Street, Floor 45 New York, NY 10007	\$0.00
56.	Mullen Advertising, Inc.	Sizmek Technologies, Inc.	Service Agreement	5/15/2009	Mullen Advertising, Inc. 36 Essex Street Wenham, MA 01984	\$0.00
57.	Netezza	Sizmek Technologies, Inc. as successor to Sizmek Technologies, Inc.	General Terms & Conditions	12/20/2010	Netezza, an IBM Company, 26 Forest Street, Marlborough MA 01752	\$0.00
58.	One Advertising AG	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	7/22/2014	One Advertising AG Lucile-Grahn-Strasse 39 Muenchen, 81675 Germany	\$0.00
59.	Owner IQ, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/25/2015	Owner IQ, Inc. 27-43 Wormwood St., Suite 400 Boston, MA 02210	\$0.00
60.	PowerPHYL Media Solutions	Sizmek Technologies, Inc.	Peer39 Order	12/1/2018	PowerPHYL Media Solutions 370 Seventh Avenue, Suite 905 New York, NY 10001	\$0.00
61.	Q1Media	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Addendum to Peer39 IO and AppNexus Data Sharing Agreement	6/9/2015	Q1Media 8240 N Mopac Expy Suite 250 Austin, TX 78759	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
62.	Quantcast (Struq Ltd)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	9/6/2012	Quantcast 5th Floor, Waverly House 7-11 Noel Street, Soho London W1F 8GQ United Kingdom	\$0.00
63.	Quartz, a division of The Atlantic Media Monthly Group, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	4/21/2016	Quartz c/o The Atlantic Monthly Group, Inc. 600 New Hampshire Avenue NW Washington, DC 20037	\$0.00
64.	ReachLogic Media LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	8/6/2013	ReachLogic Media LLC 35 Essex Street New York, NY 10002	\$0.00
65.	Retargeter	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	4/23/2012	Retargeter 33 New Montgomery St., Suite 150 San Francisco, CA 94105	\$0.00
66.	Sirdata	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/19/2015	Sirdata 9 Boulevard Berthier 75017 Paris France	\$0.00
67.	Smart Reach Digital, LLC (a subsidiary of Entercom Communications Corp.)	Sizmek Technologies, Inc.	Peer39 Srvs Order	7/1/2018	Entercom Communications Corp. 345 Hudson Street, 11th Floor New York, NY 10014	\$0.00
68.	Smartclip Hispania, SL	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/22/2015	Avenida Europa (ed 2), 19 - PLT 1, Pozuelo de Alarcon, 28224 , Madrid	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
69.	Smartclip (AMG Advertising Spain SL)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	6/22/2015	AMG Advertising Spain SL avenida de Europa 19, edificio I, 28224 Pozuelo de Alarcon Spain	\$0.00
70.	Systran S.A.	Sizmek Technologies Inc. as successor for Peer39, Inc.	License & Services Agreement	6/30/2011	Systran S.A. 5 rue Feydeau 75002 Paris – FRANCE	\$0.00
71.	Tersertude Ltd	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	8/10/2015	Tersertude Ltd 65 Menachem Begin Street Tel Aviv, 6713818 Israel	\$0.00
72.	The Atlantic Monthly Group, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	5/1/2013	The Atlantic Monthly Group, Inc. 600 New Hampshire Avenue NW Washington, DC 20037	\$0.00
73.	The Programmatic Agency	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/12/2015	The Programmatic Agency 18 rue Cardinet 75017 Paris France	\$0.00
74.	The Trade Desk, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Service Agreement	5/16/2013	The Trade Desk, Inc. 42 N. Chestnut Street Ventura, CA 93001	\$0.00
75.	Tightrope Interactive	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/24/2015	Tightrope Interactive 425 Bush Street San Francisco, CA 94108	\$0.00
76.	Time Inc. (UK)	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	10/5/2015	TI Media 161 Marsh Street London E14 9AP	\$0.00

	Contract Counterparty	Debtor Counterparty	Contract	Contract Date and/or Term	Counterparty Notice Address	Proposed Cure Cost
77.	TradeLab	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	3/29/2016	TradeLab 73 rue d'Arjod 75008 Paris France	\$0.00
78.	TubeMogul, Inc.	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 Service Agreement	8/13/2015	TubeMogul, Inc. 1250 53rd Street, Suite 1 Emeryville, CA 94608	\$0.00
79.	ViralGains, Inc.	Sizmek Technologies, Inc.	Peer39 Service Agreement	2/8/2017	ViralGains, Inc. 290 Congress Street, 7th Floor Boston, MA 02210	\$0.00
80.	Xaxis US LLC	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	3/15/2015	Xaxis US LLC 132 W. 31st Street New York, NY 10001	\$0.00
81.	Zenith Media on behalf of JP Morgan Chase Retail	Sizmek Technologies, Inc. (as successor to Peer39 Inc.)	Peer39 IO and AppNexus Data Sharing Agreement	11/11/2015	AppNexus Inc. 28 W. 23rd St., 4th Floor New York, NY 10010 Attn: Legal notices@appnexus.com	\$0.00
82.	Hewlett-Packard Financial Services Company	Sizmek Technologies, Inc.	Schedule Number 5424046699000003 to Master Lease and Financing Agreement	12/18/2018	Jill B. Bienstock Cole Schotz P.C. 25 Main Street Hackensack, NJ, 07601 JBienstock@coleschotz.com	\$12,213.00