

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

FORM 10-Q

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

For the Quarterly Period Ended **June 30, 2016**

OR

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

For the Transition Period from _____ to _____

Commission File Number **000-28275**

PFsweb, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

505 Millennium Drive, Allen, Texas
(Address of principal executive offices)

75-2837058
(I.R.S. Employer I.D. No.)

75013
(Zip Code)

Registrant's telephone number, including area code: **(972) 881-2900**

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

Indicate by checkmark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller Reporting Company

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

At August 5, 2016 there were 18,700,125 shares of registrant's common stock outstanding.

PFSWEB, INC. AND SUBSIDIARIES

Form 10-Q
June 30, 2016

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PART I. FINANCIAL INFORMATION

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PFSWEB, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Share Data)

	(Unaudited) June 30, 2016	December 31, 2015
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 16,692	\$ 21,781
Restricted cash	219	275
Accounts receivable, net of allowance for doubtful accounts of \$485 and \$600 at June 30, 2016 and December 31, 2015, respectively	60,418	70,700
Inventories, net of reserves of \$607 and \$739 at June 30, 2016 and December 31, 2015, respectively	8,049	9,262
Other receivables	4,926	8,704
Prepaid expenses and other current assets	5,841	5,662
Total current assets	<u>96,145</u>	<u>116,384</u>
PROPERTY AND EQUIPMENT, net	26,915	24,093
IDENTIFIABLE INTANGIBLES, net	9,295	8,810
GOODWILL	45,601	39,829
OTHER ASSETS	2,294	2,174
Total assets	<u>\$ 180,250</u>	<u>\$ 191,290</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Current portion of long-term debt and capital lease obligations	\$ 5,166	\$ 3,153
Trade accounts payable	39,649	51,170
Deferred revenue	6,377	7,390
Performance-based contingent payments	867	11,679
Accrued expenses	23,950	30,563
Total current liabilities	<u>76,009</u>	<u>103,955</u>
LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS, less current portion	49,864	32,238
DEFERRED REVENUE	4,413	4,499
DEFERRED RENT	4,918	4,362
OTHER LIABILITIES	543	2,478
Total liabilities	<u>135,747</u>	<u>147,532</u>
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Preferred stock, \$1.00 par value; 1,000,000 shares authorized; none issued or outstanding	—	—
Common stock, \$0.001 par value; 35,000,000 shares authorized; 18,724,551 and 18,136,218 shares issued at June 30, 2016 and December 31, 2015, respectively; and 18,691,084 and 18,102,751 outstanding at June 30, 2016 and December 31, 2015, respectively	18	18
Additional paid-in capital	144,662	141,948
Accumulated deficit	(100,721)	(97,787)
Accumulated other comprehensive income (loss)	669	(296)
Treasury stock at cost, 33,467 shares	(125)	(125)
Total shareholders' equity	<u>44,503</u>	<u>43,758</u>
Total liabilities and shareholders' equity	<u>\$ 180,250</u>	<u>\$ 191,290</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PFSWEB, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands, Except Per Share Data)

	Three Months Ended		Six Months Ended	
	2016	2015	2016	2015
REVENUES:				
Service fee revenue	\$ 51,166	\$ 39,075	\$ 100,484	\$ 75,783
Product revenue, net	11,380	13,658	24,987	30,312
Pass-through revenue	14,653	10,443	26,809	20,927
Total revenues	<u>77,199</u>	<u>63,176</u>	<u>152,280</u>	<u>127,022</u>
COSTS OF REVENUES:				
Cost of service fee revenue	34,381	26,645	66,655	51,800
Cost of product revenue	10,742	12,911	23,644	28,619
Cost of pass-through revenue	14,653	10,443	26,809	20,927
Total costs of revenues	<u>59,776</u>	<u>49,999</u>	<u>117,108</u>	<u>101,346</u>
Gross profit	17,423	13,177	35,172	25,676
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES , including stock based compensation expense of \$629 and \$1,150 in the three months ended June 30, 2016 and 2015, respectively, and \$1,396 and \$1,954 in the six months ended June 30, 2016 and 2015, respectively				
Loss from operations	18,808	14,676	36,358	28,290
Loss from operations	(1,385)	(1,499)	(1,186)	(2,614)
INTEREST EXPENSE, net	609	223	1,094	541
Loss from operations before income taxes	(1,994)	(1,722)	(2,280)	(3,155)
INCOME TAX EXPENSE	188	178	654	438
NET LOSS	<u>\$ (2,182)</u>	<u>\$ (1,900)</u>	<u>\$ (2,934)</u>	<u>\$ (3,593)</u>
NET LOSS PER SHARE:				
Basic	\$ (0.12)	\$ (0.11)	\$ (0.16)	\$ (0.21)
Diluted	<u>\$ (0.12)</u>	<u>\$ (0.11)</u>	<u>\$ (0.16)</u>	<u>\$ (0.21)</u>
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING:				
Basic	18,627	17,368	18,477	17,257
Diluted	<u>18,627</u>	<u>17,368</u>	<u>18,477</u>	<u>17,257</u>
COMPREHENSIVE LOSS:				
Net loss	\$ (2,182)	\$ (1,900)	\$ (2,934)	\$ (3,593)
Foreign currency translation adjustment	669	238	965	(668)
TOTAL COMPREHENSIVE LOSS	<u>\$ (1,513)</u>	<u>\$ (1,662)</u>	<u>\$ (1,969)</u>	<u>\$ (4,261)</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PFSWEB, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Six Months Ended June 30,	
	2016	2015
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (2,934)	\$ (3,593)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	7,403	6,564
Amortization of debt issuance costs	73	—
Gain on sale of fixed assets	—	20
Provision for doubtful accounts	18	16
Provision for excess and obsolete inventory	27	9
Deferred income taxes	(9)	39
Stock-based compensation expense	1,396	1,954
Non-cash compensation expense	—	87
Change in performance-based contingent payments	(1,768)	—
Changes in operating assets and liabilities:		
Restricted cash	—	34
Accounts receivable	11,930	15,607
Inventories	1,205	109
Prepaid expenses, other receivables and other assets	4,867	3,854
Deferred rent	921	(282)
Accounts payable, deferred revenue, accrued expenses and other liabilities	(20,012)	(18,307)
Net cash provided by operating activities	<u>3,117</u>	<u>6,111</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(6,553)	(1,946)
Acquisitions, net of cash acquired	(8,320)	(878)
Net cash used in investing activities	<u>(14,873)</u>	<u>(2,824)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Net proceeds from issuance of common stock	1,037	1,189
Decrease in restricted cash	56	112
Payments on performance-based contingent payments	(9,454)	(2,043)
Payments on capital lease obligations	(1,415)	(1,081)
Taxes paid on behalf of employees for withheld shares	(1,307)	(588)
Payments on debt, net	(2,492)	(2,212)
Borrowings on term loan	12,000	—
Borrowings on revolver	42,839	—
Payments on revolver	(35,095)	—
Net cash provided by (used in) financing activities	<u>6,169</u>	<u>(4,623)</u>
EFFECT OF EXCHANGE RATES ON CASH AND CASH EQUIVALENTS	498	(1,071)
NET DECREASE IN CASH AND CASH EQUIVALENTS	<u>(5,089)</u>	<u>(2,407)</u>
CASH AND CASH EQUIVALENTS, beginning of period	21,781	18,128
CASH AND CASH EQUIVALENTS, end of period	<u>\$ 16,692</u>	<u>\$ 15,721</u>
SUPPLEMENTAL CASH FLOW INFORMATION		
Non-cash investing and financing activities:		
Property and equipment acquired under long-term debt and capital leases	<u>\$ 1,654</u>	<u>\$ 1,637</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

1. OVERVIEW AND BASIS OF PRESENTATION

PFSweb, Inc. and its direct and indirect subsidiaries are collectively referred to as the “Company”; “Supplies Distributors” refers to Supplies Distributors, Inc. and its subsidiaries; “Retail Connect” refers to PFSweb Retail Connect, Inc.; “REV” collectively refers to REV Solutions, Inc. and REVTECH Solutions India Private Limited; “LAL” refers to LiveAreaLabs, Inc.; “Moda” refers to Moda Superbe Limited; “CrossView” refers to CrossView, Inc.; “Conexus” refers to Conexus Limited and “PFSweb” refers to PFSweb, Inc. and its subsidiaries, excluding Supplies Distributors and Retail Connect.

PFSweb Overview

PFSweb is a global provider of omni-channel commerce solutions, including a broad range of technology, infrastructure and professional services, to major brand name companies and others seeking to optimize their supply chain and to enhance their online and traditional business channels and initiatives in the United States, Canada, and Europe. PFSweb’s service offerings include website design, creation and integration, digital agency and marketing, eCommerce technologies, order management, customer care, logistics and fulfillment, financial management and professional consulting.

Supplies Distributors Overview

Supplies Distributors and PFSweb operate under distributor agreements with Ricoh Company Limited and Ricoh USA, Inc., a strategic business unit within the Ricoh Family Group of Companies, (collectively hereafter referred to as “RicoH”), under which Supplies Distributors acts as a distributor of various Ricoh products. The majority of Supplies Distributors’ revenue is generated by its sale of product purchased from Ricoh.

Supplies Distributors has obtained financing to fund certain working capital requirements for the sale of primarily Ricoh products. Pursuant to the transaction management services agreements between PFSweb and Supplies Distributors, PFSweb provides to Supplies Distributors transaction management and fulfillment services, such as managed web hosting and maintenance, procurement support, web-enabled customer contact center services, customer relationship management, financial services including billing and collection services, information management, and international distribution services. Supplies Distributors does not have its own sales force and relies upon RicoH’s sales force and product demand generation activities for its sale of Ricoh products. Supplies Distributors sells its products in the United States, Canada and Europe.

Supplies Distributors also maintains agreements with certain additional clients where it operates as an agent for the resale of product between the client and the clients’ customer, and records product revenue net of cost of product revenue as a component of service fee revenue. PFSweb also provides various transaction management services to Supplies Distributors under these arrangements.

All of the agreements between PFSweb and Supplies Distributors were made in the context of an affiliate relationship and were negotiated in the overall context of PFSweb’s and Supplies Distributors’ arrangement with the client or vendor. Although management believes the terms of these agreements are generally consistent with fair market values, there can be no assurance that the prices charged to or by each company under these arrangements are not higher or lower than the prices that may be charged by, or to, unaffiliated third parties for similar services. All of these transactions are eliminated upon consolidation.

Basis of Presentation

The interim condensed consolidated financial statements as of June 30, 2016, and for the three and six months ended June 30, 2016 and 2015, have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and are unaudited. Certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) have been condensed or omitted pursuant to the rules and regulations promulgated by the SEC. In the opinion of management and subject to the foregoing, the unaudited interim condensed consolidated financial statements of the Company include all adjustments necessary for a fair presentation of the Company’s financial position as of June 30, 2016, its results of operations for the three and six months ended June 30, 2016 and 2015 and its cash flows for the six months ended June 30, 2016 and 2015. Certain prior-year amounts have been reclassified to conform to the current year’s presentation. Results of the Company’s operations for interim periods may not be indicative of results for the full fiscal year.

2. SIGNIFICANT ACCOUNTING POLICIES**Principles of Consolidation**

All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of condensed consolidated financial statements and related disclosures in conformity with U.S. GAAP requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and disclosure of contingent assets and liabilities. The recognition and allocation of certain revenues and selling, general and administrative expenses in these condensed consolidated financial statements also require management estimates and assumptions.

Estimates and assumptions about future events and their effects cannot be determined with certainty. The Company bases its estimates on historical experience and on various other assumptions believed to be applicable and reasonable under the circumstances. These estimates may change as new events occur, as additional information is obtained and as the operating environment changes. These changes have been included in the condensed consolidated financial statements as soon as they became known. In addition, management is periodically faced with uncertainties, the outcomes of which are not within its control and will not be known for prolonged periods of time. These uncertainties are discussed in this report and in the Company's Annual Report on Form 10-K for the year ended December 31, 2015 in the section entitled "Risk Factors." Based on a critical assessment of accounting policies and the underlying judgments and uncertainties affecting the application of those policies, management believes the Company's condensed consolidated financial statements are fairly stated in accordance with U.S. GAAP, and provide a fair presentation of the Company's financial position and results of operations.

Revenue and Cost Recognition

The Company derives revenue primarily from services provided under contractual arrangements with its clients or from the sale of products under its distributor agreements. The following revenue recognition policies define the manner in which the Company accounts for sales transactions.

The Company recognizes revenue when persuasive evidence of a sales arrangement exists, product shipment or delivery has occurred or services are rendered, the sales price or fee is fixed or determinable, and collectability is reasonably assured.

In instances where revenue is derived from sales of third-party vendor services, the Company records revenue on a gross basis when the Company is a principal to the transaction and net of costs when the Company is acting as an agent between the customer or client and the vendor. The Company considers several factors to determine whether it is a principal or an agent, most notably whether the Company is the primary obligor to the vendor or customer, has established its own pricing and has inventory and credit risks, if applicable.

Service Fee Revenue Activity

The Company's service fee revenue primarily relates to its distribution services, order management/customer care services, professional digital agency and technology services. The Company typically charges its service fee revenue on either a cost-plus basis, a percent of shipped revenue basis, on a time and materials, project or retainer basis for professional services, or a per transaction basis, such as a per item basis for fulfillment services or a per labor hour basis for web-enabled customer contact center services. Additional fees are billed for other services.

The Company evaluates its contractual arrangements to determine whether or not they include multiple service elements. Revenue recognition is determined for the separate service elements of the contract in accordance with the requirements of Accounting Standards Codification ("ASC") 605, "Revenue Recognition." A deliverable constitutes a separate unit of accounting when it has standalone value and there are no return rights or other contingencies present for the delivered elements. The Company allocates revenue to each element based on estimated selling price. Each of the Company's client contracts, and the related services, is unique, with individual needs and criteria customized for each client. Each client engagement is scoped and priced separately and as such the Company is not able to establish vendor specific objective evidence of fair value for its services, nor is third-party evidence available to establish stand-alone selling prices. Accordingly the Company uses management's best estimate of selling price for the deliverables. The Company establishes its estimates considering internal factors such as margin objectives, pricing practices and controls as well as market conditions such as competitor pricing strategies.

Notes to Unaudited Condensed Consolidated Financial Statements

Distribution services relate primarily to inventory management, product receiving, warehousing and fulfillment (i.e., picking, packing and shipping) and facilities and operations management. Service fee revenue for these activities is recognized as earned, which is either (i) on a per transaction basis or (ii) at the time of product fulfillment, which occurs at the completion of the distribution services.

Order management/customer care services relate primarily to taking customer orders for the Company's clients' products. These services also entail addressing customer questions related to orders, as well as cross-selling/up-selling activities. Service fee revenue for this activity is recognized as the services are rendered. Fees charged to the client are on a per transaction basis based on either (i) a pre-determined fee per order or fee per telephone minutes incurred, (ii) a per dedicated agent fee, or (iii) are included in the product fulfillment service fees that are recognized on product shipment.

Professional consulting and technology service revenues primarily relate to design, implementation, service and support of eCommerce platforms, website design and solutions and quality control for the Company's clients. Additionally, the Company provides digital agency services that enable client marketing programs to attract new customers, convert buyers and increase website value. These fees are typically charged on either a per labor hour basis, or transaction basis, a dedicated resource model, a fixed price arrangement, or a percent of merchandise shipped basis. Service fee revenue for this activity is generally recognized as the services are rendered.

The Company performs front-end set-up and integration services to support client eCommerce platforms and websites. When the Company determines these front-end set-up and integration services do not meet the criteria for recognition as a separate unit of accounting, the Company defers the start-up fees received and the related costs, and recognizes them over the expected performance period. When the Company determines these front-end set-up and integration services do meet the criteria for recognition as a separate unit of accounting, for time and material arrangements, the Company recognizes revenue as services are rendered and costs as they are incurred. For fixed-price arrangements, the Company uses the completed contract method to recognize revenues and costs if reasonable and reliable cost estimates for a project cannot be made. If reasonable and reliable costs estimates for a project can be made, the Company recognizes revenue over the expected performance period on a proportional performance basis, as determined by the relationship of actual costs incurred compared to the estimated total contract costs. At the time a loss in a contract is expected, the entire amount of the estimated loss is accrued.

The Company's billings for reimbursement of out-of-pocket expenses, including travel and certain third-party vendor expenses such as shipping and handling costs and telecommunication charges, are included in pass-through revenue. The related reimbursable costs are reflected as cost of pass-through revenue.

The Company's cost of service fee revenue, representing the cost to provide the services described above, is recognized as incurred. Cost of service fee revenue also includes certain costs associated with technology collaboration and ongoing technology support that include maintenance, web hosting and other ongoing programming activities. These activities are primarily performed to support the distribution and order management/customer care services and are recognized as incurred.

Product Revenue Activity

Depending on the terms of the customer arrangement, Supplies Distributors recognizes product revenue and product cost either upon the shipment of product to customers or when the customer receives the product. Supplies Distributors permits its customers to return product for credit against other purchases, which include returns for defective products (that Supplies Distributors then returns to the manufacturer) and incorrect shipments. Supplies Distributors provides a reserve for estimated returns and allowances and offers terms to its customers that it believes are standard for its industry.

Freight costs billed to customers are reflected as components of product revenue. Freight costs incurred are recorded as a component of cost of goods sold.

Under its distributor agreements, Supplies Distributors bills Ricoh for reimbursements of certain expenses, including: pass-through customer marketing programs, including rebates and co-op funds; certain freight costs; direct costs incurred in passing on any price decreases offered by Ricoh to Supplies Distributors or its customers to cover price protection and certain special bids; the cost of products provided to replace defective product returned by customers; and certain other expenses as defined. Supplies Distributors records these reimbursable amounts as they are incurred as other receivables in the condensed consolidated balance sheet with a corresponding reduction in either inventory or cost of product revenue. Supplies Distributors also records pass-through customer marketing programs as a reduction of both product revenue and cost of product revenue.

Notes to Unaudited Condensed Consolidated Financial Statements

Accounts Receivable

The Company recognizes revenue and records trade accounts receivable, pursuant to the methods described above, when collectability is reasonably assured. Collectability is evaluated in the aggregate and on an individual customer or client basis taking into consideration payment due date, historical payment trends, current financial position, results of independent credit evaluations and payment terms. Related reserves are determined by either using percentages applied to certain aged receivable categories based on historical results, reevaluated and adjusted as additional information is received, or a specific identification method. After all attempts to collect a receivable have failed, the receivable is written off against the allowance for doubtful accounts.

Deferred Revenues and Deferred Costs

The Company primarily performs its services under multiple-year contracts, certain of which include early termination provisions, and clients are obligated to pay for services performed. In conjunction with these long-term contracts, the Company sometimes receives start-up fees to cover its implementation costs, including certain technology infrastructure and development costs. When the Company determines that these start-up and integration activities do not meet the criteria for recognition as a separate unit of accounting, the Company defers the start-up fees received, and the related costs, and recognizes them over the expected performance period. The amortization of deferred revenue is included as a component of service fee revenue. The amortization of deferred implementation costs is included as a cost of service fee revenue. To the extent implementation costs for non-technology infrastructure and development exceed the corresponding fees received, the excess costs are expensed as incurred.

Advances to Affiliates

Priority Fulfillment Services, Inc. ("PFS") a wholly-owned subsidiary of PFSweb, Inc. has made advances to Supplies Distributors that are evidenced by a Subordinated Demand Note (the "Subordinated Note"). Under the terms of certain of Supplies Distributors' debt facilities, the outstanding balance of the Subordinated Note cannot be decreased to less than \$2.5 million without prior approval of certain of Supplies Distributors' lenders. As of June 30, 2016 and December 31, 2015, the outstanding balance of the Subordinated Note was \$2.5 million. The Subordinated Note is eliminated in the Company's condensed consolidated financial statements.

Concentration of Business and Credit Risk

One service fee client relationship represented approximately 10% of the Company's consolidated total revenues during the six months ended June 30, 2016. No customer or service fee client exceeded 10% of consolidated accounts receivable as of June 30, 2016.

A summary of the nonaffiliated customer and client concentrations as a percentage of product revenue and service fee revenue, respectively, is as follows:

	Six Months Ended	
	June 30,	
	2016	2015
Product Revenue (as a percentage of total Product Revenue):		
Customer 1	13%	15%
Customer 2	15%	14%
Service Fee Revenue (as a percentage of total Service Fee Revenue):		
Client 1	10%	15%

The Company currently anticipates that its product revenue from the customers identified above will decline during the next twelve months.

The Company has provided certain collateralized guarantees of its subsidiaries' financings and credit arrangements. These subsidiaries' ability to obtain financing on similar terms would be significantly impacted without these guarantees.

The Company has multiple arrangements with International Business Machines Corporation ("IBM") and Ricoh. These arrangements include Supplies Distributors' distributor agreements and certain of Supplies Distributors' working capital financing agreements. The majority of Supplies Distributors' revenue is generated by its sale of product purchased from Ricoh. Supplies Distributors also relies upon Ricoh's sales force and product demand generation activities and the discontinuance of such services

Notes to Unaudited Condensed Consolidated Financial Statements

would have a material impact upon Supplies Distributors' business. In addition, Supplies Distributors has product sales to IBM and Ricoh business affiliates.

As a result of certain operational restructuring of its business, Ricoh has implemented, and will continue to implement, certain changes in the sale and distribution of Ricoh products. The changes have resulted, and are expected to continue to result, in reduced revenues and profitability for Supplies Distributors.

Inventories

Inventories (all of which are finished goods) are stated at the lower of weighted average cost or market. The Company establishes inventory reserves based upon estimates of declines in values due to inventories that are slow moving or obsolete, excess levels of inventory or values assessed at lower than cost.

Supplies Distributors assumes responsibility for slow-moving inventory under its Ricoh distributor agreements, subject to certain termination rights, but has the right to return product rendered obsolete by engineering changes, as defined. In the event PFS, Supplies Distributors and Ricoh terminate the distributor agreements, the agreements provide for the parties to mutually agree on a plan of disposition of Supplies Distributors' then existing inventory.

Operating Leases

The Company leases certain real estate for its warehouse, call center, sales, professional services and corporate operations, as well as certain equipment, under non-cancelable operating leases that expire at various dates through 2026. Management expects that, in the normal course of business, leases that expire will be renewed or replaced by other similar leases. The Company recognizes escalating lease payments on a straight-line basis over the term of each respective lease with the difference between cash payments and rent expense recognized being recorded as deferred rent in the accompanying condensed consolidated balance sheets.

Property and Equipment

The Company's property held under capital leases totaled approximately \$5.6 million and \$5.5 million, net of accumulated amortization of approximately \$4.8 million and \$4.6 million, at June 30, 2016 and December 31, 2015, respectively. Depreciation and amortization expense related to capital leases during six months ended June 30, 2016 and 2015 was \$1.4 million and \$1.0 million, respectively.

Income Taxes

The Company records a tax provision primarily associated with state income taxes and its foreign operations. The Company has recorded a valuation allowance for the majority of its domestic net deferred tax assets, which are primarily related to its net operating loss carryforwards, and for certain foreign deferred tax assets.

Cash Paid for Interest and Taxes

The Company made payments for interest of approximately \$0.8 million and \$0.3 million in the six months ended June 30, 2016 and 2015, respectively. Income taxes of approximately \$0.6 million and \$0.7 million were paid by the Company during the six months ended June 30, 2016 and 2015, respectively.

Impact of Recently Issued Accounting Standards*Accounting Standards Recently Adopted*

In March 2016, the Financial Accounting Standards Board (the "FASB") issued ASU 2016-09, "*Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.*" The amendment in this ASU affects all organizations that issue share-based payment awards to employees and is intended to simplify several aspects of the accounting for these awards, including income tax consequences, classification of awards as either equity or liabilities, classification on the statement of cash flows, and allowing an accounting policy election to account for forfeitures as they occur. As permitted by ASU 2016-09, the Company elected to early adopt ASU 2016-09 in the quarter ended June 30, 2016 with an effective date of January 1, 2016. As a result of the adoption, the Company recognized previously unrecognized excess tax benefits of \$1.9 million, which was offset by a valuation

Notes to Unaudited Condensed Consolidated Financial Statements

allowance in the same amount as the Company does not believe, on a more-likely-than-not basis, the net operating losses will be realized. The adoption of ASU 2016-09 resulted in a cumulative adjustment to equity, subject to a full valuation allowance, as of January 1, 2016.

The Company has not yet adopted and is currently assessing the potential effect of the following pronouncements on its condensed consolidated financial statements and related disclosures:

In May 2014, the Financial Accounting Standards Board (the "FASB") issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASU 2014-09"), which outlines a single, comprehensive model for entities to use in accounting for revenue arising from contracts with customers. The core principle of ASU 2014-09 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. ASU 2014-09 defines a five step process to achieve this core principle and, in doing so, it is possible more judgment and estimates may be required within the revenue recognition process than required under existing U.S. GAAP, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. ASU 2014-09 is effective for the fiscal year beginning January 1, 2018, with early adoption permitted for fiscal years beginning January 1, 2017. The FASB has also issued the following standards which clarify ASU 2014-09 and have the same effective date as the original standard:

- ASU No. 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)*;
- ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*; and
- ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*.

In February 2016, the FASB issued ASU 2016-02, "*Leases*". The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available.

3. ACQUISITIONS

Acquisitions have been recorded using the purchase method of accounting for business combinations.

Acquisition Related Expenses

The acquisitions discussed below are expected to enhance the Company's overall service offering to its existing clients and customers as well as support anticipated growth opportunities. For the three months ended June 30, 2016 and 2015, acquisition related costs were \$1.4 million and \$0.9 million, respectively, and for the six months ended June 30, 2016 and 2015, acquisition related costs were \$1.6 million and \$1.3 million, respectively, and recognized in selling, general and administrative expenses in the condensed consolidated statements of operations.

2016 Acquisition

Acquisition of Conexus

On June 8, 2016, PFSweb, Inc. acquired the outstanding capital stock of Conexus, an eCommerce system integrator that provides strategic consulting, system integration, and managed services for leading businesses and technology companies. Conexus maintains primary operations in Basingstoke, Hampshire (U.K.). The purchase price for the shares consists of (i) an initial cash payment of £5,855,000 (approximately \$8.5 million), subject to a post-closing adjustment based upon a May 31, 2016 balance sheet analysis to be completed following the closing, and (ii) up to an aggregate maximum of £1,445,000 (approximately \$1.9 million at June 30, 2016), subject to Conexus achieving certain operational and financial targets during the post-closing period ending December

Notes to Unaudited Condensed Consolidated Financial Statements

31, 2016 (the "Earn-out Payments"), subject to possible offsets for indemnification and other claims arising under the purchase agreement. Up to 40% (but not to exceed £450,000) (approximately \$0.6 million at June 30, 2016) of the Earn-out Payments may be paid by the issuance of restricted shares of PFSweb common stock, based on its then current market value at the time of issuance. As of June 30, 2016, the Company has recorded a liability of \$0.6 million applicable to the estimated Earn-out Payments, which is included in performance-based contingent payments in the condensed consolidated balance sheets.

The results of operations of Conexus have been included in the Company's condensed consolidated financial statements since the date of acquisition which, for the three and six months ended June 30, 2016, includes \$0.5 million of service fee revenue and \$0.3 million of net loss. The net loss for Conexus for the three months ended June 30, 2016 included \$0.5 million of acquisition related costs. Additional acquisition related costs applicable to the Conexus acquisition of approximately \$1.0 million and \$1.1 million were also incurred by the Company during the three and six month ended June 30, 2016, respectively. The Company determined fair value using a combination of the discounted cash flow, market multiple and market capitalization valuation methods. The Company is in the process of finalizing the purchase price allocation and, accordingly, the following preliminary allocation of the purchase price is subject to adjustment.

The following table summarizes the preliminary estimated fair value of the tangible and intangible assets acquired and liabilities assumed (in thousands):

Cash	\$	156
Accounts receivable, net		1,458
Other receivables		1,434
Property and equipment		200
Other assets		82
Intangible assets		2,181
Total assets acquired		5,511
Total liabilities assumed		2,211
Net assets acquired		3,300
Goodwill		5,772
Total purchase price	\$	9,072
Aggregate cash payments		8,476
Performance-based contingent payments (based on estimated fair value at acquisition date)		596
Total purchase price	\$	9,072

The excess of the purchase price over the fair value of the net identifiable assets acquired and liabilities assumed was allocated to goodwill. Total goodwill of \$5.8 million, none of which is deductible for tax purposes, is not being amortized but is subject to an annual impairment test using a fair-value-based approach.

The Company is amortizing the identifiable intangible assets acquired using a pattern in which the economic benefit of the assets are expected to be realized by the Company over their estimated remaining useful lives. There are no residual values for any of the intangible assets subject to amortization acquired during the Conexus acquisition. Estimated definite lived intangible assets acquired in the Conexus acquisition consist of customer relationships of \$1.5 million, with an estimated useful life of approximately five years and developed technology of \$0.7 million, with an estimated useful life of approximately three years.

2015 Acquisitions

Acquisition of Moda

On June 11, 2015, PFSweb, Inc. acquired the outstanding capital stock of Moda, an eCommerce system integrator and consultancy that provides unique digital experiences for fashion brands and retailers. Moda maintains primary operations in London. Consideration paid for the shares included an initial £650,000 (approximately \$1.0 million) cash payment and 16,116 unregistered shares of Company stock (approximately \$0.2 million in value as of the acquisition date). The purchase agreement provides for future earn-out payments ("Moda Earn-out Payments") payable in 2016 and 2017 based on Moda's achievement of certain 2015 and 2016 financial targets, with no guaranteed minimum and an aggregate maximum each year of £500,000 (approximately \$0.8 million), in each case, subject to possible offsets for indemnification and other claims arising under the purchase agreement. As of June 30, 2016,

Notes to Unaudited Condensed Consolidated Financial Statements

the Company has recorded a liability of \$0.1 million applicable to the estimated 2016 Moda Earn-out Payments, which is included in performance-based contingent payments in the condensed consolidated balance sheets. The estimated performance-based contingent liability for the Moda 2016 Earn-out Payments was reduced from \$0.3 million as of December 31, 2015 to \$0.1 million as of June 30, 2016 as a result of updated 2016 Moda financial projections. At the Company's election, up to 25% of the 2016 Moda Earn-out Payments are payable in restricted shares of common stock of the Company.

The results of operations of Moda have been included in the Company's condensed consolidated financial statements since the date of acquisition.

The Company determines fair value using a combination of the discounted cash flow, market multiple and market capitalization valuation methods. The following table summarizes the fair value of the tangible and intangible assets acquired and liabilities assumed (in thousands):

Cash and cash equivalents	\$	126
Accounts receivable		335
Property and equipment		27
Identifiable intangibles		340
Other assets		23
Total assets acquired		851
Total liabilities assumed		658
Net assets acquired		193
Goodwill		1,287
Total purchase price	\$	1,480

Purchase price for Moda is as follows (in thousands, except share data and stock price):

Number of shares of common stock issued		16,116
Multiplied by PFSweb Inc.'s stock price	\$	14.60
Share consideration	\$	235
Aggregate cash payments		1,005
Performance-based contingent payments (based on estimated fair value at acquisition date)		240
Total purchase price	\$	1,480

The excess of the purchase price over the fair value of the net identifiable assets acquired and liabilities assumed was allocated to goodwill. Total goodwill of \$1.3 million, none of which is deductible for tax purposes, is not being amortized but is subject to an annual impairment test using a fair-value-based approach.

The Company is amortizing the identifiable intangible assets acquired using a pattern in which the economic benefit of the assets are expected to be realized by the Company over their estimated remaining useful lives. There are no residual values for any of the intangible assets subject to amortization acquired during the Moda acquisition. Estimated definite lived intangible assets acquired in the Moda acquisition consist of (in thousands):

	Fair Value at Acquisition	June 30, 2016		December 31, 2015		Estimated Useful Life from Acquisition
		Accumulated Amortization	Net Carrying Value	Accumulated Amortization	Net Carrying Value	
Customer relationships	\$ 309	\$ (203)	\$ 106	\$ (141)	\$ 168	1.6 years
Non-compete agreements	31	(21)	10	(12)	19	2.5 years
Total definite lived intangible assets	\$ 340	\$ (224)	\$ 116	\$ (153)	\$ 187	

Notes to Unaudited Condensed Consolidated Financial Statements

Acquisition of CrossView

On August 5, 2015, PFSweb, Inc. acquired substantially all of the assets, and assumed substantially all of the liabilities, in each case, other than certain specified assets and liabilities, of CrossView, an ecommerce systems integrator and provider of a wide range of ecommerce services in the U.S. and Canada.

Consideration paid by the Company included an initial cash payment of \$30.7 million and 553,223 unregistered shares of Company common stock (approximately \$6.3 million in value as of the acquisition date). The initial cash payment was subject to adjustment based upon a post-closing balance sheet reconciliation. In addition, the purchase agreement provides for future earn-out payments ("CrossView Earn-out Payments") payable in 2016, 2017 and 2018 based on the achievement of certain 2015, 2016 and 2017 financial targets. The CrossView Earn-out Payments have no guaranteed minimum and an aggregate maximum of \$18.0 million and are subject to possible offsets for indemnification and other claims. In the quarter ended June 30, 2016, the Company paid an aggregate of \$7.9 million in settlement of the 2015 CrossView Earn-out Payments, of which, \$1.6 million was paid by the issuance of restricted shares of Company stock. The Company will pay 15% of any 2016 and 2017 earn-outs payments in restricted shares of Company common stock, based on its current market value at the time of issuance. As of June 30, 2016, the Company has recorded a total liability of \$0.8 million applicable to the projected CrossView Earn-out Payments, which is included in performance-based contingent payments and other liabilities in the condensed consolidated balance sheets. This estimated performance-based liability was reduced from \$10.2 million as of December 31, 2015 to \$0.8 million as of June 30, 2016 following \$7.9 million of payments during the quarter ended June 30, 2016 and as a result of updated CrossView financial projections for the 2016 and 2017 earn-out periods.

The results of operations of CrossView have been included in the Company's condensed consolidated financial statements since the date of acquisition

The Company determined fair value using a combination of the discounted cash flow, market multiple and market capitalization valuation methods. The following table summarizes the preliminary estimated fair value of the tangible and intangible assets acquired and liabilities assumed (in thousands):

Accounts receivable	\$	7,595
Property and equipment		441
Other assets		149
Identifiable intangibles		9,050
Total assets acquired		17,235
Total liabilities assumed		2,556
Net assets acquired		14,679
Goodwill		30,176
Total purchase price	\$	<u>44,855</u>

Purchase price for CrossView is as follows (in thousands, except share data and stock price):

Number of shares of common stock issued		553,223
Multiplied by PFSweb Inc.'s stock price	\$	11,40
Share consideration	\$	6,307
Aggregate cash payments		30,740
Performance-based contingent payments (based on estimated fair value at acquisition date)		9,195
Post-closing balance sheet reconciliation adjustment		(1,387)
Total purchase price	\$	<u>44,855</u>

Notes to Unaudited Condensed Consolidated Financial Statements

The excess of the purchase price over the fair value of the net identifiable assets acquired and liabilities assumed was allocated to goodwill. Total goodwill of \$30.2 million, which, given the structure of the acquisition, is expected to be deductible for tax purposes over 15 years.

The Company is amortizing the identifiable intangible assets acquired using a pattern in which the economic benefit of the assets are expected to be realized by the Company over their estimated remaining useful lives. There are no residual values for any of the intangible assets subject to amortization acquired during the CrossView acquisition. Estimated definite lived intangible assets acquired in the CrossView acquisition consist of (in thousands):

	Fair Value at Acquisition	June 30, 2016		December 31, 2015		Estimated Useful Life from Acquisition
		Accumulated Amortization	Net Carrying Value	Accumulated Amortization	Net Carrying Value	
Trade names	\$ 1,100	\$ (403)	\$ 697	\$ (183)	\$ 917	2.5 years
Non-compete agreements	300	(92)	208	(42)	258	3 years
Customer relationships	6,800	(2,306)	4,494	(1,394)	5,406	9 years
Developed technology	850	(308)	542	(140)	710	2.5-3 years
Total definite lived intangible assets	<u>\$ 9,050</u>	<u>\$ (3,109)</u>	<u>\$ 5,941</u>	<u>\$ (1,759)</u>	<u>\$ 7,291</u>	

Performance-Based Contingent Payment

The following table presents the change in the acquisition related performance-based contingent payments for the periods presented:

	2016	2015
As of January 1,	\$ 14,157	\$ 5,391
CrossView earn-out payment in common stock and cash	(7,942)	-
LAL earn-out payment in common stock and cash	(2,000)	(950)
REV earn-out payment in common stock and cash	(1,750)	(1,434)
Value recorded at acquisition - Conexus	553	-
Value recorded at acquisition - Moda	-	240
Change in balance due	(1,609)	561
As of June 30,	<u>\$ 1,409</u>	<u>\$ 3,808</u>

Pro Forma Information

The following table presents selected pro forma information, for comparative purposes, assuming the acquisitions of Conexus and CrossView had occurred on January 1, 2015 (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Total revenues	\$ 78,841	\$ 75,338	\$ 155,907	\$ 150,011
Net loss	(814)	(2,258)	(1,438)	(6,121)
Basic and diluted net loss per share	(0.04)	(0.13)	(0.08)	(0.35)

The unaudited pro forma total revenues and pro forma net loss are not necessarily indicative of the consolidated results of operations for future periods or the results of operations that would have been realized had the Company consolidated Conexus and CrossView during the periods noted. Moda did not meet the significance test requirements and thus is not included in the pro forma presentation above.

Notes to Unaudited Condensed Consolidated Financial Statements

4. GOODWILL AND IDENTIFIABLE INTANGIBLES, NET

Goodwill acquired through acquisitions is recognized as part of the PFSweb segment and was \$45.6 million and \$39.8 million as of June 30, 2016 and December 31, 2015, respectively. As discussed in note 3, the Company acquired Conexus in June of 2016 and recognized goodwill of \$5.8 million. The Company determined fair value using a combination of the discounted cash flow, market multiple and market capitalization valuation methods.

The following table presents the gross carrying value and accumulated amortization for identifiable intangibles:

	June 30, 2016			December 31, 2015			Estimated Useful Life from Acquisition
	Fair Value at Acquisition	Accumulated Amortization	Net Carrying Value	Fair Value at Acquisition	Accumulated Amortization	Net Carrying Value	
Trade names	\$ 1,250	\$ (541)	\$ 709	\$ 1,250	\$ (266)	\$ 984	2.25 - 2.5 years
Non-compete agreements	575	(253)	322	575	(159)	416	1- 3.5 years
Leasehold	45	(33)	12	45	(24)	21	2.5 years
Customer relationships	10,433	(3,501)	6,932	8,979	(2,378)	6,601	1.6 - 9 years
Developed technology	1,577	(308)	1,269	850	(140)	710	2.5-3 years
Other intangibles	468	(417)	51	468	(390)	78	9 years
Total definite lived intangible assets	<u>\$ 14,348</u>	<u>\$ (5,053)</u>	<u>\$ 9,295</u>	<u>\$ 12,167</u>	<u>\$ (3,357)</u>	<u>\$ 8,810</u>	

Definite Lived Intangible Asset Amortization

For the three months ended June 30, 2016 and 2015, amortization expense related to acquired definite lived intangible assets was \$0.8 million and \$0.2 million, respectively, and for the six months ended June 30, 2016 and 2015, amortization expense was \$1.7 million and \$0.5 million, respectively, and recognized in selling, general and administrative expenses in the condensed consolidated statements of operations. The estimated amortization expense for each of the next five years is as follows (in thousands):

Remaining 2016	\$	2,357
2017		3,220
2018		1,780
2019		748
2020		526
2021 and thereafter		664

5. NET LOSS PER COMMON SHARE

Basic and diluted net loss per common share are computed by dividing net loss by the weighted-average number of common shares outstanding for the reporting period.

The following equity awards have been excluded from the calculation of diluted net loss per share as their effect would be anti-dilutive as of June 30, 2016:

(shares in thousands)	As of June 30,	
	2016	2015
Stock options	1,232	1,332
Performance shares	305	561
Deferred stock units	104	58
Total anti-dilutive stock options, performance shares and deferred stock units	<u>1,641</u>	<u>1,951</u>

6. STOCK AND STOCK OPTIONS

Total stock-based compensation expense was \$0.6 million and \$1.2 million for the three months ended and \$1.4 million and \$2.0 million for the six months ended, June 30, 2016 and 2015, respectively, and were included as a component of selling, general and administrative expenses in the condensed consolidated statements of operations.

On March 23, 2015, pursuant to the Company's Employee Stock and Incentive Plan, as amended and restated ("the Plan"), the Company issued approximately 12,000 Other Stock-Based Awards and approximately 38,000 Restricted Stock Unit Awards (as such terms are defined in the Plan) to certain of the Company's executive officers and senior management. The Restricted Stock Unit Awards are subject to three year vesting beginning in 2015 based on continued employment. The Company also issued additional Restricted Stock Units and Performance-Based Share Awards (as such terms are defined in the Plan) to the Company's executives and senior management. Under the terms of these additional 2015 awards, the determination of the number of Restricted Stock Units and Performance Shares that each such individual received was subject to, and calculated by reference to, the achievement by the Company of a performance goal measured by a range of targeted financial performance, as defined, for 2015, as well as, for certain of the Restricted Stock Units, individual performance goals, as defined. Based on the Company's 2015 results, the Company issued an aggregate of approximately 283,000 Performance Shares and 84,000 Restricted Stock Units for 2015. The Performance Shares are subject to annual vesting based upon continued employment and either the achievement of a defined annual financial target or for certain of the Performance Shares, the comparative performance (on an annual and cumulative basis) of the Company's common stock on NASDAQ compared to the Russell Micro Cap Index.

During 2016, the Company issued additional Restricted Stock Units and Performance-Based Share Awards (as such terms are defined in the Plan) to certain of the Company's executives and senior management. Under the terms of these 2016 awards, the number of restricted stock units and performance shares that each such individual may receive is subject to, and calculated by reference to, the achievement by the Company of a performance goal measured by a range of targeted financial performance, as defined, for 2016, as well as, for certain of the restricted stock units, individual performance goals, as defined. Assuming achievement of the highest financial and individual performance goal, the aggregate maximum number of restricted stock units is approximately 91,000 and the aggregate maximum number of performance shares is approximately 282,000, which performance shares are subject to annual vesting based upon continued employment and, for certain of the performance shares, the achievement of a defined annual financial target or the comparative performance (on an annual and cumulative basis) of the Company's common stock on NASDAQ compared to the Russell Micro Cap Index.

7. VENDOR FINANCING

Supplies Distributors has a short-term credit facility with IBM Credit LLC to finance its distribution of Ricoh products in the United States, providing financing for eligible Ricoh inventory and certain receivables up to \$13.0 million. The agreement has no stated maturity date and provides either party the ability to exit the facility following a 90-day notice. Given the structure of this facility and as outstanding balances, which represent inventory purchases, are repaid within twelve months, the Company has classified the outstanding amounts under this facility, which were \$6.1 million and \$8.2 million as of June 30, 2016 and December 31, 2015, respectively, as accounts payable in the condensed consolidated balance sheets. As of June 30, 2016, Supplies Distributors had \$1.9 million of available credit under this facility. The credit facility contains cross default provisions, various restrictions upon the ability of Supplies Distributors to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to related parties (including entities directly or indirectly owned by PFSweb, Inc.), provide guarantees, make investments and loans, pledge assets, make changes to capital stock ownership structure and pay dividends. The credit facility also contains financial covenants, such as annualized revenue to working capital, net profit after tax to revenue, and total liabilities to tangible net worth, as defined, and is secured by certain of the assets of Supplies Distributors, as well as a collateralized guaranty of PFSweb. Additionally, PFS is required to maintain a minimum Subordinated Note receivable balance from Supplies Distributors of \$2.5 million. Borrowings under the credit facility accrue interest, after a defined free financing period, at prime rate plus 0.5% (4.00% as of June 30, 2016). The facility also includes a monthly service fee. As of June 30, 2016, the Company was in compliance with all financial covenants.

8. DEBT AND CAPITAL LEASE OBLIGATIONS

Outstanding debt and capital lease obligations consist of the following (in thousands):

	June 30, 2016	December 31, 2015
U.S. Credit Agreement		
Revolver	\$ 27,027	\$ 19,283
Term loan	22,000	10,000
Debt issuance costs	(598)	(671)
Master lease agreements	6,538	6,644
Other	63	135
Total	55,030	35,391
Less current portion of long-term debt	5,166	3,153
Long-term debt, less current portion	\$ 49,864	\$ 32,238

U.S. Credit Agreement

In August 2015, PFSweb, Inc. and its U.S. subsidiaries entered into a credit agreement ("Credit Agreement") with Regions Bank, as agent for itself and one or more future lenders including Bank of America N.A. and HSBC Bank USA, National Association ("the Lenders"). Under the Credit Agreement, and subject to the terms set forth therein, the Lenders have agreed to provide PFS with a revolving loan facility for up to \$32.5 million and a term loan facility for up to \$30 million through August 5, 2020. Subject to the terms of the Credit Agreement, PFS has the ability to increase the total loan facilities to \$75 million. Availability under the revolving loan facility may not exceed a borrowing base of eligible accounts receivable (as defined). As of June 30, 2016, the Company had \$5.5 million and \$8.0 million of available credit under the revolving loan facility and term loan facility, respectively. Advances under the revolving loan portion of the Credit Agreement are due and payable on August 5, 2020. Term loan advances amortize during the five year term of the Credit Agreement based upon scheduled percentage payments with the then remaining outstanding balance (potentially up to 65% of the amount borrowed) due on August 5, 2020. Borrowings under the Credit Agreement accrue interest at a variable rate based on prime rate or Libor, plus an applicable margin. As of June 30, 2016, the weighted average interest rates on the revolving loan facility and the term loan facility were 2.94% and 2.53%, respectively. In connection with the Credit Agreement, the Company paid \$0.6 million of fees, which are being amortized through the life of the Credit Agreement and are reflected as a net reduction in debt. The Credit Agreement is secured by a lien on substantially all of the assets of Company and its U.S. subsidiaries and a pledge of 65% of the shares of certain of the Company's foreign subsidiaries. The Credit Agreement contains cross default provisions, various restrictions upon the Company's ability to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to subsidiaries, affiliates and related parties, make capital expenditures, make investments and loans, pledge assets, make changes to capital stock ownership structure, as well as financial covenants, as defined, of a minimum consolidated fixed charge ratio and a maximum consolidated leverage ratio. In June 2016, PFSweb also entered into a Master Agreement with Regions Bank to provide financing for certain capital expenditures. As of June 30, 2016, there were no amounts outstanding under the Master Agreement.

Debt Covenants

To the extent the Company or any of its subsidiaries fail to comply with its covenants applicable to its debt or vendor financing obligations, including the periodic financial covenant requirements, such as profitability and cash flow, and required level of shareholders' equity or net worth, (as defined), the Company would be required to obtain a waiver from the lender or the lender would be entitled to accelerate the repayment of any outstanding credit facility obligations, and exercise all other rights and remedies, including sale of collateral and enforcement of payment under the Company parent guarantee. Any acceleration of the repayment of the credit facilities may have a material adverse impact on the Company's financial condition and results of operations and no assurance can be given that the Company would have the financial ability to repay all of such obligations. As of and for the six months ended June 30, 2016, the Company was in compliance with all debt covenants.

Master Lease Agreements

The Company has various agreements that provide for leasing or financing transactions of equipment and other assets and will continue to enter into such arrangements as needed to finance the purchasing or leasing of certain equipment or other assets.

Notes to Unaudited Condensed Consolidated Financial Statements

Borrowings under these agreements, which generally have terms of three to five years, are generally secured by the related equipment, and in certain cases, by a Company parent guarantee.

9. SEGMENT INFORMATION

The Company is currently organized into two primary operating segments, which generally align with its corporate organization structure. In the first segment, PFSweb is a global provider of various infrastructure, technology, and digital agency solutions and operates as a service fee business. In the second operating segment ("Business and Retail Connect"), subsidiaries of the Company purchase inventory from clients and resell the inventory to client customers. In this segment, the Company recognizes product revenue when it operates as a principal in the arrangement and service fee revenue when it operates as an agent.

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2016	2015	2016	2015
Revenues (in thousands):				
PFSweb	\$ 65,484	\$ 49,434	\$ 126,474	\$ 96,143
Business and Retail Connect	15,130	17,062	33,074	37,896
Eliminations	(3,415)	(3,320)	(7,268)	(7,017)
	<u>\$ 77,199</u>	<u>\$ 63,176</u>	<u>\$ 152,280</u>	<u>\$ 127,022</u>
Income (loss) from operations (in thousands):				
PFSweb	\$ (1,817)	\$ (1,869)	\$ (2,114)	\$ (3,531)
Business and Retail Connect	432	370	928	917
	<u>\$ (1,385)</u>	<u>\$ (1,499)</u>	<u>\$ (1,186)</u>	<u>\$ (2,614)</u>
Depreciation and amortization (in thousands):				
PFSweb	\$ 3,794	\$ 3,290	\$ 7,390	\$ 6,521
Business and Retail Connect	6	19	13	43
	<u>\$ 3,800</u>	<u>\$ 3,309</u>	<u>\$ 7,403</u>	<u>\$ 6,564</u>
Capital expenditures (in thousands):				
PFSweb	\$ 5,186	\$ 676	\$ 6,553	\$ 1,946
Business and Retail Connect	—	—	—	—
	<u>\$ 5,186</u>	<u>\$ 676</u>	<u>\$ 6,553</u>	<u>\$ 1,946</u>
Assets (in thousands):				
PFSweb		\$ 152,441	\$ 151,064	
Business and Retail Connect		38,287	50,682	
Eliminations		(10,478)	(10,456)	
		<u>\$ 180,250</u>	<u>\$ 191,290</u>	

10. RELATED PARTY TRANSACTIONS

In September 2014, the Company purchased all of the stock of REV Solutions, Inc. and REVTech Solutions India Private Limited from Mr. Steven Stephan, currently a Senior Vice President of the Company, and other shareholders in a transaction which, in addition to a closing payment, provided for earn-out payments based on the achievement of certain metrics for each of calendar years 2014 and 2015. Since January 1, 2015, the Company has paid Mr. Stephan an aggregate of \$2.4 million and has issued 38,574 shares of common stock as the final purchase price earn-out payments associated with such transaction.

11. COMMITMENTS AND CONTINGENCIES

The Company received municipal tax abatements in certain locations. In prior years, the Company received notice from a municipality that it did not satisfy certain criteria necessary to maintain the abatements and that the municipal authority planned to make an adjustment to the Company's tax abatement. The Company disputed the adjustment and such dispute has been settled with the municipality. However, the amount of additional property taxes to be assessed against the Company and the timing of the related payments has not been finalized. As of June 30, 2016, the Company believes it has adequately accrued for the expected assessment.

In connection with a client project, the Company has provided a \$1.3 million performance bond which may be drawn upon in the event of a default by the Company of its obligations under the project, or, in the absence of a default, upon successful completion of the project, the bond will be returned.

The Company is subject to claims in the ordinary course of business, including claims of alleged infringement by the Company or its subsidiaries of the patents, trademarks and other intellectual property rights of third parties. PFS is generally required to indemnify its service fee clients against any third party claims asserted against such clients alleging infringement by PFS of the patents, trademarks and other intellectual property rights of third parties.

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

The following discussion and analysis of our results of operations and financial condition should be read in conjunction with the unaudited interim condensed consolidated financial statements and related notes appearing elsewhere in this Form 10-Q.

Forward-Looking Information

We have made forward-looking statements in this Report on Form 10-Q. These statements are subject to risks and uncertainties, and there can be no guarantee that these statements will prove to be correct. Forward-looking statements include assumptions as to how we may perform in the future. When we use words like "seek," "strive," "believe," "expect," "anticipate," "predict," "potential," "continue," "will," "may," "could," "intend," "plan," "target" and "estimate" or similar expressions, we are making forward-looking statements. You should understand that the following important factors, in addition to those set forth above or elsewhere in this Report on Form 10-Q and our Form 10-K for the year ended December 31, 2015, could cause our results to differ materially from those expressed in our forward-looking statements. These factors include:

- our ability to retain and expand relationships with existing clients and attract and implement new clients;
- our reliance on the fees generated by the transaction volume, product sales and technology and agency projects and support of our clients;
- our reliance on our clients' projections or transaction volume or product sales;
- our dependence upon our agreements with International Business Machines Corporation ("IBM") and Ricoh Company Limited and Ricoh USA, Inc., a strategic business unit within the Ricoh Family Group of Companies, (collectively hereafter referred to as "Ricoh");
- our dependence upon our agreements with our major clients;
- our client mix, their business volumes and the seasonality of their business;
- our ability to finalize pending client and customer contracts;
- the impact of strategic alliances and acquisitions;
- trends in e-commerce, outsourcing, government regulation, both foreign and domestic, and the market for our services;
- whether we can continue to manage growth;
- increased competition;
- our ability to generate more revenue and achieve sustainable profitability;
- effects of changes in profit margins;
- the customer and supplier concentration of our business;
- our reliance on third-party providers and other subcontracted services;
- the unknown effects of possible system failures and rapid changes in technology;
- foreign currency risks and other risks of operating in foreign countries;
- potential litigation;
- our dependency upon key personnel;
- our ability to retain seasonal and temporary workers;
- the impact of new accounting standards and changes in existing accounting rules or the interpretations of those rules;
- our ability to raise additional capital or obtain additional financing;
- our ability, and the ability of our subsidiaries, to borrow under current financing arrangements and maintain compliance with debt covenants;
- our relationship with, and our guarantees of, certain of the liabilities and indebtedness of our subsidiaries; and
- taxation on the sale of our products and provision of our services.

We have based these statements on our current expectations about future events. Although we believe that the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee these expectations will actually be achieved. In addition, some forward-looking statements are based upon assumptions as to future events that may not prove to be accurate. Therefore, actual outcomes and results may differ materially from what is expected or forecasted in such forward-looking statements. We undertake no obligation to update publicly any forward-looking statement for any reason, even if new information becomes available or other events occur in the future.

Key Transactions and Events

During 2015, we were impacted by the following key transactions and events that also affect comparability of our results to prior periods and are discussed further in our Form 10-K for the year ended December 31, 2015:

- Acquired the outstanding capital stock of Moda Superbe Limited (“Moda”) on June 11, 2015. The results of operations of Moda have been included in our condensed consolidated financial statements since the acquisition date.
- Completed an asset purchase agreement with CrossView, Inc. (“CrossView”) and its shareholders on August 5, 2015. The results of operations of CrossView have been included in our condensed consolidated financial statements since the acquisition date.

During 2016, we acquired the outstanding capital stock of Conexus Limited (“Conexus”) on June 8, 2016. The results of operations of Conexus have been included in our condensed consolidated financial statements since the acquisition date.

Overview

We are a global provider of omni-channel commerce solutions. Comprised of a broad range of technology, critical infrastructure and professional services, we provide our clients with best-of-breed capabilities offered as a complete end-to-end solution or on an à la carte basis. We provide these solutions and services to major brand name companies and others seeking to optimize their supply chain and to enhance their online and traditional business channels and initiatives. We derive our revenues from providing a broad range of services using three different seller services financial models: 1) the Service Fee model, 2) the Agent (or Flash) model and 3) the Retail model.

We refer to the standard PFSweb seller services financial model as the Service Fee model. In this model, our clients own the inventory and are the merchants of record and engage us to provide various infrastructure, technology and digital agency services in support of their business operations. We derive our service fee revenues from a broad range of service offerings that include digital agency and marketing, eCommerce technologies, system integration, order management, customer care, logistics and fulfillment, financial management and professional consulting. We offer our services as an integrated solution, which enables our clients to outsource their complete ecommerce needs to a single source and to focus on their core competencies though clients are also able to select individual or groupings of our various service offerings on an à la carte basis. We currently provide services to clients that operate in a range of vertical markets, including technology manufacturing, computer products, cosmetics, fragile goods, coins and collectibles, apparel, telecommunications, consumer electronics and consumer packaged goods, among others.

In the Service Fee model, we typically charge for our services on a cost-plus basis, a percent of shipped revenue basis, a time and materials, project or retainer basis for our professional services, or a per-transaction basis, such as a per-labor hour basis for web-enabled customer contact center services and a per-item basis for fulfillment services. Additional fees are billed for other services. We price our services based on a variety of factors, including the depth and complexity of the services provided, the amount of capital expenditures or systems customization required, the length of contract and other factors.

Many of our service fee contracts involve third-party vendors who provide additional services, such as package delivery. The costs we are charged by these third-party vendors for these services are often passed on to our clients. Our billings for reimbursements of these costs and other ‘out-of-pocket’ expenses include travel, shipping and handling costs and telecommunication charges and are included in pass-through revenue.

As an additional service, we offer the Agent or Flash, financial model, in which our clients maintain ownership of the product inventory stored at our locations as in the Service Fee model. When a customer orders the product from our clients, a “flash” sale transaction passes product ownership to us for each order and we in turn immediately re-sell the product to the customer. The “flash” ownership exchange establishes us as the merchant of record, which enables us to use our existing merchant infrastructure to process sales to end customers, removing the need for the clients to establish these business processes internally, but permitting them to control the sales process to end customers. In this model, based on the terms of our current client arrangements, we record product revenue net of cost of product revenue as a component of service fee revenue in our condensed consolidated statement of operations.

Finally, our Retail model allows us to purchase inventory from the client. In this model, we place the initial and replenishment purchase orders with the client and take ownership of the product upon delivery to our facility. In this model, depending on the terms of our client arrangements, we may own the inventory and the accounts receivable arising from our product sales. Under the Retail model, depending upon the product category and sales characteristics, we may require the client to provide product price protection as well as product purchase payment terms, right of return, and obsolescence protection appropriate to the product sales profile. Depending on the terms of our client arrangements in the Retail model, we record in our condensed consolidated statement of operations either: 1) product revenue as a component of product revenue, or 2) product revenue net of cost of product revenue as a component of service fee revenue. In general, we seek to structure client relationships in our Retail model under the net revenue approach to more closely align with our service fee revenue financial presentation and mitigate inventory ownership, although we have one client still utilizing the gross revenue approach. Freight costs billed to customers are reflected as components of product revenue. This business model generally requires significant working capital, for which we have credit available either through credit terms provided by our clients or under senior credit facilities.

In general, we provide the Service Fee model through our all of our subsidiaries, the Agent (or Flash) model through our PFS and Supplies Distributors subsidiaries and the Retail model through our Supplies Distributors subsidiary.

Growth is a key element to achieving our future goals, including achieving and maintaining sustainable profitability. Growth in our Service Fee and Agent models is driven by two main elements: new client relationships and organic growth from existing clients. We focus our sales efforts on larger contracts with brand-name companies within four primary target markets, health and beauty, home goods and collectibles, fashion and consumer packaged goods, which, by nature, require a longer duration to close but also have the potential to be higher quality and longer duration engagements. The acquisitions of Moda in June 2015, CrossView in August 2015 and Conexus in June 2016 expanded our service offering capabilities and added new client relationships, which we currently expect to enhance our growth opportunities.

Currently, we are targeting any growth within our Retail model to be through relationships with clients under which we can record service fee revenue (product revenue net of product cost of revenue) in our condensed consolidated statement of operations as opposed to product revenue as generated in the Agent or Flash model above. These relationships are often driven by the sales and marketing efforts of the manufacturers and third party sales partners. In addition, as a result of certain operational restructuring of its business, our primary client relationship operating in the Retail model, Ricoh, has implemented, and will continue to implement, certain changes in the sale and distribution of Ricoh products. These changes have resulted, and are expected to continue to result, in reduced product revenues and profitability under our Retail model.

We continue to monitor and control our costs to focus on profitability. While we are targeting our new service fee contracts to yield incremental gross profit, we also expect to incur incremental investments in technology development, operational and support management and sales and marketing expenses to help generate growth.

Our expenses comprise primarily four categories: 1) cost of service fee revenue, 2) cost of product revenue, 3) cost of pass-through revenue and 4) selling, general and administrative expenses.

Cost of service fee revenue - consists primarily of compensation and related expenses for our web-enabled customer contact center services, international fulfillment and distribution services and professional, digital agency and technology services, and other fixed and variable expenses directly related to providing services under the terms of fee based contracts, including certain occupancy and information technology costs and depreciation and amortization expenses.

Cost of product revenue - consists of the purchase price of product sold and freight costs, which are reduced by certain reimbursable expenses. These reimbursable expenses include pass-through customer marketing programs, direct costs incurred in passing on any price decreases offered by vendors to cover price protection and certain special bids, the cost of products provided to replace defective product returned by customers and certain other expenses as defined under the distributor agreements.

Cost of pass-through revenue - the related reimbursable costs for pass-through expenditures are reflected as cost of pass-through revenue.

Selling, General and Administrative expenses - consist of expenses such as compensation and related expenses for sales and marketing staff, distribution costs (excluding freight) applicable to the Supplies Distributors business and the Retail model, executive, management and administrative personnel and other overhead costs, including certain occupancy and information technology costs and depreciation and amortization expenses.

Results of Operations for the Interim Periods Ended June 30, 2016 and 2015

The following table discloses certain financial information for the periods presented, expressed in terms of dollars, dollar change, percentage change and as a percentage of total revenue (in millions):

	Three Months Ended June 30,					Six Months Ended June 30,				
	2016	2015	Change	% of Net Revenues		2016	2015	Change	% of Net Revenues	
				2016	2015				2016	2015
Revenues										
Service fee revenue	\$ 51.2	\$ 39.1	\$ 12.1	66.3%	61.9%	\$ 100.5	\$ 75.8	\$ 24.7	66.0%	59.7%
Product revenue, net	11.4	13.7	(2.3)	14.7%	21.6%	25.0	30.3	(5.3)	16.4%	23.9%
Pass-through revenue	14.7	10.4	4.3	19.1%	16.5%	26.8	20.9	5.9	17.6%	16.5%
Total net revenues	77.3	63.2	14.1	100.1%	100.0%	152.3	127.0	25.3	100.0%	100.1%
Cost of Revenues										
Cost of service fee revenue (1)	34.4	26.6	7.8	67.2%	68.2%	66.7	51.8	14.9	66.3%	68.4%
Cost of product revenue (2)	10.7	12.9	(2.2)	94.4%	94.5%	23.6	28.6	(5.0)	94.6%	94.4%
Pass-through cost of revenue (3)	14.7	10.4	4.3	100.0%	100.0%	26.8	20.9	5.9	100.0%	100.0%
Total cost of revenues	59.8	49.9	9.9	77.4%	79.1%	117.1	101.3	15.8	76.9%	79.8%
Service fee gross profit	16.8	12.5	4.3	32.8%	31.8%	33.8	24.0	9.8	33.7%	31.6%
Product revenue gross profit	0.7	0.8	(0.1)	5.6%	5.5%	1.4	1.7	(0.3)	5.4%	5.6%
Pass-through gross profit	—	—	—	—	—	—	—	—	—	—
Total gross profit	17.5	13.3	4.2	22.6%	20.9%	35.2	25.7	9.5	23.1%	20.2%
Selling General and										
Administrative expenses	18.8	14.7	4.1	24.4%	23.2%	36.4	28.3	8.1	23.9%	22.3%
Loss from operations	(1.3)	(1.4)	0.1	(1.8)%	(2.4)%	(1.2)	(2.6)	1.4	(0.8)%	(2.1)%
Interest expense, net	0.7	0.3	0.4	0.8%	0.4%	1.1	0.6	0.5	0.7%	0.4%
Loss before income taxes	(2.0)	(1.7)	(0.3)	(2.6)%	(2.7)%	(2.3)	(3.2)	0.9	(1.5)%	(2.5)%
Income tax expense, net	0.2	0.2	0.0	0.2%	0.3%	0.6	0.4	0.2	0.4%	0.3%
Net loss	\$ (2.2)	\$ (1.9)	\$ (0.3)	(2.8)%	(3.0)%	\$ (2.9)	\$ (3.6)	\$ 0.7	(1.9)%	(2.8)%

(1) % of net revenues represents the percent of Service fee revenue.

(2) % of net revenues represents the percent of Product revenue, net.

(3) % of net revenues represents the percent of Pass-through revenue.

Service Fee Revenue. The increase in service fee revenue for the three and six months ended June 30, 2016, as compared to the same period of the prior year, was primarily due to the impact of expanded and new client relationships, including service fee revenues generated by our acquired subsidiaries Moda in June 2015, CrossView in August 2015 and Conexus in June 2016, partially offset by the conclusion or reduction of operations of several client programs that were in effect during the three and six months ended June 30, 2015.

The change in service fee revenue, excluding pass-through revenue, is shown below (millions):

	Three Months		Six Months	
Period ended June 30, 2015	\$	39.1	\$	75.8
New service contract relationships		14.4		25.2
Change in existing client service fees		0.7		3.4
Terminated client relationships not included in 2016 revenue		(3.0)		(3.9)
Period ended June 30, 2016	\$	51.2	\$	100.5

When considering client relationships, we define an existing client to be a client from whom we earned revenue in both the current and prior year; we define a new client to be a client from whom we only earned revenue in the current year; and we define a terminated client as a client from whom we only earned revenue in the prior year. The new service contract relationships include an aggregate of approximately \$8.3 million and \$15.3 million of revenue applicable to Conexus, Crossview and Moda in the three and six months ended June 30, 2016, respectively. Service fee revenue for the three and six month ended June 30, 2016 includes approximately \$1.1 million and \$2.4 million, respectively, of service fee revenues from clients who concluded their relationship with us during 2016. Based on current client projections, we expect the reduction in revenue from terminated client programs to be more than offset by service fee revenue generated in 2016 by new or expanded client opportunities and revenues generated by our newly acquired subsidiaries. For calendar year 2016, we are currently targeting an increase in service fee revenues of approximately 20-25% as compared to calendar year 2015, including the impact of a full year of operations for our CrossView and Moda subsidiaries versus a partial year in 2015 and the impact of our Conexus acquisition in 2016.

Product Revenue, net. Product revenue was \$11.4 million for the three months ended June 30, 2016, which represents a decrease of \$2.3 million, or 16.7% as compared to the same quarter of the prior year. In the six months ended June 30, 2016 product revenue was \$25.0 million, which represents a decrease of \$5.3 million, or 17.6%, as compared to the same period of the prior year. This reduction in revenue is primarily due to the operational restructuring by Ricoh of its business, including discontinuance of certain product lines, which has resulted, and is expected to continue to result, in lower product revenue from the sale of Ricoh products. We currently expect product revenue to continue to decline and be approximately \$45 million to \$50 million for calendar year 2016.

Cost of Service Fee Revenue. Gross profit as a percentage of service fees increased to 32.8% in three month period ended June 30, 2016 from 31.8% in the same period of 2015. In the six months ended June 30, 2016, gross profit as a percentage of service fees increased to 33.7% compared to 31.6% in the same period 2016. The improved gross margin is primarily due to an increased percentage of our service fees being generated from our higher margin professional services activity, including our agency and technology services, which have been further bolstered by our acquisitions of Moda and CrossView in mid-2015 and Conexus in June 2016. The gross profit percentage in each period included the benefit of higher margin project activity. The improvement in gross profit percentage was partially offset by certain facility and client start-up expenses incurred related to new service contract relationships.

We target to earn an overall average gross profit on our service fee activity of 27-32% on existing and new service fee contracts, but we have accepted, and may continue to accept, lower gross margin percentages on certain contracts depending on contract scope and other factors, including projected volumes. We are focused on continuing to increase our level of higher margin service fee activity, including our professional and technology services, to help offset other lower margin activities. Based on our currently projected continued growth in the professional services area of our business, including the benefit of our acquisitions, we are projecting to be at middle to high end of the targeted gross profit percentage range for calendar year 2016. Our service fee gross profit will continue to be impacted by the relative-proportion of our infrastructure related services versus our professional services activity, as well as project work.

Cost of Product Revenue. Cost of product revenue decreased by \$2.2 million, or 16.8%, to \$10.7 million in the three months ended June 30, 2016 which resulted in a gross profit margin of \$0.7 million, or 5.6% of product revenue, for the three months ended June 30, 2016, compared to \$0.8 million gross profit margin, or 5.5% of product revenue, for the comparable 2015 period. Cost of product revenue decreased by \$5.0 million, or \$17.6% million in the six months ended June 30, 2016. The resulting gross profit margin was \$1.4 million, or 5.4% of product revenue, for the six months ended June 30, 2016 and \$1.7 million, or 5.6% of product revenue, for the comparable 2015 period. We currently expect our product revenue gross profit margin to be approximately 5% for calendar year 2016.

Selling, General and Administrative ("SG&A") Expenses. SG&A expenses for the three months ended June 30, 2016 and 2015 were \$18.8 million and \$14.7 million, respectively. As a percentage of total net revenue, SG&A expenses were 24.4% in the three months ended June 30, 2016 and 23.2% in the corresponding prior year period. In the six months ended June 30, 2016, SG&A expenses were \$36.4 million, or 23.9% of total net revenue, as compared to \$28.3 million, or 22.3% of total net revenue in the comparable 2015 period. The three months ended June 30, 2016 include approximately \$2.9 million applicable to our new Conexus, CrossView and Moda subsidiaries (including \$0.7 million of amortization of acquisition related intangible assets and \$0.5 million of acquisition related costs) which were either not yet acquired as of June 30, 2015 or not included for the full quarter ended June 30, 2015. Acquisition and restructuring related costs in the three months ended June 30, 2016 and 2015 (including the \$0.5 million recorded in the June 30, 2016 period by Conexus) were \$0.9 million and \$1.1 million, respectively. The three months ended June 30, 2016 includes a \$0.7 million offset resulting from revised estimates of certain performance-based contingent payments based on our current 2016 and 2017 projections results for Moda and CrossView. Excluding the acquisition and amortization of acquired identifiable intangibles assets in the three months ended June 30, 2016 and 2015, SG&A expenses were 22.2% and 21.1% of total revenues in the three months ended June 30, 2016 and 2015, respectively. The remaining increases in SG&A percentage is primarily

due to increases in personnel related expenses, partially offset by a reduction in stock-based compensation expense, and an increase in sales and marketing activities and facility costs to support our growth.

SG&A for the six months ended June 30, 2016, includes \$6.1 million applicable to our new Conexus, CrossView and Moda subsidiaries (including \$1.4 million of amortization of acquisition related intangible assets and \$0.5 million of acquisition related costs) which were either not yet acquired as of June 30, 2015 or not included for the full six months ended June 30, 2015. Acquisition and restructuring related costs in the six months ended June 30, 2016 and 2015 (including the \$0.5 million recorded in the June 30, 2016 period by Conexus) were approximately \$0.1 million and \$1.9 million, respectively. The six months ended June 30, 2016 includes a \$1.8 million offset resulting from revised estimates of certain performance-based contingent payments based on our current 2016 and 2017 projections results for Moda and CrossView. Excluding the acquisition and amortization of acquired identifiable intangibles assets in the six months ended June 30, 2016 and 2015, SG&A expenses were 22.7% and 20.4% of total revenues in the six months ended June 30, 2016 and 2015, respectively. The remaining increase in the SG&A percentage is primarily due to increases in personnel related expenses, partially offset by a reduction in stock-based compensation, as well as sales and marketing activities and facility costs to support our growth.

We currently expect our SG&A expenses will continue to increase in 2016, as compared to 2015, due to acquisitions as we include a full year of expenses for Moda and CrossView and include the impact of Conexus, incur a full year of amortization for identifiable intangible assets acquired and incur additional expenditures related to our sales and marketing activities and facility costs. In addition, SG&A expense during calendar year 2016 may include further performance-based contingent payment adjustments arising from changes in our 2016 and 2017 financial projections for Conexus, CrossView and Moda.

Income Taxes. We recorded a tax provision associated primarily with state income taxes and the majority of our international operations. A valuation allowance has been provided for the majority of our U.S. domestic net deferred tax assets, which are primarily related to our net operating loss carryforwards, and for certain foreign deferred tax assets.

Liquidity and Capital Resources

During the six months ended June 30, 2016, net cash provided by operations was \$3.1 million, primarily due to a:

- \$11.9 million decrease in accounts receivable primarily applicable to reduced service fee revenue activity as compared to the seasonally higher fourth quarter of 2015;
- \$4.2 million of cash income from operations before working capital changes; and
- \$5.8 million decrease in deferred rent, prepaid expenses, other receivables and other assets primarily due to the timing of certain payments.

The use of cash during the six months ended June 30, 2016 was partially offset by a:

- \$20.0 million net decrease in accounts payable, deferred revenue, accrued expenses and other liabilities primarily due to reduced service fee business liabilities as a result of reduced business volumes following the seasonally higher fourth quarter of 2015 and reduced inventory purchases as a result of a reduction in product revenue.

During the six months ended June 30, 2015, we generated \$6.1 million of cash for operating activities, primarily due to a:

- \$15.6 million decrease in accounts receivable primarily applicable to reduced service fee revenue activity as compared to our seasonally higher fourth quarter at the end of 2014;
- \$5.1 million of cash income from operations before working capital change; and
- \$3.9 million decrease in prepaid expenses, other receivables and other assets primarily due to the timing of certain payments.

The generation of cash was partially offset by a:

- \$18.3 million decrease in accounts payable, deferred revenue, accrued expenses and other liabilities in part due to reduced inventory purchases as a result of a reduction in product revenue and reduced service fee business liabilities due to reduced business volumes following the seasonally higher fourth quarter at the end of 2014.

Cash proceeds from debt, net of any debt and capital lease payments, was \$15.8 million during the six months ended June 30, 2016 compared to cash payments, net of any debt proceeds, of \$3.3 million during the same period of 2015. Proceeds in 2016 were

used to primarily fund working capital, capital expenditures, performance-based contingent payments related to prior year acquisitions and to purchase Conexus in June 2016.

We incurred capital expenditures, which consisted primarily of capitalized software costs and equipment purchases, of \$6.5 million and \$1.9 million in the six month periods ended June 30, 2016 and 2015, respectively, exclusive of \$1.7 million and \$1.6 million in each period, respectively, of property and equipment acquired under debt and capital lease financing. The capital expenditures include leasehold improvements and other expenditures for expansion at certain of our facilities, of which, approximately \$0.6 million were financed via tenant allowances that will also be amortized over the underlying lease terms.

Capital expenditures have historically consisted of additions to upgrade our management information systems, development of customized technology solutions to support and integrate with our service fee clients and general expansion and upgrades to our facilities, both domestic and foreign. We expect to incur capital expenditures to support new contracts and anticipated future growth opportunities. Based on our current client business activity and our targeted growth plans, we anticipate our total investment in upgrades and additions to facilities and information technology solutions and services for the upcoming twelve months, including costs to implement new clients, will be approximately \$10 million to \$14 million, although additional capital expenditures may be necessary to support the infrastructure requirements of new clients. To maintain our current operating cash position, a portion of these expenditures may be financed through client reimbursements, debt, operating or capital leases or additional equity. We may elect to modify or defer a portion of such anticipated investments in the event we do not obtain the financial results necessary to support such investments.

During the six months ended June 30, 2016, our working capital increased to \$20.1 million from \$12.4 million at December 31, 2015, primarily due to utilization of long-term financing under the Company's senior bank facility to support a portion of our financing needs, including performance-based contingent payments related to prior year acquisitions and the purchase of Conexus, including its working capital, in June 2016, partially offset by proceeds from the issuance of common stock.

The purchase price for Moda includes performance-based contingent payments for future earn-out payments payable in 2017 based on Moda's 2016 financial targets, with no guaranteed minimum and a £500,000 (approximately \$0.7 million at June 30, 2016) maximum contractual earn-out. The purchase price for CrossView includes performance-based contingent payments for future earn-out payments payable in 2017 and 2018 based on CrossView's achievement of certain 2016 and 2017 financial targets, of which \$8.3 million is the aggregate maximum contractual earn-out. The June 2016 purchase of Conexus provides for future contingent and earn-out payments based on Conexus' achievement of certain 2016 operational and financial targets, with no guaranteed minimum and a maximum of £1,445,000 (approximately \$1.9 million at June 30, 2016).

As of June 30, 2016, we have accrued \$1.5 million for future performance-based contingent payments applicable to these acquisitions (as compared to the aggregate maximum contractual remaining contingent earn-out payment of \$10.9 million), which is included in performance-based contingent payments and other liabilities in the condensed consolidated balance sheets.

To obtain additional financing in the future, in addition to our current cash position, we plan to evaluate various financing alternatives including the sale of equity, utilizing capital or operating leases, borrowing under our credit facilities, expanding our current credit facilities or entering into new debt agreements. No assurances can be given we will be successful in obtaining any additional financing or the terms thereof. We currently believe our cash position, financing available under our credit facilities and funds generated from operations will satisfy our presently known operating cash needs, our working capital and capital expenditure requirements, our current debt and lease obligations, and additional loans to our subsidiaries, if necessary, for at least the next twelve months.

Our term and revolving loan facilities described below contain both financial and non-financial covenants. To the extent we fail to comply with our debt covenants, including the financial covenant requirements and we are not able to obtain a waiver, the lenders would be entitled to accelerate the repayment of any outstanding credit facility obligations, and exercise all other rights and remedies, including sale of collateral. An acceleration of the repayment of our credit facility obligations will have a material adverse impact on our financial condition and results of operations. We can provide no assurance we will have the financial ability to repay all such obligations. As of June 30, 2016, we were in compliance with all debt covenants. Further, non-renewal of any of our credit facilities may have a material adverse impact on our business and financial condition. Other than performance-based contingent payments applicable to our acquisitions, and our capital and operating lease commitments, we do not have any other material financial commitments, although future client contracts may require capital expenditures and lease commitments to support the services provided to such clients.

We receive municipal tax abatements in certain locations. In prior years, we received notice from a municipality that we did not satisfy certain criteria necessary to maintain the abatements and that the municipal authority planned to make an adjustment to our tax abatement. We disputed the adjustment and such dispute has been settled with the municipality. However, the amount of additional

property taxes to be assessed against us and the timing of the related payments has not been finalized. As of June 30, 2016, we believe we have adequately accrued for the expected assessment.

Supplies Distributors Financing

To finance its distribution of Ricoh products in the U.S., Supplies Distributors has a short-term credit facility with IBM Credit LLC (“IBM Credit”) that provides financing for eligible inventory and certain receivables up to \$13.0 million. We have provided a collateralized guarantee to secure the repayment of this credit facility. The IBM Credit facility does not have a stated maturity and both parties have the ability to exit the facility following a 90-day notice. The Company has direct vendor credit terms with Ricoh to finance Supplies Distributors European subsidiary’s inventory purchases.

This credit facility contains various restrictions upon the ability of Supplies Distributors and its subsidiaries to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans, investments and payments to related parties (including entities directly or indirectly owned by PFSweb, Inc.), provide guarantees, make investments and loans, pledge assets, make changes to capital stock ownership structure and pay dividends, as well as financial covenants, such as annualized revenue to working capital, net profit after tax to revenue and total liabilities to tangible net worth, as defined, and are secured by all of the assets of Supplies Distributors, as well as a collateralized guaranty of PFSweb. Additionally, we are required to maintain a subordinated loan to Supplies Distributors of no less than \$2.5 million, not maintain restricted cash of more than \$5.0 million, are restricted with regard to transactions with related parties, indebtedness and changes to capital stock ownership. Furthermore, we are obligated to repay any over-advance made to Supplies Distributors or its subsidiaries under these facilities if they are unable to do so. We have also provided a guarantee of substantially all of the obligations of Supplies Distributors and its subsidiaries to IBM and Ricoh.

PFS Financing

We have a credit agreement (“Credit Agreement”) with Regions Bank, as agent for itself, Bank of America N.A., HSBC Bank USA, National Association and one or more future lenders (the “Lenders”). Under this Credit Agreement, and subject to the terms set forth therein, the Lenders have agreed to provide a revolving loan facility for up to \$32.5 million and a term loan facility for up to \$30 million. Subject to the terms of the Credit Agreement, we have the ability to increase the total loan facilities to \$75 million. Availability under the revolving loan facility may not exceed a borrowing base of eligible accounts receivable (as defined). Advances under the Credit Agreement accrue interest at a variable rate, plus an applicable margin, and have a five year maturity, with scheduled amortization payments for term loan advances. The Credit Agreement is secured by a lien on substantially all of the assets of the Company and its U.S. subsidiaries and a pledge of 65% of the shares of certain of the Company’s foreign subsidiaries. The Credit Agreement contains cross default provisions, various restrictions upon our ability to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to subsidiaries, affiliates and related parties, make capital expenditures, make investments and loans, pledge assets, make changes to capital stock ownership structure, as well as financial covenants, as defined, of a minimum fixed charge ratio and a maximum leverage ratio.

Acquisition

On June 8, 2016, PFSweb, Inc. purchased all of the outstanding shares of Conexus, Inc. (“Conexus”), an eCommerce system integrator that provides strategic consulting, system integration, and managed services for leading businesses and technology companies. Conexus maintains primary operations in Basingstoke, Hampshire (U.K.). We paid an aggregate cash payment at closing of £5,855,000 (approximately \$8.5 million), subject to a post-closing adjustment to be based upon a May 31, 2016 balance sheet analysis to be completed following the closing. In addition, we will pay up to an aggregate maximum of £1,445,000 (approximately \$1.9 million at June 30, 2016) subject to Conexus achieving certain operational and financial targets during the post-closing period ending December 31, 2016 (the “Earn-out Payments”) and subject to possible offsets for indemnification and other claims. Up to 40% (but not to exceed £450,000) (approximately \$0.6 million at June 30, 2016) of the Earn-out Payments may be paid by the issuance of restricted shares of Company common stock, based on its then current market value at the time of issuance.

Seasonality

The seasonality of our service fee business is dependent upon the seasonality of our clients’ business and sales of their products. Accordingly, we must rely upon the projections of our clients in assessing quarterly variability. We believe that with our current client mix and their current business volumes, our run rate service fee business activity will generally be highest in the quarter ended December 31. We believe our historical revenue pattern makes it difficult to predict the effect of seasonality on our future revenues and results of operations.

We believe results of operations for a quarterly period may not be indicative of the results for any other quarter or for the full year.

Inflation

Management believes that inflation has not had a material effect on our operations.

Critical Accounting Policies

A description of our critical accounting policies is included in Note 2 of the condensed consolidated financial statements in our December 31, 2015 Annual Report on Form 10-K and Note 2 of this report.

ITEM 3. Quantitative and Qualitative Disclosure about Market Risk

Not applicable.

ITEM 4. Controls and Procedures*Disclosure Controls and Procedures*

We maintain a comprehensive set of disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 ("Exchange Act"). As of June 30, 2016, an evaluation of the effectiveness of our disclosure controls and procedures was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this report, these disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

During the period that ended on June 30, 2016, there was no change in internal control over financial reporting (as defined in Rule 13a-15(f) or Rule 15d-15(f) under the Exchange Act) that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

None

ITEM 1A. Risk Factors

In addition to the risk factors set forth in Part I, Item 1A of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 filed with the Securities and Exchange Commission, our business, financial condition and operating results could be adversely affected by any or all of the following factors.

Risks Related to Our Business

We operate with significant levels of indebtedness and are required to comply with certain financial and non-financial covenants; and we have guaranteed certain indebtedness and obligations of our subsidiaries.

As of June 30, 2016, our total credit facilities outstanding, including debt, capital lease obligations and our vendor accounts payable related to financing of Ricoh product inventory, was approximately \$61 million. We cannot provide assurance that our credit facilities will be renewed by the lending parties. Additionally, these credit facilities include both financial and non-financial covenants, many of which also include cross default provisions applicable to other agreements. These covenants also restrict our ability to transfer funds among our various subsidiaries, which may adversely affect the ability of our subsidiaries to operate their businesses or comply with their respective loan covenants. We cannot provide assurance that we will be able to maintain compliance with these covenants. A non-renewal, default under or acceleration of any of our credit facilities may have a material adverse impact upon our business and financial condition. We have guaranteed most of the indebtedness of Supplies Distributors. Furthermore, we are obligated to repay any over-advance made to Supplies Distributors by its lenders to the extent Supplies Distributors is unable to do so.

Our business is subject to the risk of customer and supplier concentration.

For the six months ended June 30, 2016, one client represented more than 10% of our service fee revenue and we currently expect this client to represent approximately 10% of our service fee revenue for calendar year 2016. Most of our client agreements state a contract expiration date, but many also include an early termination clause permitting the client to terminate the contract for convenience prior to its stated expiration date or to reduce the scope of services or delay the commencement of services to be provided under the contract. Termination, reduction, or delay of our services under a contract could result from factors unrelated to our work product or the progress of the project, such as factors related to business or financial conditions of the client, changes in client strategies or the domestic or global economy generally. The early termination, reduction or substantial delay of services with any significant client, or nonrenewal of any significant client contract, or the nonpayment of a material amount of our service fees by a significant client, could have a material adverse effect upon our business, results of operation and financial condition.

The majority of our Supplies Distributors product revenue is generated by sales of product purchased under distributor agreements with Ricoh. These agreements are terminable at will and no assurance can be given that Ricoh will continue the distributor agreements with Supplies Distributors. Supplies Distributors does not have its own sales force and relies upon Ricoh's sales force and product demand generation activities for its sale of Ricoh product. As a result of certain operational restructuring of its business and its discontinuance of certain product lines, Ricoh has implemented, and will continue to implement, certain changes in the sale and distribution of Ricoh products. The changes have resulted, and are expected to continue to result, in reduced revenues and profitability for Supplies Distributors. Further reduction in the Ricoh business may have a material adverse effect on Supplies Distributors' business and may adversely affect our overall financial condition.

Sales by Supplies Distributors to two customers in the aggregate accounted for approximately 32% of Supplies Distributors' total product revenue for the six months ended June 30, 2016 and 5% of consolidated net revenue. The loss of one or both of such customers, or non-payment of any material amount by these or any other customer, would have a material adverse effect upon Supplies Distributors' business, results of operations and financial condition.

Risks Related to Our Stock

Our stock price could decline if a significant number of shares become available for sale.

As of June 30, 2016, we have issued an aggregate of (i) 1.2 million stock options outstanding to employees, directors and others with a weighted average exercise price of \$7.56 per share (ii) 626,000 performance shares of common stock that may vest, subject to satisfaction of vesting conditions, over the next one to three years, (iii) 118,000 restricted stock units that may vest subject to

satisfaction of vesting conditions, over the next two years, and (iv) 104,000 deferred stock units to the non-employee members of our Board of Directors under which the underlying shares will be issued upon the termination of service of the holder. The current and future issuance and/or vesting of shares of our common stock under the foregoing stock awards, performance shares and deferred stock units, sales of substantial amounts of common stock in the public market following the issuance and/or vesting of such shares, and/or the perception that future sales of these shares could occur, could reduce the market price of our common stock and make it more difficult to sell equity securities in the future.

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

None

ITEM 3. Defaults Upon Senior Securities

None

ITEM 4. Mine Safety Disclosure

Not applicable

ITEM 5. Other Information

None

ITEM 6. Exhibits

a) Exhibits:

<u>Exhibit No.</u>	<u>Description of Exhibits</u>
2.1*	Share Purchase Agreement dated June 8, 2016 by and among OLR (UK) Limited, PFSweb, Inc., Kenneth William Wehr and OLR Group Pty Ltd. (certain schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted schedule upon request).
3.1(1)	Amended and Restated Certificate of Incorporation of PFSweb, Inc.
3.1.1(2)	Certificate of Amendment to Amended and Restated Certificate of Incorporation of PFSweb, Inc.
3.1.2(4)	Certificate of Amendment to Certificate of Incorporation of PFSweb, Inc.
3.1.3(5)	Certificate of Amendment to Amended and Restated Certificate of Incorporation of PFSweb, Inc.
3.1.4(7)	Certificate of Amendment to Amended and Restated Certificate of Incorporation of PFSweb, Inc.
3.2(1)	Amended and Restated By-Laws
3.2.1(3)	Amendment to the Amended and Restated By-Laws of PFSweb, Inc.
3.2.2(6)	Amendment to the Amended and Restated By-Laws of PFSweb, Inc.
3.2.3(7)	Amendment to the Amended and Restated By-Laws of PFSweb, Inc.
4.1 (8)	Amendment No. 5 to Rights Agreement, dated as of June 18, 2015 between the Company and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC,) as successor to ChaseMellon Shareholder Services, LLC., as rights agent.
4.1 (9)	Amendment No. 6 to Rights Agreement, dated as of July 30, 2015 between the Company and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC,) as successor to ChaseMellon Shareholder Services, LLC., as rights agent.
10.1*	Lease agreement dated June 30, 2016 by and between US Industrial Reit III – Midwest and Priority Fulfillment Services, Inc.
31.1*	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase.
101.LAB*	XBRL Taxonomy Extension Label Linkbase.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase.
(1)	Incorporated by reference from PFSweb, Inc. Registration Statement on Form S-1 (Commission File No. 333-87657).
(2)	Incorporated by reference from PFSweb, Inc. Form 10-K for the fiscal year ended December, 31, 2005 filed on March 31, 2006.
(3)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on November 13, 2007.
(4)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on June 2, 2008.
(5)	Incorporated by reference from PFSweb, Inc. Form 10-Q filed on August 14, 2009.
(6)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on July 2, 2010.
(7)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on July 18, 2013.
(8)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on June 19, 2015.
(9)	Incorporated by reference from PFSweb, Inc. Report on Form 8-K filed on July 30, 2015.
*	Filed Herewith

SIGNATURES

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

Date: August 9, 2016

PFSweb, Inc.

By: /s/ Thomas J. Madden
Thomas J. Madden
Chief Financial Officer
Chief Accounting Officer
Executive Vice President

Dated

8 June 2016

OLR (UK) LIMITED

and

PFSWEB INC

and

KENNETH WILLIAM WEHR

and

OLR GROUP PTY LTD

SHARE PURCHASE AGREEMENT

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Parties

- (1) **OLR (UK) LIMITED** incorporated and registered in England and Wales with company number 6607378 whose registered office is at Eastlands One, London Road, Basingstoke, Hampshire, England, RG21 4FB ("**Seller**");
- (2) **PFSWEB INC** incorporated in Delaware whose principal executive offices are at 505 Millennium Drive, Allen, Texas, USA ("**Buyer**");
- (3) **KENNETH WILLIAM WEHR** of 3 Tenth Avenue, St. Peters, South Australia, 5069 ("**Covenantor**"); and
- (4) **OLR GROUP PTY LTD** incorporated and registered in Australia with company number 132 678187 whose registered office is at 204 Melbourne Street, North Adelaide SA 5006, Australia ("**Guarantor**"),

(together the "**parties**" and each a "**party**").

Background

- (A) The Company is a private company limited by shares incorporated in England and Wales.
- (B) The Company has an issued share capital of £1,000 divided into the Sale Shares, each of which is fully paid up.
- (C) Further particulars of the Company at the date of this agreement are set out in Schedule 1.
- (D) The Seller is the legal and beneficial owner of the legal and beneficial title to the Sale Shares.
- (E) The Seller has agreed to sell and the Buyer has agreed to buy the Sale Shares subject to the terms and conditions of this agreement.
- (F) The Guarantor is the holding company of the Seller. The Guarantor has become a party to this agreement for the purpose of entering into the guarantee and indemnity set out in clause 15 and the undertakings set out in clause 16.
- (G) The Covenantor is the ultimate beneficial owner of the Seller and has become a party to this agreement for the purposes of the undertakings set out in clause 13 and clause 16.

Agreed terms**1. Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

"**2016 Earn-out**" means as defined in clause 6.1.

"**Accounting Firm**" means as defined in clause 3.7.

"**Accounting Principles**" means the accounting methods, practices, principles, policies and procedures (including classifications, judgments and valuation and estimation methodologies), as used and/or applied in the preparation of the Accounts and the Management Accounts.

"**Accounts**" means the audited abbreviated financial statements of the Company as at the Accounts Date, including the abbreviated balance sheet together with the notes thereon (copies of which are included in the Disclosure Bundle).

"**Accounts Date**" means 30 June 2015.

"**Adjusted EBITDA**" means EBITDA for Calendar Year 2016, determined according to the Accounting Principles, applied consistently with those employed in the preparation of the Management Accounts, and applying the Specific Charges and

Accruals (defined in Schedule 6), but excluding all costs related to, without duplication, the Transitional Services Agreement, such costs to be incurred in accordance with the terms of the Transitional Services Agreement.

“**Adjusted EBITDA Excess**” means the amount by which the Adjusted EBITDA exceeds £1,200,000, up to a maximum of £300,000.

“**Applicable Law**” means any applicable statute, law (including common law), code, ordinance, rule, regulation, decree or other requirement or rule of law, domestic or foreign, enacted, issued, promulgated, enforced or entered by any Governmental Entity.

“**Balance**” means as defined in clause 6.9(b).

“**Bank**” means the Bank of London and the Middle East plc.

“**BLME Finance Documents**” means (i) the accession deed signed by the Company on 22 January 2014 in connection with the master murabaha facility agreement entered into between the Seller and the Bank on 21 January 2014; (ii) the debenture granted by the Seller to the Bank on 21 January 2014; (iii) the accession deed signed by the Company on 22 January 2014 in connection with the foregoing debenture; (iv) the subordination deed dated 21 January 2014 entered into, amongst other parties, between the Seller and the Bank; and (v) the accession deed signed by the Company on 22 January 2014 in connection with the foregoing subordination deed.

“**Business**” means the business carried on by the Company, namely implementation of web-based e-commerce solutions, including (but not limited to) systems integration, managed services, hosting and services related or ancillary thereto.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London (or New York City for the purposes of clause 6.10) are open for business.

“**Buyer Completion Date Balance Sheet**” means as defined in clause 3.6.

“**Buyer Earn-out Statement**” means as defined in clause 6.4.

“**Buyer Stock**” means the common stock, \$0.001 par value, of the Buyer, as the same may be changed into or exchanged for a different number or kind of shares or other securities of the Buyer, or of another corporation, whether by reason of reorganisation, merger, consolidation, recapitalisation, reclassification, stock split-up, sub-division, stock dividend, combination of shares or otherwise.

“**Buyer’s Solicitors**” means Sheridans of 76 Wardour Street, London W1F 0UR.

“**Buyer Warranties**” means the warranties given pursuant to clause 7 and set out in Schedule 10.

“**CAA 2001**” means the Capital Allowances Act 2001.

“**Calendar Year 2016**” means the twelve-month period ending 31 December 2016.

“**Claim**” means a claim for breach of any of the Warranties.

“**Closed**” a Considered Contract is deemed “**Closed**” (and “**Closing**” shall be construed accordingly) upon the execution and delivery by a Considered Contract Party after the Completion Date of (i) a new Engagement Work Authorisation under a Services Contract Agreement in effect prior to the Completion Date, or (ii) a new Services Contract Agreement and Engagement Work Authorisation thereunder, in each case, corresponding to not less than the minimum revenue identified for each Considered Contract as set forth in the Disclosure Letter.

“**Company**” means Conexus Limited, a company incorporated and registered in England and Wales with company number 3616118 whose registered office is at Eastlands One, London Road, Basingstoke, Hampshire RG21 4FB, further details of which are set out in Schedule 1.

“**Completion**” means completion of the sale and purchase of the Sale Shares in accordance with this agreement.

“**Completion Cash Payment**” means as defined in clause 3.1.

“**Completion Date**” means the date of this agreement.

“**Completion Date Balance Sheet**” means as finally agreed or determined in accordance with the provisions of clauses 3.5 to 3.13 inclusive, a balance sheet of the Company as of 31 May 2016 prepared in accordance with the Accounting Principles.

“**Completion Date Net Asset Value**” means the excess, if any, of the assets of the Company over its liabilities as of 31 May 2016, determined in accordance with the Accounting Principles as of such date.

“**Completion Notice of Disagreement**” means as defined in clause 3.7.

“**Connected**” means has, in relation to a person, the meaning given in section 1122 of the CTA 2010.

“**Consideration**” the aggregate consideration to be paid by the Buyer for the purchase of the Sale Shares under the terms of this agreement.

“**Considered Contracts**” means those certain prospective projects of the Company as described and specified as such in the Disclosure Letter and identified therein as the Considered Contracts.

“**Considered Contract Party**” means the existing or prospective customer of the Company that is the counterparty to a Considered Contract.

“**Control**” means shall be as defined in section 1124 of the CTA 2010, and the expression “**change of Control**” shall be construed accordingly.

“**Counsel**” means a barrister of not less than 10 years standing, having experience in claims similar to a relevant Outstanding Claim, as agreed by the Seller and the Buyer, or failing such agreement, as appointed by the President for the time being of the Law Society in England and Wales on the application of either party.

“**CTA 2009**” means the Corporation Tax Act 2009.

“**CTA 2010**” means the Corporation Tax Act 2010.

“**Deferred Consideration**” means the sum of up to £300,000, to be paid in accordance with the provisions of clause 4.

“**Director**” means each person who is a director or shadow director of the Company as set out in Schedule 1.

“**Disclosed**” means fairly disclosed (with sufficient details to enable a reasonable purchaser to make an informed assessment of the nature and scope of the matter disclosed) in or under the Disclosure Letter.

“**Disclosure Bundle**” means the bundle of documents, in agreed form, annexed to the Disclosure Letter and contained on the DVD titled “Project Cobalt Disclosure Bundle” and marked by the parties or their counsel for identification.

“**Disclosure Letter**” means the letter from the Seller to the Buyer, in agreed form, with the same date as this agreement that is described as the Disclosure Letter, including the Disclosure Bundle.

“**Disputed Completion Date Balance Sheet Line Items**” means as defined in clause 3.7.

“**Disputed Contract**” shall have the meaning given in the Disclosure Letter.

“**DPA 1998**” means the Data Protection Act 1998.

“**Due Amount**” means the amount (if any) due for payment by a party to the Buyer in respect of a Resolved Claim.

“**Earn-out Disputed Line Items**” means as defined in clause 6.5.

“**Earn-out Notice of Disagreement**” means as defined in clause 6.5.

“**Earn-out Payment**” means as defined in clause 6.1.

“**Earn-out Payment Date**” means the date on which the Earn-Out Payment (if any) becomes due and payable by the Buyer to the Seller under this agreement.

“**Earn-out Period**” means the period commencing on the day after the Completion Date and expiring on the last day of Calendar Year 2016.

“**Earn-out Statement**” means a written statement setting forth the calculation and determination of the Adjusted EBITDA for Calendar Year 2016, as finally agreed or determined in accordance with the provisions hereof.

“**EBITDA**” means, for Calendar Year 2016, the Company’s net income (loss) for the applicable period before deduction or addition, as the case may be, of: (i) interest expense, net of interest income; (ii) provision for Tax; and (iii) depreciation and amortization, in each case, for such period, determined in accordance with the Accounting Principles.

“**Employee**” has the meaning set out in paragraph 26.1 of Part 1 of Schedule 3.

“**Encumbrance**” means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement.

“**Engagement Work Authorisation**” means a statement of works agreed between the Company and a Considered Contract Party which is subject to a Services Contract Agreement.

“**Estimated Liability**” means in relation to an Outstanding Claim, a genuine and bona fide estimate of the amount of the party’s liability to the Buyer if the Outstanding Claim were to be resolved in the Buyer’s favour, as agreed or determined in accordance with clause 14.2.

“**Final Completion Cash Payment**” means as defined in clause 3.10.

“**FSMA**” means the Financial Services and Markets Act 2000.

“**Governmental Entity**” means any (i) federal, state, local, municipal, foreign or other government, (ii) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), or (iii) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

“**Group**” means in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a **member of the Group**.

“**Guaranteed Obligations**” means all present and future obligations and liabilities of the Seller under this agreement and all agreements and obligations entered into pursuant to or in connection with it, including all money and liabilities of any nature from time to time due, owing or incurred by the Seller under this agreement (or any agreement entered into pursuant to or in connection with it).

“**HMRC**” has the meaning given in paragraph 1.1 of Schedule 4.

“**holding company**” has the meaning given in clause 1.11.

“**IHTA 1984**” means the Inheritance Tax Act 1984.

“**Indemnity Claim**” means a claim for breach of any of the indemnities in clause 11.

“**Intellectual Property Rights**” means has the meaning given in paragraph 23.1 of Part 1 of Schedule 3.

“**ITA 2007**” means the Income Tax Act 2007.

“**ITEPA 2003**” means the Income Tax (Earnings and Pensions) Act 2003.

“**Liability for Taxation**” has the meaning given in paragraph 1.1 of Schedule 4.

“**Management Accounts**” means the unaudited balance sheet of the Company as at 30 April 2016 and the unaudited profit and loss account of the Company for the ten month period ended 30 April 2016 (a copy of which is included in the Disclosure Bundle).

“**parent undertaking**” means a parent undertaking as defined in section 1162 of the Companies Act 2006.

“**Net Asset Value Target**” means £1,049,000.

“**OLR Share Purchase Agreement**” means the share purchase agreement relating to the Company dated 22 January 2014 entered into by the Seller, Paul Sessions and others.

“**OLR SPA Tax Claim**” means as defined in clause 12.1.

“**OLR SPA Tax Claim Dispute**” means any dispute, appeal, negotiations or other proceedings in connection with an OLR SPA Tax Claim.

“**Outstanding Claim**” a Relevant Claim that has been notified by the Buyer to the relevant party in accordance with this agreement, but which is not a Resolved Claim as at the Earn-out Payment Date

“**Pension Scheme**” means the Royal London Group Personal Pension Scheme.

“**PL Side Letter**” means a side letter, in agreed form, to be entered into between the Company and Paul Lynch in respect of certain payments to be made by the Company to Paul Lynch following Completion.

“**Previously-owned Land and Buildings**” has the meaning given in paragraph 28.1 of Part 1 of Schedule 3.

“**Property**” has the meaning given in paragraph 28.1 of Part 1 of Schedule 3.

“**Relevant Indemnity Claim**” means a claim for breach of any of the indemnities in clause 11 other than the indemnities at clauses 11.1(a), 11.1(c) and 11.1(g).

“**Relevant Claim**” a Claim, Indemnity Claim, a claim pursuant to the Tax Covenant or any other claim pursuant to this agreement.

“**Resolved Claim**” means a Relevant Claim that has been:

- (a) agreed in writing between the Buyer and the relevant party as to both liability and quantum;
- (b) finally determined by a court of competent jurisdiction from which there is no right of appeal, or from whose judgment the relevant party is debarred (by passage of time or otherwise) from making an appeal; or
- (c) unconditionally withdrawn by the Buyer in writing.

“**Sale Shares**” 1,000 ordinary shares of £1.00 each in the capital of the Company, all of which have been issued and are fully paid, and which comprise the whole of the issued share capital of the Company.

“**Seller Earn-out Statement**” means as defined in clause 6.5.

“**Seller’s Solicitors**” means 3volution Limited of 10 South Parade, Leeds LS1 5QS.

“**Services Contract Agreement**” means a contract for services between the Company and a Considered Contract Party substantially in the form disclosed at document 5.16.2 in the Disclosure Bundle (as may be amended following renegotiation with a Considered Contract Party) or in a form otherwise provided by a Considered Contract Party.

“**subsidiary**” has the meaning given in clause 1.11.

“**subsidiary undertaking**” means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

“**Substantiated Claim**” means a Claim that has been:

- (a) agreed in writing by the parties to the Claim, both as to liability and quantum; or
- (b) finally adjudicated by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication, or the parties are debarred by passage of time or otherwise from making an appeal.

“**Tax or Taxation**” has the meaning given in paragraph 1.1 of Schedule 4.

“**Tax Covenant**” means the tax covenant set out in Schedule 4.

“**Tax Warranties**” means the Warranties set out in Part 2 of Schedule 3.

“**Taxation Authority**” has the meaning given in paragraph 1.1 of Schedule 4.

“**Taxation Statute**” has the meaning given in paragraph 1.1 of Schedule 4.

“**TCGA 1992**” means the Taxation of Chargeable Gains Act 1992.

“**TIOPA 2010**” means the Taxation (International and Other Provisions) Act 2010.

“**TMA 1970**” means the Taxes Management Act 1970.

“**Transaction**” means the transaction contemplated by this agreement or any part of that transaction.

“**Transitional Services Agreement**” means the transitional services agreement, in agreed form, with the same date as this agreement, to be entered into between the Seller and the Company.

“**VATA 1994**” means the Value Added Tax Act 1994.

“**Velocity Licence**” means the licence to be entered on or about the date hereof, in the agreed form, between the Company and the Seller in respect of the “Velocity” trademark.

“**Warranties**” means the warranties given pursuant to clause 8 and set out in Schedule 3.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 References to clauses and Schedules are to the clauses of and Schedules to this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to **this agreement** or to any **other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

1.9 A reference to a **party** shall include that party’s personal representatives, successors and permitted assigns.

- 1.10 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.11 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.12 A reference to **writing** or **written** includes fax and e-mail.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.15 References to a document in **agreed form** are to that document in the form agreed by the parties.
- 1.16 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the date of this agreement shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.17 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.18 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Sale and purchase

- 2.1 On the terms of this agreement, the Seller shall sell and the Buyer shall buy, with effect from Completion, the Sale Shares with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to the Sale Shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the Completion Date.
- 2.2 The Seller waives, and shall before Completion procure the irrevocable waiver of all, rights of pre-emption or other restrictions on transfer in respect of the Sale Shares (or any of them) conferred on it, or any other person who is not a party to this agreement, under the articles of association of the Company or otherwise.
- 2.3 Each of the Seller, Covenantor and the Guarantor hereby confirms that none of them nor any person Connected with any of them has any claim outstanding against the Company or against any of its directors, officers or employees and no agreement or arrangement is outstanding under which the Company has or could have any obligation of any kind.
- 2.4 If any such claim or obligation as referred to in clause 2.3 exists, each of the Seller, the Covenantor and the Guarantor (as applicable) irrevocably and unconditionally waives and releases such a claim or obligation and shall procure that any person Connected with any of them shall irrevocably and unconditionally waive and release such a claim or obligation.
- 2.5 The Buyer is not obliged to complete the purchase of any of the Sale Shares unless the purchase of all the Sale Shares is completed simultaneously.

3. Consideration

- 3.1 The Consideration shall consist of the following:
- (a) the sum of Five Million Eight Hundred and Fifty Five Thousand British Pounds (£5,855,000) (the "**Completion Cash Payment**"), as such amount is adjusted pursuant to the terms herein;
 - (b) subject to the provisions of clause 4, the Deferred Consideration; and
 - (c) subject to the provisions of clause 6 and clause 14, the Earn-out Payment.

3.2 All amounts referred to in this agreement are payable in British Pounds Sterling.

Payment of Completion Cash Payment

3.3 Upon and subject to the terms herein, on Completion the Buyer will pay the Completion Cash Payment as follows:

(a) to the client account of the Seller's Solicitors (for the account of the Seller) (the Seller's Solicitors being irrevocably authorised to receive the same) the cash sum of £3,449,397.00 (the "Seller's Cash Consideration") details as follows:

Bank name: Yorkshire Bank
Address: Leeds Central
Sort code: 05-00-20
Account: 11281393

(b) to the client account of Dentons UKMEA LLP, as lawyers for the Bank (in respect of repayment of "Facility A" under the BLME Finance Documents) the cash sum of £2,405,603.00 details as follows:

Bank: Royal Bank of Scotland, Child & Co Branch
Account No: 67072440
Sort Code: 158000
IBAN: GB63 RBOS 1580 00 6707 2440
SWIFT: RBOSGB2L

Payment in accordance with this clause 3.3 shall be a good and valid discharge of the obligations of the Buyer to pay the Completion Cash Payment to the Seller, and the Buyer shall not be concerned to see the application of the monies so paid.

Adjustment of Seller's Cash Consideration

3.4 The Seller's Cash Consideration shall be adjusted and finally determined as set out in clauses 3.5 to 3.13 inclusive.

3.5 The Seller's Cash Consideration shall be adjusted based upon the difference between the Completion Date Net Asset Value and the Net Asset Value Target as hereinafter provided. For the purposes of determining the Completion Date Net Asset Value, the Completion Date Balance Sheet shall be adjusted in accordance with the adjustments set forth in Schedule 5.

3.6 Not later than one hundred and twenty (120) days after the Completion Date, the Buyer shall cause to be prepared and delivered to the Seller the Buyer's calculation of the Completion Date Balance Sheet (the "**Buyer Completion Date Balance Sheet**"), together with a calculation of the adjustment to the Seller's Cash Consideration by, as applicable (1) increasing the amount thereof by the excess, if any, of the Completion Date Net Asset Value shown on the Buyer Completion Date Balance Sheet over the Net Asset Value Target, or (2) decreasing the amount thereof by the excess, if any, of the Net Asset Value Target over the Completion Date Net Asset Value shown on the Buyer Completion Date Balance Sheet. The Completion Date Balance Sheet shall be prepared according to the Accounting Principles, applied consistently with those employed in the preparation of the Management Accounts, and applying the YTD Charges (as defined in Schedule 5).

3.7 If the Seller disagrees in whole or in part with the Buyer Completion Date Balance Sheet, then within sixty (60) days after its receipt thereof, the Seller shall notify the Buyer of such disagreement in writing (the "**Completion Notice of Disagreement**"), setting forth in reasonable detail the particulars of any such disagreement. To be effective, any such Completion Notice of Disagreement shall include a copy of the Buyer Completion Date Balance Sheet marked to indicate the specific line items of the Buyer Completion Date Balance Sheet that are in dispute (the "**Disputed Completion Date Balance Sheet Line Items**") and shall be accompanied by Seller's calculation of each of the Disputed Completion Date

Balance Sheet Line Items and the Seller's calculation of the Completion Date Balance Sheet and its determination of the Seller's Cash Consideration, as adjusted in accordance with clause 3.5. All items that are not Disputed Completion Date Balance Sheet Line Items shall be final, binding and conclusive for the purposes of determining the Seller's Cash Consideration hereunder. If the Seller does not provide a Completion Notice of Disagreement within such sixty (60) day period, the Seller shall be deemed to have accepted in full the Buyer Completion Date Balance Sheet, and, for purposes of determining the adjustment to the Seller's Cash Consideration, such Buyer Completion Date Balance Sheet shall become final, binding and conclusive upon Buyer and Seller. In the event any effective Completion Notice of Disagreement is provided, Buyer and Seller shall use their respective reasonable endeavours for a period of fifteen (15) days (or such longer period as they may mutually agree in writing) to resolve any Disputed Completion Date Balance Sheet Line Items. If, at the end of such period, Buyer and Seller are unable to resolve all Disputed Completion Date Balance Sheet Line Items, then either the Buyer or the Seller may refer any such remaining Disputed Completion Date Balance Sheet Line Items to an independent accounting firm of international standing and repute jointly designated by Buyer and Seller (the "Accounting Firm"); provided, that in the event Buyer and Seller cannot mutually agree as to the designation of the Accounting Firm, each such party will designate an accounting firm, and the two accounting firms will designate a third accounting firm to act as the Accounting Firm, except that neither Grant Thornton LLP nor BDO LLP (nor any of their affiliated offices) shall be selected as the Accounting Firm, unless Buyer and Seller mutually agree. During the period from the Completion Date until the Completion Date Balance Sheet being finally agreed or determined as provided herein, the Buyer and the Seller shall cooperate with each other and shall have reasonable access to the books and records, working papers, schedules and calculations of the other, in order to prepare, or use in the preparation of, their respective Completion Date Balance Sheet.

- 3.8 The Buyer and the Seller will enter into reasonable and customary arrangements for the services to be rendered by the Accounting Firm under clause 3.7, such services to be provided in the Accounting Firm's capacity as an expert and not an arbitrator. The Accounting Firm shall be directed to determine as promptly as practicable (and the Buyer and the Seller shall use reasonable endeavours to cause such determination to occur within thirty (30) days) of the designation of the Accounting Firm the resolution of the Disputed Completion Date Balance Sheet Line Items. In making any determination of the Disputed Completion Date Balance Sheet Line Items, the Accounting Firm may not assign a value greater than the greatest value for such item claimed by either party or smaller than the smallest value for such item claimed by either party, and the Accounting Firm may only make a determination regarding the matters in dispute between the Buyer and the Seller. The Buyer and the Seller shall each furnish to the Accounting Firm such work papers and other documents and information relating to the Disputed Completion Date Balance Sheet Line Items, and shall provide access to personnel and answer questions, as such Accounting Firm may reasonably request. The determination of the Disputed Completion Date Balance Sheet Line Items by the Accounting Firm shall be set forth in writing and shall be final, conclusive and binding on the Buyer and the Seller for purposes of determining the Completion Date Balance Sheet, absent fraud or manifest error, and shall be based solely on the terms of this agreement and the written submissions by the Buyer and the Seller and not by independent review or investigation.
- 3.9 Subject to the next sentence, each of the Buyer and the Seller shall be responsible for its own fees and expenses incurred in connection with the matters set out in this clause 3. The Buyer and Seller shall each pay one half of the fees and expenses payable to the Accounting Firm in connection with resolving any dispute under clauses 3.7 and 3.8, except that in the event that one party's, but not the other party's, determination of the Disputed Completion Date Balance Sheet Line Items as a whole varies by 20% or more from the determination of the Disputed Completion Date Balance Sheet Line Items as a whole by the Accounting Firm hereunder, then such party shall be solely responsible for the fees and expenses of the Accounting Firm.
- 3.10 Promptly following the final determination of the Completion Date Balance Sheet pursuant to this clause 3, the Buyer shall prepare, and deliver to the Seller, the Completion Date Balance Sheet and the calculation of the Seller's Cash Consideration, as adjusted by, as applicable (1) increasing the amount thereof by the excess, if any, of the Completion Date Net Asset Value shown on the Completion Date Balance Sheet over the Net Asset Value Target, or (2) decreasing the amount thereof by the excess, if any, of the Net Asset Value Target over the Completion Date Net Asset Value shown on the Completion Date Balance Sheet (the Seller's Cash Consideration, as so adjusted, being hereinafter referred to as the "Final Completion Cash Payment"), whereupon the following payment shall be made as hereinafter provided:
- (a) if the Final Completion Cash Payment exceeds the Seller's Cash Consideration by £25,000 or more, then the Buyer shall pay to the Seller an amount in cash equal to such excess in accordance with clause 3.12; or
 - (b) if the Seller's Cash Consideration exceeds the Final Completion Cash Payment by £25,000 or more, then the Seller shall pay to the Buyer an amount in cash equal to such excess in accordance with clause 3.12.

- 3.11 For the avoidance of doubt, no payment shall be required under 3.10 if the difference between the Seller's Cash Consideration and the Final Completion Cash Payment, as finally determined, is less than £25,000.
- 3.12 Any amount payable pursuant to clause 3.10 shall be paid within five (5) Business Days after the delivery of the Completion Date Balance Sheet via wire transfer of cleared funds to:
- (a) in the case of a payment to the Seller, the account set out in clause 3.3(a); and
 - (b) in the case of a payment to the Buyer, such account as the Buyer designates in writing.
- 3.13 Payments pursuant to clause 3.10 shall be treated for all purposes as adjustments to the Consideration.

4. Deferred Consideration

- 4.1 Subject to receipt by the Buyer or the Company of documentation evidencing the Closing of one or more Considered Contracts and the limitation set forth in clause 4.2, the Buyer covenants and agrees to pay to the Seller by way of Deferred Consideration £75,000 in respect of each Considered Contract which is Closed within 90 days following Completion (such period to be referred to herein as the "**Deferred Consideration Period**").
- 4.2 The total amount of Deferred Consideration payable pursuant to clause 4.1 shall not exceed £300,000.
- 4.3 Any and all amounts payable pursuant to clause 4.1 shall be paid by the Buyer via wire transfer of cleared funds to the account, details of which are set out in clause 3.3(a), within five (5) Business Days of a Considered Contract being Closed.
- 4.4 The Buyer hereby confirms, and will procure that the Company shall:
- (a) use reasonable commercial endeavours to effect the Closing of each Considered Contract within 90 days of Completion and that it shall not, and shall procure that the Company shall not do anything deliberately which could have the effect of delaying or preventing the Closing of any such Considered Contract; and
 - (b) comply with the provisions of the PL Side Letter and not vary the terms of the PL Side Letter or put in place any other incentive arrangement in relation to any of the Considered Contracts other than with the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).
- 4.5 At the end of the Deferred Consideration Period, the "**Aggregate Unearned Deferred Consideration Amount**" shall be determined by subtracting the total amount of all Deferred Consideration earned pursuant to clause 4.1 during the Deferred Consideration Period from £300,000. For the avoidance of doubt, the Aggregate Unearned Deferred Consideration Amount cannot be less than 0.

5. Completion

- 5.1 Completion shall take place on the Completion Date at the offices of the Buyer's Solicitors (or at any other place as may be agreed in writing by the parties).
- 5.2 At Completion:
- (a) the Seller shall:
 - (i) deliver or cause to be delivered to the Buyer the documents and evidence set out in Part 1 of Schedule 2;
 - (ii) procure that a board meeting of the Company is held at which the matters set out in Part 2 of Schedule 2 are carried out; and
 - (iii) deliver any other documents referred to in this agreement as being required to be delivered by the Seller; and

- (b) the Buyer shall (subject to the Seller complying with its obligations in clause 5.2(a)):
- (i) pay the Completion Cash Payment in accordance with clause 3.3;
 - (ii) deliver to the Seller:
 - (A) a signed acknowledgement of the Disclosure Letter; and
 - (B) a copy of the resolution adopted by the board of directors of the Buyer approving the Transaction and the execution and delivery of this agreement and any other documents to be delivered by the Buyer at Completion.

5.3 As soon as possible after Completion, the Seller shall send to the Buyer (at the Company's registered office for the time being) all records, correspondence, documents, files, memoranda and other papers relating to the Company which are not kept at the Property and which are not required to be delivered at Completion.

5.4 In the event of any Claim, Indemnity Claim or claim under the Tax Covenant, the Consideration shall be deemed to be reduced by the amount of any payment made to the Buyer in respect thereof.

5.5 The Seller hereby assigns all of its rights, title, interest and benefit in and to the OLR Share Purchase Agreement to the Buyer with effect from the Completion Date pursuant to the provisions of clause 13.3(b) of the OLR Share Purchase Agreement. The Seller shall notify all parties to the OLR Share Purchase Agreement of such assignment in writing within seven days of Completion.

6. **Earn-out**

6.1 Subject to the terms and provisions contained herein, the Buyer covenants and agrees to pay to the Seller an amount (the "**2016 Earn-out**") equal to the amount determined according to the following formula:

(i) the sum of £1,145,000, plus the Aggregate Unearned Deferred Consideration (as determined in accordance with clause 4.5), multiplied by (ii) a fraction, the numerator of which is the Adjusted EBITDA Excess and the denominator of which is £300,000 (the "**Earn-out Payment**"). For the avoidance of doubt, the amount of the Earn-out Payment shall not exceed the sum of £1,145,000 plus the Aggregate Unearned Deferred Consideration Amount (regardless of Adjusted EBITDA).

6.2 For the avoidance of doubt, no Earn-Out Payment shall be payable if Adjusted EBITDA is £1,200,000 or less.

6.3 The right to receive the Earn-out Payment shall not be represented by any form of certificate or other instrument, is not assignable or transferable, may not be pledged or encumbered by the party entitled thereto and does not constitute an equity or ownership interest in the Buyer or the Company.

6.4 As promptly as practicable following the end of Calendar Year 2016, but in any event no later than 31 March 2017, the Buyer shall deliver to the Seller its calculation of the Earn-out Statement for Calendar Year 2016, accompanied by supporting documentation containing a sample of the actual calculations made by the Buyer, in order to enable the Seller to verify the calculations contained therein (the "**Buyer Earn-out Statement**").

6.5 If the Seller disagrees in whole or in part with the Buyer Earn-out Statement, then within sixty (60) days after its receipt thereof, the Seller shall notify the Buyer of such disagreement in writing (the "**Earn-out Notice of Disagreement**"), setting forth in reasonable detail the particulars of any such disagreement. To be effective, any such Earn-out Notice of Disagreement shall include a copy of the Buyer Earn-out Statement marked to indicate the specific line items of the Buyer Earn-out Statement that are in dispute (the "**Earn-out Disputed Line Items**") and shall be accompanied by the Seller's calculation of each of the Earn-out Disputed Line Items and Seller's calculation of the Earn-out Statement (the "**Seller Earn-out Statement**"). All items that are not Earn-out Disputed Line Items shall be final, binding and conclusive for the purposes of determining the Earn-out Payments hereunder. In the event that the Seller does not provide an Earn-out Notice of Disagreement within such sixty (60) day period, the Seller shall be deemed to have accepted in full the Buyer Earn-out Statement, and, for purposes of determining the corresponding Earn-out Payment, such Buyer Earn-out Statement shall become final, binding and conclusive upon Buyer and Seller. In the event any Earn-out Notice of Disagreement is provided in accordance with this clause 6.5 and the time limits prescribed by it, Buyer and Seller shall use their respective commercially reasonable efforts for a period of fifteen (15) days (or such longer period as they may mutually agree) to

resolve any Earn-out Disputed Line Items. If, at the end of such period, Buyer and Seller are unable to resolve all Earn-out Disputed Line Items, then either Buyer or Seller may refer any such remaining Earn-out Disputed Line Items to an Accounting Firm. The Buyer and the Seller shall cooperate with each other and shall have reasonable access to the books and records, working papers, schedules and calculations of the other, in order to prepare, or use in the preparation of, their respective Earn-out Statement.

- 6.6 The Buyer and Seller will enter into reasonable and customary arrangements for the services to be rendered by the Accounting Firm under clause 6.5, such services to be provided in the Accounting Firm's capacity as an expert and not an arbitrator. The Accounting Firm shall be directed to determine as promptly as practicable (and Buyer and Seller shall use commercially reasonable efforts to cause such determination to occur within thirty (30) days) of the designation of the Accounting Firm the resolution of the Earn-out Disputed Line Items. In making any determination of the Earn-out Disputed Line Items, the Accounting Firm may not assign a value greater than the greatest value for such item claimed by either party or smaller than the smallest value for such item claimed by either party, and the Accounting Firm may only make a determination regarding the matters in dispute between Buyer and Seller. The Buyer and the Seller shall each furnish to the Accounting Firm such work papers and other documents and information relating to the Earn-out Disputed Line Items, and shall provide access to personnel and answer questions, as such Accounting Firm may reasonably request. The determination of the Earn-out Disputed Line Items by the Accounting Firm shall be set forth in writing and shall be final, conclusive and binding on the Buyer and Seller for purposes of determining the Earn-out Payment absent fraud or manifest error and shall be based solely on the terms of this agreement and the written submissions by Buyer and Seller and not by independent review or investigation.
- 6.7 Subject to the next sentence, each party shall be responsible for its own fees and expenses incurred in connection with this clause 6. The Buyer and Seller shall each pay one half of the fees and expenses payable to the Accounting Firm in connection with resolving any dispute under clause 6.5 or 6.6, except that in the event that one party's, and not the other party's, determination of the Earn-out Disputed Line Items as a whole varies by 20% or more from the determination of the Earn-out Disputed Line Items as a whole by the Accounting Firm hereunder, then such party shall be solely responsible for the fees and expenses of the Accounting Firm. In the Buyer's sole discretion, up to forty percent (40%) of the Earn-out Payment (but not to exceed Four Hundred and Fifty Thousand British Pounds (£450,000)) may be satisfied by the allotment and issue fully paid to the Seller of unregistered shares of Buyer Stock, such number of Shares to be calculated pursuant to clause 6.10.
- 6.8 Promptly following the agreement or final determination of the Earn-out Statement pursuant to clauses 6.5 or 6.6, the Buyer shall prepare and deliver to the Seller the Earn-out Statement, the calculation of the Earn-out Payment and confirmation of the amount of the Earn-out Payment to be satisfied by the allotment and issue fully paid to the Seller of unregistered shares of Buyer Stock.
- 6.9 Within ten (10) Business Days after the delivery of the Earn-out Statement pursuant to clause 6.8 above, the Buyer shall:
- (a) pay the cash element of the Earn-out Payment to the Seller in cleared funds by wire transfer to the bank account detailed in clause 3.3(a); and
 - (b) pay the balance of the Earn-out Payment (the "**Balance**") by the allotment and issuance of shares of Buyer Stock to the Seller, which shares when issued in accordance with the terms of this agreement, shall be validly issued, fully paid and non-assessable, and which shares shall be restricted and not transferable for a period of not more than six months from the date of issuance and issued in certificate form and bear such restrictive legends as may be required under Applicable Law (the "**Earn-out Shares**"). Buyer shall deliver certificates representing the Earn-out Shares as promptly as possible following the issuance thereof, to such address as Seller shall designate in writing, subject to the ordinary policies and procedures of the transfer agent for the Buyer Stock.
- 6.10 For the purposes of clause 6.9(b), the number of Earn-out Shares shall be calculated by converting the amount of the Balance from British Pounds Sterling into U.S. Dollars by applying the exchange rate for the conversion of British Pounds Sterling into U.S. Dollars as shown in The Wall Street Journal on 31 March 2017 and then issuing to the Seller a number of shares of the Buyer Stock in equal value in U.S. Dollars equal to the amount of the Balance (in U.S. Dollars) divided by the volume weighted average price of the Buyer Stock upon the NASDAQ Capital Market during the twenty (20) Business Days in the United States ending on 31 March 2017.

- 6.11 The Buyer agrees that, for the duration of the Earn-out Period it will, and will cause each member of its Group (including the Company following the Completion) to, act in good faith and refrain from taking any action specifically intended to diminish the value of the Earn-out Payment. During the Earn-out Period, the Buyer will permit the Company to be operated in a manner consistent with the past practices of the Company in the ordinary course of business of the Company. In particular, the Buyer undertakes, and shall procure that each member of its Group undertakes, that at all times for the duration of the Earn-out Period:
- (a) it shall procure that the Company shall not sell, transfer or otherwise dispose of all or a material part of its business, assets or undertaking (or enter into any agreement to do so);
 - (b) it shall not cause or permit a material change to the scope or nature of the business of the Company;
 - (c) all intra-group transactions between the Company and another member of the Buyer's Group shall be undertaken on an arm's length basis and upon reasonable commercial terms;
 - (d) it shall not cause or permit the Company to cease to carry on all or a material part of its business;
 - (e) it shall limit the Company's use of third party contractors for professional services and managed services to those resources reasonably necessary to perform its obligations under customer contracts and shall charge any professional services and managed services resources provided by other companies in the Buyer's Group at the rate structure set forth in the Disclosure Letter; and
 - (f) it shall procure that no material overheads, permanent professional services staff (excluding contractors) or permanent managed services staff (excluding contractors), will be added to the Business without the consent of Paul Lynch (or if he is not employed by the Company, the Seller, in which case such consent shall not be unreasonably withheld, delayed or conditioned).
- 6.12 The Buyer further undertakes that it shall for the duration of the Earn-out Period, procure that the Company shall not, except with the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed) acquire any shares or other membership interest in another entity or all (or a material part) of the assets or undertaking of another entity.
- 6.13 Notwithstanding anything to the contrary contained herein, the Buyer shall be entitled to deduct and withhold from payments made in connection with any of the transactions contemplated by this agreement such Tax amounts as it is required to deduct and withhold with respect to the making of such payment under any Applicable Law. To the extent that amounts are so deducted and withheld by the Buyer, such deducted and withheld amounts (i) shall be remitted by Buyer to the applicable Governmental Entity and (ii) shall be treated for all purposes of this agreement as having been paid to the person in respect of which such deduction and withholding was made by the Buyer.
7. **Buyer Warranties**
- 7.1 On the date of this agreement, the Buyer warrants to the Seller that each Buyer Warranty is true in all respects.
8. **Warranties**
- 8.1 The Seller acknowledges that the Buyer is entering into this agreement on the basis of, and in reliance on, the Warranties.
- 8.2 On the date of this agreement, except as Disclosed, the Seller warrants that each Warranty is true in all respects.
- 8.3 Subject to clause 8.7, Warranties qualified by the expression **so far as the Seller is aware** or any similar expression are deemed to be given to the best of the knowledge, information and belief of the Seller after it has made reasonable enquiries of Paul Lynch, the Covenantor, David Barrett and Marc Jones, and the Seller shall be deemed to be aware of all matters that are within the actual and constructive knowledge of Paul Lynch, the Covenantor, David Barrett and Marc Jones.
- 8.4 Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in this agreement.
- 8.5 The Seller agrees that the supply of any information by or on behalf of the Company, or any of its employees, directors, agents or officers ("**Officers**") to the Seller or its advisers in connection with the Warranties, the Disclosure Letter or

otherwise shall not constitute a warranty, representation or guarantee as to the accuracy of such information in favour of the Seller. The Seller unconditionally and irrevocably waives all and any rights and claims that it may have against the Company or the persons on whom that Seller has, or may have, relied in connection with the preparation of the Disclosure Letter, or agreeing the terms of this agreement, and further undertakes to the Buyer and the Company not to make any such claims.

8.6 The rights and remedies of the Buyer in respect of any Claim, Indemnity Claim or claim under the Tax Covenant shall not be affected by Completion.

8.7 Warranties qualified by the expression **since 22 January 2014** or any similar expression are deemed to be repeated by the Seller in relation to matters prior to 22 January 2014 so far as the Seller is aware.

9. Limitations on claims

9.1 Save as provided in clause 9.7, the provisions of:

- (a) this clause 9.1 and Schedule 11 limit the liability of the Seller in relation to any Claim and (where specifically provided) any claim under the Tax Covenant; and
- (b) paragraph 5 of Schedule 4 (Tax Covenant) limits the liability of the Seller in relation to any claim under the Tax Covenant.

9.2 The aggregate liability of the Seller for all Substantiated Claims, Relevant Indemnity Claims and all claims under the Tax Covenant shall not exceed the aggregate value and amount of:

- (a) the Consideration actually paid in cash pursuant to this agreement;
- (b) the sum paid to Dentons UKMEA LLP, as lawyers for the Bank (in respect of repayment of "Facility A" under the BLME Finance Documents) pursuant to clause 3.3(b) of this agreement;
- (c) an amount equal to the aggregate value assigned to the Earn-out Shares under clause 6;
- (d) any sums actually paid in cash to Paul Lynch under Schedule 1 of his service agreement with the Company and the PL Side Letter; and
- (e) an amount equal to the aggregate value assigned to any shares of Buyer Stock allotted and issued to Paul Lynch under Schedule 1 of his service agreement with the Company and the PL Side Letter.

9.3 The Seller shall not be liable for a Claim unless:

- (a) the Seller's liability in respect of such Claim (together with any connected Claims) exceeds £5,000; and
- (b) the amount of the Seller's liability in respect of such Claim (together with any connected Claims), when aggregated with the Seller's liability for all Claims that are not excluded under clause 9.3(a) and all claims under the Tax Covenant, exceeds £30,000, in which case the Seller shall be liable for the whole amount claimed (and not just the amount by which the threshold in this clause 9.3(b) is exceeded).

For the purposes of this clause 9.3, a Claim is connected with another Claim if the Claims arise from the same event or set of circumstances, or relate to the same subject matter.

9.4 The Seller shall not be liable for a Claim or Indemnity Claim unless notice in writing summarising the nature of the Claim or Indemnity Claim (in so far as it is known to the Buyer) and, as far as is reasonably practicable, the amount claimed, has been given by or on behalf of the Buyer to the Seller:

- (a) in the case of a claim made under the Tax Warranties, on or before the seventh anniversary of Completion; or
- (b) in respect of any other Claim or an Indemnity Claim, prior to the expiry of the period of two years commencing on the Completion Date.

- 9.5 The Claim or Indemnity Claim shall be deemed to have been withdrawn (if not previously satisfied, settled or withdrawn) six months after notice of it has been given pursuant to this clause unless proceedings in respect of it have been issued and served on the Seller.
- 9.6 The Seller shall not be liable for a Claim to the extent that the Claim:
- (a) relates to matters Disclosed;
 - (b) relates to any matter specifically and fully provided for in the Accounts or the Management Accounts; or
 - (c) is based on a liability which is contingent only unless and until such contingent liability becomes an actual liability and is due and payable in which case the period as set out in clause 9.4(b) shall run from the date on which the liability becomes an actual liability.
- 9.7 Nothing in this clause 9, Schedule 4 or Schedule 11 applies to exclude or limit the liability of the Seller:
- (a) to the extent that a Claim, Indemnity Claim or a claim under the Tax Covenant arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller, its agents or advisers; or
 - (b) in respect of a breach of any of the warranties in paragraph 1.1, paragraph 1.2, paragraph 2.1, paragraph 2.2, paragraph 2.3, paragraph 2.4, paragraph 13.2, the second sentence of paragraph 14.12, paragraph 17 or paragraph 31 of Part 1 of Schedule 3.
- 9.8 The Seller shall not plead the Limitation Act 1980 in respect of any claims made under the Tax Warranties or Tax Covenant up to seven years after the Completion Date.
- 9.9 Where the Company is entitled to recover from a third party or claim reimbursement of all or any part of a sum which forms all or part of any Claim (other than in relation to an OLR SPA Tax Claim), the Buyer shall procure that it takes reasonable steps to enforce the recovery or reimbursement before making a Claim.
- 9.10 If the Seller pays to the Buyer an amount in respect of a Claim or Indemnity Claim and the Buyer subsequently receives from a third party a sum which is referable to that matter the Buyer shall, as soon as reasonably practicable, repay to the Seller the amount so received less the reasonable costs and expenses incurred by the Buyer in obtaining or recovering that sum, provided that the Seller shall not receive more than the aggregate amount paid by it in respect of that Claim or Indemnity Claim.
- 9.11 Nothing in this agreement shall be deemed to relieve the Buyer from its common law duty to mitigate its loss.
- 9.12 Neither the Buyer nor any member of the Buyer's Group shall be entitled to recover damages or any other amount in respect of any Claim or Indemnity Claim or otherwise obtain reimbursement or restitution more than once in respect of the same matter, loss or liability.
- 10. Tax covenant**
- The provisions of Schedule 4 apply in this agreement in relation to Taxation.
- 11. Indemnities**
- 11.1 The Seller shall indemnify the Buyer and the Company against, and shall pay to the Buyer a sum equal to, all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis), and all other reasonable professional costs and expenses suffered or reasonably incurred by the Buyer or the Company arising out of or in connection with any or all of the following matters:
- (a) any claims following the Completion Date in connection with any of the BLME Finance Documents;
 - (b) any third party claims (excluding in relation to Taxation) arising from and/or in connection with: (a) any contractors engaged either directly or indirectly via Usha Martin or any other agency in respect of which there is no written contract with the Company, signed by both the Company and the relevant contractor or a third party

agency on behalf of the relevant contractor, at Completion and included in the Disclosure Bundle (“Contractors”); and/or (b) an infringement of Intellectual Property Rights and/or any other rights in respect of services and/or work created by Contractors; and/or (c) a breach of (i) the second sentence in paragraph 23.2; and/or (ii) paragraph 23.12 of Part 1 of Schedule 3; and/or (d) an infringement of Intellectual Property Rights and/or any other rights in respect of the Conexus logo created by a third party; and/or (e) loss of, damage to, or unauthorised disclosure, processing or other use of Commercial Data (as defined in Schedule 3) or personal data (as defined under the DPA 1998);

- (c) a breach of the second sentence of paragraph 14.12 of Part 1 of Schedule 3;
- (d) non-compliance by the Company with Microsoft software licences on or prior to the Completion Date, including but not limited to circumstances where such non-compliance is a result of such licences not being adequate to cover the number of users of the relevant software in the course of the Business;
- (e) termination by the Company of the employment of the employee who has undergone an internal grievance process as Disclosed prior to Completion, and/or the bringing of any claim by such employee as a direct result of any of the issues which form part of such Disclosed internal grievance procedure;
- (f) any claims relating to or in connection with any Disputed Contract and arising, directly or indirectly, from any services provided by the Company thereunder or any failure by the Company to perform any obligations thereunder, or any dispute related thereto, in each case, on or prior to the Completion Date, to the extent that such matters (and corresponding amounts) have not been Disclosed; and
- (g) a breach of paragraph 31 of Part 1 of Schedule 3 to the extent not Disclosed.

11.2 Any payment made by the Seller in respect of an Indemnity Claim shall include any amount necessary to ensure that, after any Taxation of the payment, the Buyer or the Company (as the case may be) is left with the same amount it would have had if the payment was not subject to Taxation.

11.3 The Buyer shall use its reasonable endeavours to procure that the Company enters into written contracts with the Contractors within a reasonable time following Completion in respect of the engagement of those Contractors by the Company. For the avoidance of doubt, the foregoing shall be without prejudice to: (i) the indemnity set out at clause 11.1 (and a failure by the Buyer or the Company to comply with this clause 11.3 shall not prejudice any claim the Buyer may have pursuant to clause 11.1); and (ii) any third party claims arising prior to Completion.

12. Conduct of Tax claims under the OLR Share Purchase Agreement

12.1 Subject to clause 12.2, if the Buyer or the Company becomes aware of any claim or circumstance arising which might constitute a claim against any or all of the sellers under the OLR Share Purchase Agreement (the “Original Sellers”) in respect of Part 2 of Schedule 4 of the OLR Share Purchase Agreement (Tax Warranties) or Schedule 5 of the OLR Share Purchase Agreement (Tax Covenant) (any such claim against the Original Sellers being an “OLR SPA Tax Claim”), the Buyer shall give or procure that notice in writing specifying in reasonable detail, to the extent then known, the nature of an existing or potential OLR SPA Tax Claim is given to the Seller as soon as is reasonably practicable.

12.2 If the Seller becomes aware of an OLR SPA Tax Claim, it shall notify the Buyer in writing as soon as is reasonably practicable, and on receipt of such notice, the Buyer shall be deemed to have given the Seller notice of the OLR SPA Tax Claim in accordance with the provisions of clause 12.1.

12.3 Subject to the Seller indemnifying the Buyer and the Company to the Buyer’s reasonable satisfaction against all liabilities, reasonable costs, damages or reasonable expenses that may be reasonably incurred (including any additional Liability for Taxation) in relation to pursuing an OLR SPA Tax Claim (a) the conduct of an OLR SPA Tax Claim shall be delegated at all times and exclusively to the Seller and/or (b) if the Seller so elects at any time (including after any delegation under sub clause 12.3(a) above, the Buyer shall (in so far as it is able to do so) assign to the Seller any rights to pursue an OLR SPA Tax Claim, and in each case the Seller shall be entitled to receive any damages, compensation or other remedy and any costs, expenses or interest arising from such OLR SPA Tax Claim, provided that the Seller shall:

- (a) promptly inform the Buyer of all matters relating to the OLR SPA Tax Claim and in so far as it is practicable shall provide the Buyer with copies of any material correspondence and notes, or other written records relating to the OLR SPA Tax Claim; and

- (b) where reasonably practicable not settle or compromise the OLR SPA Tax Claim without prior consultation with the Buyer (and shall take into account the Buyer's reasonable requests and opinions in relation thereto).

12.4 Notwithstanding clause 12.3, the Seller shall not be entitled to take action in respect of an OLR SPA Tax Claim (a) in the name of the Company or (b) that (in the Buyer's reasonable opinion), is likely to harm the Buyer's or the Company's commercial or employment relationship (potential or actual) with any person.

12.5 If the Seller fails to indemnify the Buyer and the Company in relation to pursuing an OLR SPA Tax Claim to the Buyer's reasonable satisfaction within 15 days of demand by the Buyer, then the Buyer or the Company shall have the conduct of the OLR SPA Tax Claim absolutely and (without prejudice to their respective rights under this clause 12), shall be free to settle the OLR SPA Tax Claim on such terms as the Buyer or the Company may in its absolute discretion consider fit and shall be entitled to retain any proceeds arising from such OLR SPA Tax Claim.

12.6 Neither the Buyer nor the Company shall assign (at law or in equity), transfer, charge, make the subject of a trust or deal in any other manner with any of its rights or benefits relating to OLR SPA Tax Claim (a "**Claim Transfer**") without prior written consent of the Seller other than as the same is included (and provided that any such Claim Transfer shall not operate to transfer the restrictions on and obligations of the Buyer under this clause 12 (which restrictions and obligations shall remain fully binding on the Buyer) and the Seller has been given written notification of such Claim Transfer promptly upon such transfer taking place by the Buyer) in a sale of all or substantially all of the assets of the Buyer or the Company.

12.7 The Buyer shall or shall procure that the Company provides the Seller and the Seller's professional advisors with access to material documents, information or personnel that the Seller reasonably considers is necessary to pursue any OLR SPA Tax Claim on the basis that the Seller so far as is reasonably practicable will provide the Buyer or the Company not less than two Business Days written notice.

12.8 To the extent that the Seller or the Company is required to do anything pursuant to its obligations to the Original Sellers to enable it to pursue an OLR SPA Tax Claim, following Completion the Buyer shall or shall procure that the Company shall (in each case at the Seller's cost) perform such reasonable obligations and take such reasonable steps and actions as are required by the Seller subject to the Seller so far as is reasonably practicable first giving the Buyer or the Company not less than two Business Days' written notice.

13. **Restrictions on Seller and Covenantor**

13.1 In this clause 13, the following words and expressions shall have the following meanings:

"**Prospective Customer**" means a person who is at Completion, or has been at any time during the period of 12 months immediately preceding the Completion Date, in discussions with the Company with a view to becoming a client or customer of the Company.

"**Restricted Business**" means any business involved in the sale, resale of, or provision of services in respect of, SAP Hybris technology, including systems integration, managed services, hosting and services related or ancillary thereto.

"**Restricted Customer**" means any person who is at Completion, or who has been at any time during the period of 12 months immediately preceding the Completion Date, a client or customer of, or in the habit of dealing with, the Company.

"**Restricted Person**" means any person who is at Completion or who has been at any time during the period of 12 months immediately preceding the Completion Date, employed or directly or indirectly engaged by the Company in an executive, managerial, sales or technical role.

13.2 The Seller covenants with the Buyer and the Company that it shall not:

- (a) at any time during the period of three years commencing on the Completion Date, carry on or be employed, engaged, concerned or interested in a Restricted Business; or
- (b) at any time during the period of three years commencing on the Completion Date:
 - (i) canvass, solicit or otherwise seek the custom of any Restricted Customer or Prospective Customer in competition with the Business (or any part of it) as it was carried on at the Completion Date; or

- (ii) induce or attempt to induce a Restricted Customer or Prospective Customer to cease or refrain from conducting business with, or to reduce the amount of business conducted with or to vary adversely the terms upon which it conducts business with the Company, or do any other thing which is reasonably likely to have such an effect; or
- (c) at any time during the period of three years commencing on the Completion Date, have any business dealings with a Restricted Customer or a Prospective Customer in competition with the Business (or any part of it) as it was carried on at the Completion Date; or
- (d) at any time during the period of three years commencing on the Completion Date, have any business dealings with, solicit, entice or attempt to entice away any person who is at Completion, or has been at any time during the period of 12 months immediately preceding the Completion Date, a supplier of goods or services to the Company, if such dealings, solicitation or enticement causes or is reasonably likely to cause such supplier to cease supplying, or reduce its supply of goods or services to the Company, or to vary adversely the terms upon which it conducts business with the Company; or
- (e) at any time during the period of three years commencing on the Completion Date:
 - (i) offer employment to, enter into a contract for the services of, or otherwise entice or attempt to entice away from the Company, any Restricted Person; or
 - (ii) procure or facilitate the making of any such offer or attempt by any other person in relation to a Restricted Person,
 save in either case where such Restricted Person responds to a bona fide advertisement of employment, generally circulated; or
- (f) at any time after Completion, use in the course of any business:
 - (i) the words "Conexus", "Keystone" or "Velocity", other than in respect of "Velocity", pursuant to the terms of the Velocity Licence; or
 - (ii) any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Company in connection with the Business; or
 - (iii) anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo; or
- (g) at any time after Completion, present itself or permit itself to be presented as:
 - (i) connected in any capacity with the Company; or
 - (ii) interested or concerned in any way in the Sale Shares (or any of them); or
- (h) at any time after Completion, do or say anything which may be harmful to the reputation of the Company (or allow any of its officers, directors or employees to do so).

13.3 The Covenantor covenants with the Buyer and the Company that he shall not:

- (a) at any time during the period of two years commencing on the Completion Date, carry on or be employed, engaged, concerned or interested in a Restricted Business; or
- (b) at any time during the period of two years commencing on the Completion Date:
 - (i) canvass, solicit or otherwise seek the custom of any Restricted Customer or Prospective Customer in competition with the Business (or any part of it) as it was carried on at the Completion Date; or

(ii) induce or attempt to induce a Restricted Customer or Prospective Customer to cease or refrain from conducting business with, or to reduce the amount of business conducted with or to vary adversely the terms upon which it conducts business with the Company, or do any other thing which is reasonably likely to have such an effect; or

(c) at any time during the period of two years commencing on the Completion Date, have any business dealings with a Restricted Customer or a Prospective Customer in competition with the Business (or any part of it) as it was carried on at the Completion Date; or

(d) at any time during the period of two years commencing on the Completion Date, have any business dealings with, solicit, entice or attempt to entice away any person who is at Completion, or has been at any time during the period of 12 months immediately preceding the Completion Date, a supplier of goods or services to the Company, if such dealings, solicitation or enticement causes or is reasonably likely to cause such supplier to cease supplying, or reduce its supply of goods or services to the Company, or to vary adversely the terms upon which it conducts business with the Company; or

(e) at any time during the period of two years commencing on the Completion Date:

(i) offer employment to, enter into a contract for the services of, or otherwise entice or attempt to entice away from the Company, any Restricted Person; or

(ii) procure or facilitate the making of any such offer or attempt by any other person in relation to a Restricted Person;

save in either case where such Restricted Person responds to a bona fide advertisement of employment generally circulated; or

(f) at any time after Completion, use in the course of any business:

(i) the words "Conexus", "Keystone" or "Velocity", other than in respect of "Velocity", pursuant to the terms of the Velocity Licence; or

(ii) any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Company in connection with the Business; or

(iii) anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo,

(g) at any time after Completion, present himself or permit himself to be presented as:

(i) connected in any capacity with the Company; or

(ii) interested or concerned in any way in the Sale Shares (or any of them); or

(h) at any time after Completion, do or say anything which may be harmful to the reputation of the Company.

13.4 The covenants in clauses 13.2 and 13.3 are intended for the benefit of, and shall be enforceable by, each of the Buyer and the Company and apply to actions carried out by the Seller or Covenantor, as applicable, in any capacity (including as shareholder, partner, director, principal, consultant, officer, employee, agent or otherwise) and whether directly or indirectly, on the Seller's, or Covenantor's, as applicable, own behalf or on behalf of, or jointly with, any other person.

13.5 Nothing in clause 13.2 or 13.3 shall prevent the Seller or Covenantor from holding for investment purposes only:

(a) units of any authorised unit trust; or

(b) not more than 5% of any class of shares or securities of any company traded on a recognised investment exchange (within the meaning of FSMA).

- 13.6 Each of the covenants in clauses 13.2 or 13.3 is a separate undertaking by the Seller and Covenantor, as applicable, in relation to himself or itself and his or its interests and shall be enforceable by the Buyer and the Company separately and independently of their right to enforce any one or more of the other covenants contained in that clause.
- 13.7 The parties acknowledge that the Seller and Covenantor have confidential information relating to the Business and that the Buyer is entitled to protect the goodwill of the Business as a result of buying the Sale Shares. Accordingly, each of the covenants in clauses 13.2 and 13.3 is considered fair and reasonable by the parties.
- 13.8 The obligations and liability of the Seller and Covenantor under this clause 12 shall be given by each for his or its own part only and not on the part of the other and extend only to any loss or damage arising out of his or its own breaches.

14. Set-off

14.1 If on the Earn-out Payment Date:

- (a) a Due Amount (or any part of it) is outstanding, the Buyer shall be entitled (at its sole discretion) to satisfy all (to the extent possible) or part of the relevant party's liability to pay the Due Amount by way of set-off against the Earn-out Payment, and to treat its obligation to make the Earn-out Payment as being reduced pro tanto by the amount so set off; and/or
- (b) there is an Outstanding Claim, the Buyer shall be entitled (at its sole discretion) to, subject to the provisions of clause 14.4:
 - (i) withhold from the Earn-Out Payment an amount equal to the Estimated Liability or, if lower, the full amount of the Earn-out Payment ("**Reserved Sum**"); and
 - (ii) defer payment of the Reserved Sum until such time as the Outstanding Claim has become a Resolved Claim.

14.2 Where the provisions of clause 14.1(b) apply, the Buyer and the relevant party shall use all reasonable endeavours to agree the Estimated Liability in respect of the Outstanding Claim as soon as possible and in any event within the period of 10 Business Days following the Deferred Payment Date. In the absence of such agreement, the following procedure shall apply:

- (a) the determination of the Estimated Liability shall be referred to Counsel at the request of either party;
- (b) Counsel shall be requested to provide his determination of the Estimated Liability within 15 Business Days of accepting his appointment (or such other period as the Buyer and the party concerned may otherwise agree with Counsel);
- (c) Counsel shall act as an expert and not as arbitrator and his determination regarding the amount of the Estimated Liability shall, in the absence of manifest error, be final and binding on all the parties; and
- (d) Counsel's fees in making his determination of the Estimated Liability shall be borne by the Buyer and the relevant party equally or as Counsel may otherwise direct having regard to the respective conduct of the parties.

14.3 Where a Reserved Sum has been withheld by the Buyer pursuant to clause 14.1(b) in respect of an Outstanding Claim, upon that claim becoming a Resolved Claim the Buyer shall:

- (a) be entitled (at its sole discretion) to satisfy all (to the extent possible) or part of the relevant party's liability to pay the Due Amount in respect of the relevant Resolved Claim by way of set-off against the corresponding Reserved Sum, and to treat its obligation to pay the Reserved Sum as being reduced pro tanto by the amount so set off; and
- (b) pay to the Seller the balance of the corresponding Reserved Sum (if any) on the later of the applicable date due for payment hereunder or after the Buyer has exercised its rights pursuant to clause 14.3(a). Such payment shall be made by the Buyer within 10 Business Days of the Outstanding Claim becoming a Resolved Claim.

- 14.4 If on the expiry of six (6) months following notification of an Outstanding Claim by the Buyer to the Seller:
- (a) such Outstanding Claim has not become a Resolved Claim; or
 - (b) legal proceedings have not been issued by the Buyer; or
 - (c) the Buyer and the Seller have not agreed in writing that the Outstanding Claim be settled in favour of the Buyer; or
 - (d) the Seller has not acknowledged that liability is accepted in respect of such Outstanding Claim,

then the amount of the Earn-out Payment that has been withheld pursuant to this clause 14 shall be paid by the Buyer within 20 Business Days of the expiry of such six (6) month period in accordance with the provisions of clause 5. For the avoidance of doubt, nothing in this clause 14.4 shall constitute or be deemed to be a waiver or determination of any Relevant Claim.

- 14.5 Nothing in this clause 14 shall prejudice, limit or otherwise affect:

- (a) any right or remedy the Buyer may have against any party from time to time, whether arising under this agreement or any of the documents executed pursuant to this agreement; or
- (b) the Buyer's right to recover against any party, whether before or after the Earn-out Payment is made in accordance with this agreement.

- 14.6 The amount of a Reserved Sum withheld by the Buyer in accordance with this clause 14 shall not be regarded as imposing any limit on the amount of any claims under this agreement or any of the documents executed pursuant to this agreement.

- 14.7 If a Due Amount is not satisfied in full by way of set-off under clause 14.1(a) or clause 14.3, nothing in this agreement shall prevent or otherwise restrict the Buyer's right to recover the balance from the party concerned and the Due Amount (to the extent not so satisfied) shall remain fully enforceable against that party.

15. **Guarantee**

- 15.1 In consideration of the Buyer entering into this agreement, the Guarantor guarantees to the Buyer the due and punctual performance, observance and discharge by the Seller of all the Guaranteed Obligations if and when they become performable or due under this agreement (or (as the case may be) any agreement entered into pursuant to or in connection with it).

- 15.2 If the Seller defaults in the payment when due of any amount that is a Guaranteed Obligation the Guarantor shall, immediately on demand by the Buyer, pay that amount to the Buyer in the manner prescribed by this agreement (or (as the case may be) any agreement entered into pursuant to or in connection with it) as if it was the Seller.

- 15.3 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 15.1 and clause 15.2, agrees to indemnify and keep indemnified the Buyer in full and on demand from and against all and any direct losses, reasonable costs, claims, liabilities, damages, demands and expenses suffered or reasonably incurred by the Buyer arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason, or the Seller's failure to perform or discharge any of the Guaranteed Obligations.

- 15.4 The guarantee in this clause 15 is and shall at all times be a continuing security and shall cover the ultimate balance of all monies payable by the Seller in respect of the Guaranteed Obligations, irrespective of any intermediate payment or discharge in full or in part of the Guaranteed Obligations.

- 15.5 The liability of the Guarantor under the guarantee in this clause 15 shall not be reduced, discharged or otherwise adversely affected by:

- (a) any act, omission, matter or thing which would have discharged or affected the liability of the Guarantor had it been a principal obligor instead of a guarantor or indemnifier; or
- (b) anything done or omitted by any person which, but for this provision, might operate or exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under the guarantee in this clause 15.

- 15.6 The Guarantor waives any right it may have to require the Buyer (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this clause 15.
- 15.7 The Guarantor shall, on a full indemnity basis, pay to the Buyer on demand the amount of all reasonable costs and expenses (including legal and out-of-pocket expenses and any value added tax on them) reasonably and properly incurred by the Buyer in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with the guarantee in this clause 15 or any attempt so to do; and
 - (b) any discharge or release of this guarantee.
- 15.8 Until all amounts which may be or become payable by the Seller under or in connection with this agreement have been irrevocably paid in full, and unless the Buyer otherwise directs in writing, the Guarantor shall not exercise any security or other rights it may have by reason of performing its obligations under this clause 15, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
- 15.9 The guarantee in this clause 15 shall be in addition to and independent of all other security which the Buyer may hold from time to time in respect of the discharge and performance of the Guaranteed Obligations.
- 16. Confidentiality and announcements**
- 16.1 Each of the Seller, the Covenantor and the Guarantor severally undertakes, for its own part only, to each of the Buyer and the Company that it shall:
- (a) keep confidential all confidential information or trade secrets in his possession concerning the business, affairs, customers, clients or suppliers of the Company or any member of the Buyer's Group;
 - (b) not disclose any of the information referred in clause 16.1(a) in whole or in part to any third party, except as expressly permitted by this clause 16; and
 - (c) not make any use of any of the information referred in clause 16.1(a), other than to the extent necessary for the purpose of exercising or performing his rights and obligations under this agreement.
- 16.2 The Buyer undertakes to the Seller that it shall:
- (a) keep confidential all confidential information or trade secrets in its possession concerning the business, affairs, customers, clients or suppliers of the Seller;
 - (b) not disclose any of the information referred in clause 16.2(a) in whole or in part to any third party, except as expressly permitted by this clause 16; and
 - (c) not make any use of any of the information referred in clause 16.2(a), other than to the extent necessary for the purpose of exercising or performing its rights and obligations under this agreement.
- 16.3 Nothing in this agreement shall be construed as imposing on the Buyer an obligation to keep confidential, or restrict its use after Completion, of any information relating to the Company.
- 16.4 Notwithstanding any other provision of this agreement, no party shall be obliged to keep confidential or to restrict its use of any information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or any person to whom it has disclosed the information in accordance with clause 16.5(a) in breach of this agreement); or
 - (b) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party.

- 16.5 Any party may disclose any information that it is otherwise required to keep confidential under this clause 16:
- (a) to those of its employees, officers, consultants, representatives or advisers (or those of any member of its Group) who need to know such information to enable them to advise on this agreement, or to facilitate the Transaction, provided that the party making the disclosure informs the recipient of the confidential nature of the information before disclosure and procures that each recipient shall, in relation to any such information disclosed to him, comply with the obligations set out in this clause 16 as if they were that party. The party making a disclosure under this shall, at all times, be liable for the failure of its recipients to comply with the obligations set out in this clause 16; or
 - (b) in the case of the Buyer only, to a proposed transferee of the Sale Shares for the purpose of enabling the proposed transferee to evaluate the proposed transfer; or
 - (c) in the case of the Buyer only, to its funders, potential investors and their respective advisers, employees, officers, representatives or consultants in connection with the financing of the Transaction; or
 - (d) with the prior consent in writing of all the other parties bound by this clause 16; or
 - (e) if such information relates to one party only, with the prior consent in writing of that party; or
 - (f) to confirm that the Transaction has taken place, or the date of the Transaction (but without otherwise revealing any other terms of the Transaction or making any other announcement); or
 - (g) to the extent that the disclosure is required:
 - (i) by the laws of any jurisdiction to which that party is subject; or
 - (ii) by an order of any court of competent jurisdiction, or any regulatory, judicial, governmental or similar body, or any Taxation Authority or securities exchange of competent jurisdiction; or
 - (iii) to make any filing with, or obtain any authorisation from, a regulatory, governmental or similar body, or any Taxation Authority or securities exchange of competent jurisdiction; or
 - (iv) to protect that party's interest in any legal proceedings,
- PROVIDED that in each case (and to the extent it is legally permitted to do so) the party making the disclosure gives the other parties who are bound by this clause 16 as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of such other parties in relation to the content of such disclosure.
- 16.6 Subject to clause 16.7, clause 16.8 and clause 16.9, no party shall make, or permit any person to make, any public announcement, communication or circular (“**announcement**”) concerning this agreement or the Transaction without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).
- 16.7 Nothing in clause 16.6 shall prevent any party from making any announcement required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction provided that the party required to make the announcement consults with the other parties and takes into account the reasonable requests of the other parties in relation to the content of such announcement before it is made.
- 16.8 The parties shall issue a press release in agreed form immediately after Completion.
- 16.9 The Buyer may, at any time after Completion announce its acquisition of the Sale Shares to any employees, clients, customers or suppliers of the Company or any other member of the Buyer's Group.

17. Further assurance

17.1 The Seller shall (at its own expense) promptly execute and deliver such documents and perform such acts as the Buyer may reasonably require from time to time to vest full title in the Sale Shares to the Buyer and to give full effect to clauses 2.2 and 2.3 of this agreement.

17.2 The Seller undertakes to the Buyer that, if and for so long as it remains the registered holder of any of the Sale Shares after Completion, it shall:

- (a) hold such Sale Shares together with all dividends and any other distributions of profits, surplus or other assets in respect of such Sale Shares and all rights arising out of or in connection with them, in trust for the Buyer;
- (b) at all times after Completion, deal with and dispose of such Sale Shares, dividends, distributions, assets and rights as the Buyer shall direct;
- (c) exercise all voting rights attached to such Sale Shares in such manner as the Buyer shall direct; and
- (d) if required by the Buyer, execute all instruments of proxy or other documents as may be necessary to enable the Buyer to attend and vote at any meeting of the Company,

the Seller hereby appoints the Buyer (acting by any of its directors from time to time) as its attorney with full power to exercise all of the rights attaching to the Sale Shares, including without limitation the rights set out above in this clause 17.2, as the attorney in its absolute discretion sees fit.

18. Assignment

18.1 Subject to the further provisions of this clause 18, no party shall assign, transfer, mortgage, charge, declare a trust of, or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it).

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18.3 The Buyer may assign or transfer its rights (but not its obligations) under this agreement (or any document referred to in this agreement) to:

- (a) another member of its Group; or
- (b) any person to whom the Sale Shares are sold or transferred by the Buyer following Completion,

but the continuing parties' liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

18.4 The Buyer may grant security over, or assign by way of security, any or all of its rights under this agreement for the purposes of, or in connection with, the financing (whether in whole or in part) by the Buyer of the Transaction. On the enforcement of any security of a kind referred to in this clause, the Buyer, or any administrative receiver, receiver, administrator or liquidator of the Buyer or any person having the benefit of such security may assign any or all of the relevant rights to any person, but the continuing parties' liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

18.5 If there is an assignment or transfer of the Buyer's rights in accordance with clause 18.3 or clause 18.4:

- (a) the Seller may discharge its obligations under this agreement to the Buyer until it receives notice of the assignment; and
- (b) the assignee may enforce this agreement as if it were named in this agreement as the Buyer, but the Buyer shall remain liable for any obligations and liabilities under this agreement.

19. Entire agreement

This agreement (together with the documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

20. Variation and waiver

20.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.2 A waiver of any right or remedy under this agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

20.3 A failure or delay by any person to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

20.4 No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.5 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

20.6 The Buyer may take action against, grant time or other indulgence to, or release or compromise in whole or part the liability of, any party in respect of any warranty, indemnity or other obligation under this agreement without affecting the liability of any of the other parties who are liable (whether jointly and severally or otherwise) in respect of that warranty, indemnity, or other obligation.

21. Costs

Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of this agreement (and any documents referred to in it).

22. Notices

22.1 For the purposes of this clause 22, but subject to clause 22.7, notice includes any other communication.

22.2 A notice given to a party under or in connection with this agreement:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the relevant party for the attention of the contact and to the address specified at the start of this agreement or clause 22.3 (as the case may be), or such other address or person as that party may notify to the others in accordance with the provisions of this clause 22;
- (d) shall be:
 - (i) delivered by hand; or
 - (ii) sent by pre-paid first class post, recorded delivery or special delivery; or
 - (iii) sent by airmail or by reputable international overnight courier (if the notice is to be served by post to an address outside the country from which it is sent); or
 - (iv) sent by email; and

- (e) is deemed received as set out in clause 22.5.

22.3 The addresses for service of notices on the Seller, Guarantor, Covenantor and the Buyer are:

- (a) Seller
 - (i) address: 40 St. Paul's Square, Birmingham B3 1FQ
 - (ii) email: ken.wehr@OLRretail.com
 - (iii) for the attention of: Ken Wehr
- (b) Buyer
 - (i) address: 505 Millennium Drive, Allen, Texas, USA
 - (ii) email: tmadden@pfsweb.com
 - (iii) for the attention of: Tom Madden
- (c) Guarantor
 - (i) address: 204 Melbourne Street, North Adelaide SA 5006, Australia
 - (ii) email: ken.wehr@OLRretail.com
 - (iii) for the attention of: Ken Wehr
- (d) Covenantor
 - (i) address: 3 Tenth Avenue, St. Peters, South Australia, 5069

22.4 A party may change its details for service of notices as specified in clause 22.3 by giving notice to each of the other parties. Any change notified pursuant to this clause shall take effect at 9.00am on the later of:

- (a) the date (if any) specified in the notice as the effective date for the change; or
- (b) five Business Days after deemed receipt of the notice of change.

22.5 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address; or
- (b) if sent by pre-paid first class post, recorded delivery or special delivery to an address in the UK, at 9.00am on the second Business Day after posting; or
- (c) if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00am on the fifth Business Day after posting; or
- (d) if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt or at the time the notice is left at the address; or
- (e) if sent by email, at 9.00am on the next Business Day after transmission;
- (f) if deemed receipt under the previous paragraphs of this clause 22.5 would occur outside business hours (meaning 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt), at 9.00am on the day when business next starts in the place of deemed receipt. For the purposes of this clause, all references to time are to local time in the place of deemed receipt.

- 22.6 To prove service, it is sufficient to prove that:
- (a) if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address; or
 - (b) if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted; or
 - (c) if sent by email, that it was sent to the email address provided in clause 22.3 above.
- 22.7 This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
23. **Interest**
- If a party fails to make any payment due to any other party under this agreement within ten (10) Business Days of the due date for payment (other than pursuant to clause 14), then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
24. **Severance**
- If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
25. **Agreement survives Completion**
- This agreement (other than obligations that have already been fully performed) remains in full force after Completion.
26. **Third party rights**
- 26.1 Except as expressly provided in clause 26.2, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 26.2 The following provisions are intended to benefit future buyers of the Sale Shares and (to the extent that they are identified in the relevant clauses as recipients of rights or benefits under that clause), the Company and the Officers (as defined in clause 8.5), and shall be enforceable by each of them to the fullest extent permitted by law:
- (a) clause 2.3;
 - (b) clause 2.4;
 - (c) clause 8 (Warranties) and Schedule 3 (Warranties) (subject to clause 9 (Limitations on claims) and Schedule 11 (Seller's limitation of liability));
 - (d) clause 10 (Tax covenant) and Schedule 4 (Tax covenant);
 - (e) clause 11 (Indemnities);
 - (f) clause 12 (Conduct of claims under the OLR Share Purchase Agreement);
 - (g) clause 13 (Restrictions on seller and covenantor);
 - (h) clause 14 (Set-off);
 - (i) clause 15 (Guarantee);

- (j) clause 16 (Confidentiality and announcements);
- (k) clause 23 (Interest);
- (l) clause 28 (Counterparts);
- (m) clause 29 (Rights and remedies);
- (n) clause 30 (Inadequacy of damages); and
- (o) clause 31 (Governing law and jurisdiction).

26.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

27. **Successors**

This agreement (and the documents referred to in it) are made for the benefit of the parties and their successors and permitted assigns, and the rights and obligations of the parties under this agreement shall continue for the benefit of, and shall be binding on, their respective successors and permitted assigns.

28. **Counterparts**

28.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

28.2 Transmission of the executed signature page of a counterpart of this agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

28.3 No counterpart shall be effective until each party has executed at least one counterpart.

29. **Right and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

30. **Inadequacy of damages**

Without prejudice to any other rights or remedies that the Buyer may have, the parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of clause 13 or clause 16 by the Seller or Covenantor. Accordingly, the Buyer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of clause 13 or clause 16 of this agreement.

31. **Governing law and jurisdiction**

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Buyer to take proceedings against any other party in any other court of competent jurisdiction in any state in Australia, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any of England and Wales or Australia, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This agreement has been entered into as a deed and is delivered on the date stated at the beginning of it.

Schedule 1 Particulars of the Company

Name:	Conexus Limited
Registration number:	3616118
Registered office:	Eastlands One, London Road, Basingstoke, Hampshire RG21 4FB
Issued share capital:	Amount: £1,000 Divided into: 1,000 ordinary shares of £1 each
Registered shareholders (and number of Sale Shares held):	The Seller – 1,000 ordinary shares of £1 each
Directors:	Kenneth Wehr
Secretary:	None
Auditors:	Grant Thornton LLP
Registered charges:	Charge (0361 6118 0003) in favour of Bank of London and Middle East plc dated 22 January 2014 (to be released before Completion)

Schedule 2 Completion

Part 1. What the Seller shall deliver to the Buyer at Completion

1. At Completion, the Seller shall deliver or cause to be delivered to the Buyer the following:
- (a) transfers of the Sale Shares, in agreed form, executed by the registered holder in favour of the Buyer;
 - (b) the share certificate for the Sale Shares in the name of the registered holder;
 - (c) a duly certified copy of any power of attorney under which any document to be delivered to the Buyer under this paragraph 1 has been executed;
 - (d) the statutory registers and minute books (duly written up to the time of Completion) of the Company, the common seal (if any), certificate of incorporation and any certificates of incorporation on change of name;
 - (e) the written resignation, in agreed form and executed as a deed, of the sole Director of the Company, from his office with the Company;
 - (f) signed minutes, in agreed form, of each of the board meetings required to be held pursuant to Part 2 of this Schedule 2;
 - (g) in relation to the Company:
 - (i) statements from each bank at which it has an account, giving the balance of each account at the close of business on the last Business Day before Completion;
 - (ii) all cheque books in current use and written confirmation that no cheques have been written since the statements delivered above were prepared;
 - (iii) all credit cards issued on the Company's account and held by the Covenantor;
 - (iv) details of its cash book balances; and
 - (v) reconciliation statements reconciling the cash book balances and the cheque books with the bank statements delivered above;
 - (h) all title deeds and other documents relating to the Property;
 - (i) board minutes (or the equivalent corporate authority) of the Guarantor, in agreed form, authorising its entry into this agreement;
 - (j) an opinion of Australian counsel that the guarantee given by the Guarantor under and pursuant to clause 15 is duly authorised and enforceable and that the Guarantor is in current good standing;
 - (k) the most recent audited accounts of the Guarantor (on an individual company and not a consolidated basis);
 - (l) board minutes of the Seller, in agreed form, authorising its entry into this agreement;
 - (m) in connection with the BLME Finance Documents:
 - (i) a deed of release and termination, in agreed form, duly executed the Bank, the Seller and the Company;
 - (ii) an amendment letter, in agreed form, duly executed by the Bank, the Seller, the Company, the Guarantor and OLR Australia Pty Limited;
 - (iii) duly completed and executed Form MR04 (statement of satisfaction in full or in part of mortgage or charge), in agreed form;

- (iv) duly completed and executed Form MR05, in agreed form;
- (v) duly executed release in agreed form confirming that the Company is released from all of its obligations to each member of the Seller's Group under the BLME Finance Documents;
- (n) the service agreement, in agreed form, to be made between the Company and Paul Lynch, duly executed by Paul Lynch;
- (o) a release, in agreed form, duly executed by Paul Lynch and the Company releasing the Company from any pre-Completion liability to him;
- (p) the Transitional Services Agreement, duly executed by the Seller;
- (q) the Velocity Licence duly executed by the Seller;
- (r) the PL Side letter, duly executed by Paul Lynch;
- (s) the Disclosure Letter, duly executed by the Seller;
- (t) evidence, in agreed form, that Conexus, Inc has been dissolved;
- (u) evidence, in agreed form, that the Seller has changed its registered office and no companies in the Seller's Group share the same registered office as the Company;
- (v) all instruments or documents necessary to change the names of the individuals who have access to or are authorised in respect of all bank accounts, other accounts, certificates of deposits, marketable securities, other investments (including bank mandate forms), safe deposit boxes, lock boxes and safes of the Company, if any; and
- (w) to the extent not at the Property, all keys and combinations to all locks (including building, room, and file cabinet locks) and all safe deposit boxes, lock boxes and safes of the Company (if any) all vehicle keys and registration documents, and any filing codes in respect of online filing made by the Company with the Registrar of Companies or any other governmental entity.

Part 2. Matters for the board meetings at Completion

1. The Seller shall cause a board meeting of the Company to be held at Completion at which the following matters shall take place:

- (a) the approval of the registration of the transfer of the Sale Shares, subject only to the transfers being stamped at the cost of the Buyer;
- (b) acceptance of the resignation referred to in paragraph 1(e) of Part 1 of this Schedule 2 with effect from the end of the relevant board meeting;
- (c) approval of the appointment of the persons nominated by the Buyer as directors of the Company (but not exceeding any maximum number of directors contained in the Company's articles of association) with effect from the end of the relevant board meeting;
- (d) the accounting reference date of the Company shall be changed to such date as is required by the Buyer;
- (e) all existing instructions and authorities to the bankers of the Company shall be revoked and replaced with new instructions and authorities as the Buyer requires; and
- (f) the approval of the entry by the Company into the service agreement and any other documents to which the Company is a party, in each case as referred to in Part 1 of this Schedule 2.

Schedule 3 Warranties

Part 1. General Warranties

1. **Power to sell the Sale Shares**

- 1.1 The Seller and each Guarantor has taken all necessary actions and has all requisite power and authority to enter into and perform this agreement and the other documents referred to in it (to which they are a party) in accordance with their respective terms.
- 1.2 This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on the Seller and the Guarantor in accordance with their respective terms.
- 1.3 The execution and delivery by the Seller and the Guarantor of this agreement and the documents referred to in it, and compliance with their respective terms shall not breach or constitute a default:
- (a) under any agreement or instrument to which the Seller or either Guarantor is a party or by which the Seller or the Guarantor is bound; or
 - (b) of any order, judgment, decree or other restriction applicable to the Seller.

2. **Shares in the Company**

- 2.1 The Sale Shares constitute the whole of the allotted and issued share capital of the Company and are fully paid or credited as fully paid.
- 2.2 The Seller is the legal and beneficial owner of the Sale Shares and is entitled to transfer the legal and beneficial title to the Sale Shares to the Buyer free from all Encumbrances, without the consent of any other person.
- 2.3 No person has any right to require, at any time, the transfer, creation, issue or allotment of any share, loan capital or other securities (or any rights or interest in them) of the Company, and neither the Seller nor the Company has agreed to confer any such rights, and no person has claimed any such right.
- 2.4 No Encumbrance has been granted to any person or otherwise exists affecting:
- (a) the Sale Shares; or
 - (b) any unissued shares, debentures or other unissued securities of the Company.

No commitment to create any such Encumbrance has been given, nor has any person claimed any such rights.

2.5 The Company:

- (a) does not hold or beneficially own, nor has it agreed to acquire, any shares, loan capital or any other securities in any company; or
- (b) has not at any time since 22 January 2014 had any subsidiaries or subsidiary undertakings; or
- (c) is not or has not agreed to become, a member of any partnership or other unincorporated association, joint venture or consortium (other than recognised trade associations); or
- (d) does not control or takes part in the management of any company or business organisation, nor has it agreed to do so; or
- (e) does not have any branch or permanent establishment, outside its country of incorporation.

- 2.6 The Company has not since 22 January 2014:
- (a) purchased, redeemed, reduced, forfeited or repaid any of its own share capital; or
 - (b) allotted or issued any securities that are convertible into shares.
- 2.7 No shares in the capital of the Company have been issued, and no transfer of any such shares has been registered, except in accordance with all applicable laws and the memorandum and articles of association of the Company and all such transfers have been duly stamped (where applicable).
- 2.8 Conexus Inc has been dissolved and did not trade since its incorporation.

3. Constitutional and corporate documents

- 3.1 Copies of the articles of association (or other constitutional and corporate documents) of the Company have been Disclosed. Such copy documents:
- (a) are true, accurate and complete in all respects;
 - (b) have attached to them copies of all resolutions and agreements required by applicable law to be so attached; and
 - (c) fully set out all the rights and restrictions attaching to each class of shares in the capital of the Company.
- 3.2 All statutory books and registers of the Company have been properly kept, are written up to date and contain a true, complete and accurate record of all matters which should be contained in them. Neither the Seller nor the Company has received any notice or allegation that any such books or registers are incorrect or should be rectified.
- 3.3 Since 22 January 2014, all returns, particulars, resolutions and other documents that the Company is required by law to file with, or deliver to, any authority in any jurisdiction (including, in particular, the Registrar of Companies in England and Wales) have been correctly made up and duly filed or delivered.
- 3.4 Since 22 January 2014, all dividends or distributions declared, made or paid by the Company have been declared, made or paid in accordance with its articles of association, all applicable laws and regulations and any agreements or arrangements made with any third party regulating the payment of dividends and distributions.
- 3.5 All deeds and documents belonging to the Company, or to which any of them is a party, are in the possession or control of the Company.
- 3.6 The Seller has not brought any warranty or indemnity claim under OLR Share purchase Agreement, nor has it assigned or waived any of its rights under that agreement.
- 3.7 So far as the Seller is aware no party to the OLR Share Purchase Agreement has raised any defence or counterclaim under that agreement.

4. Information

- 4.1 The particulars of the Company set out in Schedule 1 are complete and accurate and not misleading in respect of the matters dealt with.
- 4.2 All replies to the Buyer's enquiries contained in the Disclosure Bundle at documents 18.1 to 18.6 (inclusive) given by or on behalf of the Seller or the Company (or their advisers) to the Buyer (or its advisers) in the course of the negotiations leading up to this agreement together with the Seller's and the Company's written replies to the CPSE 1 and CPSE 4 enquiries raised by the Buyer (contained in the Disclosure Bundle at documents 9.2.19 and 9.2.20), were when given and are now true and accurate in all material respects.

5. **Compliance with laws**
- 5.1 Since 22 January 2014 the Company has at all times conducted its business in accordance with, and has acted materially in compliance with, all applicable laws and regulations of any relevant jurisdiction.
- 5.2 Neither the Company, nor any of its directors or employees (current or past), has been convicted of an offence in relation to the business or affairs of the Company.
6. **Licences and consents**
- 6.1 The Company holds all licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which it is carried on at the date of this agreement (“**Consents**”).
- 6.2 Each of the Consents is valid and subsisting, and the Company is not in breach of the terms or conditions of the Consents (or any of them).
- 6.3 So far as the Seller is aware there is no reason why any of the Consents may be revoked, suspended or cancelled (in whole or in part), or may not be renewed on the same terms.
7. **Insurance**
- 7.1 The Company maintains, and has at all material times since 22 January 2014 maintained, in the honest opinion of the Seller, adequate insurance cover against all losses and liabilities, including business interruption, and all other risks that are normally insured against by a person carrying on the same type of business as the Business.
- 7.2 Accurate details of all insurance policies maintained by or on behalf of the Company (“**Policies**”) have been Disclosed.
- 7.3 The Policies are in full force and effect, all premiums due on them have been paid and all other conditions of the Policies have been performed and observed.
- 7.4 The Company has not done, or omitted to do, anything that may result in an increase in the premium payable for any of the Policies, or that may adversely affect the renewal of any of the Policies.
- 7.5 None of the Policies:
- (a) are subject to any special or unusual terms or restrictions, or to the payment of any premium in excess of the normal rate; or
 - (b) are void or voidable and nothing has been done, or omitted to be done, which could make any of them void or voidable; or
 - (c) are capable of being terminated, or will otherwise cease to be available to the Company as a result of Completion.
- 7.6 The Disclosure Letter contains accurate details of all insurance claims made by the Company during the period of 12 months ending on the date of this agreement.
- 7.7 There are no material outstanding claims under, or in respect of the validity of, any of the Policies and, so far as the Seller is aware, there are no circumstances likely to give rise to a claim under any of the Policies.
8. **Powers of attorney**
- 8.1 There are no powers of attorney granted by the Company which are currently in force.
- 8.2 No person is entitled or authorised in any capacity to bind or commit the Company to any obligation outside the ordinary course of the Business.

9. Disputes and investigations

9.1 Neither the Company, nor any of its Directors, nor so far as the Seller is aware, any person for whose acts the Company may be vicariously liable, is engaged or involved in, or otherwise subject to any of the following matters (such matters being referred to in this paragraph 9 as “**Proceedings**”):

- (a) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal or any governmental, regulatory or similar body, or any department, board or agency (except for debt collection in the normal course of business); or
- (b) any dispute with, or any investigation, inquiry or enforcement proceedings by, any governmental, regulatory or similar body or agency in any jurisdiction.

9.2 No Proceedings have been threatened or are pending by or against the Company, any Director or any person for whose acts the Company may be vicariously liable, and so far as the Seller is aware there are no circumstances likely to give rise to any such Proceedings.

9.3 The Company:

- (a) is not affected by any existing or pending judgment, order or other decision or ruling of a court, tribunal, arbitrator, or any governmental, regulatory or similar body or agency in any jurisdiction; or
- (b) has not given any undertaking to any court, tribunal, arbitrator, or any governmental, regulatory or similar body or any other third party arising out of, or in connection with, any Proceedings which remains in force.

10. Defective products and services

10.1 So far as the Seller is aware, the Company has not produced or sold any products or supplied any services which were at the time they were produced, sold or supplied, faulty or defective or did not or do not comply in all material respects with:

- (a) any warranties or representations expressly or impliedly made by or on behalf of the Company in connection with such products or services; or
- (b) any laws, regulations, standards and requirements applicable to such products or services.

10.2 No proceedings have been started or, so far as the Seller is aware, are pending or have been threatened against the Company:

- (a) in which it is claimed that any product manufactured or sold by the Company is defective, not appropriate for its intended use or has caused bodily injury or material damage to any person or property when applied or used as intended; or
- (b) in respect of any services supplied by the Company.

10.3 There are no disputes between the Company and any of its customers, clients or any other third parties in connection with any products or services manufactured, sold or supplied by the Company.

11. Customers and suppliers

11.1 The definition in this paragraph applies in this agreement.

“**Material Counterparty**” means any customer, client or supplier of the Company who is of material importance to the business or profits of the Company.

11.2 In the period of 12 months ending on the date of this agreement:

- (a) no Material Counterparty has ceased, or threatened to cease to do business with, or reduced, or threatened to reduce in any material respect the extent to which it does business with, the Company;

- (b) there has been no material adverse change in the basis or terms on which any Material Counterparty does business with the Company; and
- (c) the Business has not been materially affected in an adverse manner as a result of (either individually or in combination) the loss of, or reduction in trading with, any customer, client or supplier of the Company, or a change in the terms on which any such customer, client or supplier does business with the Company.

11.3 The Seller is not aware of any fact that may reasonably be likely to give rise to any matter listed in paragraph 11.2.

11.4 No customer, client or supplier accounted for more than 10% of the aggregate sales or purchases (as applicable) made by the Company during the period of 12 months ending on the date of this agreement.

12. **Contracts**

12.1 The definition in this paragraph applies in this agreement.

“**Material Contract**” means any agreement, arrangement, understanding or commitment that the Company is a party to, or bound by, which is of material importance to the business, profits or assets of the Company and involves or is likely to involve an aggregate consideration payable by or to the Company, or actual or potential liability for the Company, in excess of £100,000.

12.2 Except as Disclosed, the Company is not a party to, or otherwise subject to any agreement, arrangement, understanding or commitment which:

- (a) is a Material Contract; or
- (b) is of an unusual or exceptional nature; or
- (c) is not in the ordinary and usual course of the Business; or
- (d) may be terminated as a result of a change of Control of the Company; or
- (e) restricts the freedom of the Company to carry on the whole or any part of the Business in any part of the world in such manner as it thinks fit; or
- (f) involves agency or distributorship; or
- (g) involves partnership, joint venture, consortium, joint development, shareholder or similar arrangements; or
- (h) involves the grant of any sole or exclusive rights by or to the Company; or
- (i) cannot be readily fulfilled or performed by the Company on time and without undue or unusual expenditure of money and effort; or
- (j) involves or is likely to involve an aggregate consideration payable by or to the Company in excess of £100,000; or
- (k) requires the Company to pay any commission, finders’ fee, royalty or the like; or
- (l) is for the supply of goods and/or services by or to the Company on terms under which retrospective or future discounts, price reductions or other financial incentives are given; or
- (m) is not on arm’s-length terms; or
- (n) is a finance lease, hire purchase, rental or credit sale agreement or which otherwise provides for the purchase or right to purchase any asset by instalment payments.

- 12.3 There are no outstanding or ongoing negotiations of material importance to business, profits or assets of the Company, or any outstanding quotations or tenders for a contract that, if accepted, would give rise to a Material Contract, or a contract of any other type as referred to in paragraph 12.2 of Part 1 of this Schedule 3.
- 12.4 Each Material Contract is in full force and effect and binding on the parties to it.
- 12.5 Neither the Company, nor so far as the Seller is aware any other counterparty is (or will, with the lapse of time, be) in default of:
- (a) any Material Contract; or
 - (b) any other agreement, arrangement, undertaking or commitment a default of which would be material having regard to the trading, profits or financial position of the Company.
- 12.6 No such default has been threatened, and so far as the Seller is aware there are no facts or circumstances likely to give rise to any such default.
- 12.7 No notice of termination of a Material Contract has been received or served by the Company, and so far as the Seller is aware there are no grounds for the termination, rescission, avoidance, repudiation or a material change in the terms of any such contract.
- 12.8 Each of the Material Contracts has been entered into on the Company's usual terms and in the ordinary course of the Company's business.
- 13. Transactions with the Seller and the Seller's interests**
- 13.1 There is no outstanding indebtedness or other liability (actual or contingent) and no outstanding contract, commitment or arrangement between the Company and any of the following:
- (a) the Seller, or any person Connected with the Seller;
 - (b) a Director, or any person Connected with a Director; or
 - (c) any person relating to payments to or arrangements made with those persons listed in sub-paragraphs (a) and (b) of this paragraph 13.1.
- 13.2 Neither the Seller, nor any person Connected with a Seller, has a claim of any nature against the Company, or has assigned to any person the benefit of any such claim.
- 13.3 The Seller is not at the Completion Date, nor has it been at any time during the period of two years immediately preceding the Completion Date, concerned, interested or engaged, directly or indirectly and in whatever capacity, in any other business competitive with all or any part of the Business as it is carried on at the Completion Date.
- 14. Finance and guarantees**
- 14.1 The Disclosure Letter contains full particulars of:
- (a) all money borrowed by the Company; and
 - (b) all loans, overdrafts or other financial facilities currently outstanding or available to the Company ("**Financial Facilities**"), including copies of all material documents relating to such Financial Facilities.
- 14.2 The total amount borrowed by the Company (whether pursuant to the Financial Facilities or otherwise) does not exceed any limitations on the borrowing powers of the Company contained in:
- (a) its articles of association; or
 - (b) any debenture or other deed or document binding on the Company.

- 14.3 There are no circumstances or matters which could affect the continuance of any of the Financial Facilities, or which may result in an amendment of their terms.
- 14.4 No indebtedness of the Company is due and payable and no Encumbrance over any of the assets of the Company is now enforceable, whether by virtue of the stated maturity date of the indebtedness having been reached or otherwise.
- 14.5 The Company has not received any notice (whose terms have not been fully complied with or carried out) from any creditor requiring any payment to be made in respect of any indebtedness (whether arising pursuant to the Financial Facilities or otherwise), or intimating the enforcement of any Encumbrance which it holds over the assets of the Company.
- 14.6 No Encumbrance, guarantee, indemnity or other similar security arrangement has been given or entered into by the Company or any third party in respect of borrowings or other obligations of the Company (whether arising pursuant to the Financial Facilities or otherwise), nor has any such person agreed to do so.
- 14.7 The Company has not given or entered into, or agreed to give or enter into, any Encumbrance, guarantee, indemnity or other similar security arrangement in respect of the indebtedness of, or the default in the performance of any obligation by, of any other person.
- 14.8 The Company has not:
- (a) factored or discounted any of its debts; or
 - (b) engaged in financing of a type which would not need to be shown or reflected in the Accounts; or
 - (c) waived any right of set-off it may have against any third party.
- 14.9 The Company has no outstanding loan capital, nor has it lent any money that has not been repaid, and there are no debts owing to the Company other than debts that have arisen in the normal course of the Business.
- 14.10 The debts owing to the Company as reflected in the Accounts, and all debts subsequently recorded in the books of the Company since the Accounts Date:
- (a) have been realised in full;
 - (b) have not been outstanding (in whole or in part) for more than two months from its due date for payment; and
 - (c) are not subject to any right of set-off or counterclaim.
- 14.11 The Company is not subject to any arrangement for receipt or repayment of any grant, subsidy or financial assistance from any government department or other body.
- 14.12 Particulars of the balances of all the bank accounts of the Company, showing the position as at the day immediately preceding the date of this agreement, have been Disclosed and the Company has no other bank account. Since the date of those particulars, there have been no payments out of those bank accounts other than routine payments in the ordinary course of the Business.
15. **Liabilities**
- 15.1 The Company has no liabilities (including contingent liabilities) other than as disclosed in the Accounts, the Management Accounts or incurred in the ordinary and proper course of the Business.
- 15.2 No sum is owing by the Company to their auditors, solicitors or other professional advisers, and no accrual ought properly be made by it in respect of any such sum.

16. Effect of sale of Sale Shares

16.1 Neither the acquisition of the Sale Shares by the Buyer, nor compliance with the terms of this agreement will:

- (a) so far as the Seller is aware, cause the Company to lose the benefit of any asset, right or privilege it presently enjoys; or
- (b) relieve any person of any obligation to the Company (whether contractual or otherwise), or enable any person to determine any such obligation or any right or benefit enjoyed by the Company, or to exercise any other right in respect of the Company; or
- (c) result in any customer, client or supplier being entitled to cease dealing with the Company, or materially reducing its level of business, or changing the terms on which it deals, with the Company; or
- (d) result in the loss or impairment of, or any default under, any licence, authorisation or consent required by the Company for the purposes of the Business; or
- (e) so far as the Seller is aware, result in any officer or senior employee leaving the Company; or
- (f) result in the creation, imposition, crystallisation or enforcement of any Encumbrance on any of the assets of the Company; or
- (g) result in any present or future indebtedness of the Company becoming due and payable, or capable of being declared due and payable prior to its stated maturity date, or cause any Financial Facility to be terminated or withdrawn; or
- (h) entitle any person to receive from the Company any finders fee, brokerage or other commission in connection with the Transaction; or
- (i) give rise to, or cause to become exercisable, any right of pre-emption over the Sale Shares; or
- (j) entitle any person to acquire, or affect the entitlement of any person to acquire, shares in the Company.

17. Insolvency

17.1 Neither the Seller, the Guarantor nor the Company:

- (a) is insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 or any other applicable insolvency legislation; or
- (b) has stopped paying its debts as they fall due.

17.2 No step has been taken in any applicable jurisdiction to initiate any process by or under which:

- (a) the ability of the creditors of the Company, the Seller or the Guarantor to take any action to enforce their debts is suspended, restricted or prevented; or
- (b) some or all of the creditors of the Company, the Seller or the Guarantor accept, by agreement or in pursuance of a court order, an amount less than the sums owing to them in satisfaction of those sums with a view to preventing the dissolution of the Company, the Seller or the Guarantor; or
- (c) a person is appointed to manage the affairs, business and assets of the Company, the Seller or the Guarantor on behalf of their creditors; or
- (d) the holder of a charge over any of the assets of the Company, the Seller or the Guarantor is appointed to control the business and/or any assets of the Company, the Seller or either Guarantor.

- 17.3 In relation to the Company, the Seller or the Guarantor:
- (a) no administrator has been appointed;
 - (b) no documents have been filed with the court for the appointment of an administrator; and
 - (c) no notice of an intention to appoint an administrator has been given by the relevant company, its Directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986).
- 17.4 No process has been initiated which could lead to the Company, the Seller or the Guarantor being dissolved and its assets being distributed among the relevant company's creditors, shareholders or other contributors.
- 17.5 No distress, execution or other process has been levied on an asset of the Company, the Seller or the Guarantor.
- 17.6 The Covenantor has not:
- (a) had a bankruptcy petition presented against him or been declared bankrupt; or
 - (b) been served with a statutory demand, or is unable to pay any debts within the meaning of the Insolvency Act 1986; or
 - (c) entered into, or has proposed to enter into, any composition or arrangement with, or for, his creditors (including an individual voluntary arrangement); or
 - (d) been subject of any other event analogous to the foregoing in any jurisdiction.
- 18. Accounts**
- 18.1 The Accounts have been properly prepared in accordance with generally accepted accounting principles applied in the UK and in accordance with the applicable law and regulations of that jurisdiction.
- 18.2 The Accounts have been prepared by a firm of accountants.
- 18.3 The Accounts:
- (a) make proper and adequate provision for all bad and doubtful debts, obsolete or slow-moving stocks and for depreciation on fixed assets;
 - (b) do not overstate the estimated value of current or fixed assets at the Accounts Date; and
 - (c) do not understate any liabilities (whether actual or contingent) at the Accounts Date.
- 18.4 The Accounts give a true and fair view of the state of affairs of the Company as at the Accounts Date, and of the profit or loss of the Company for the financial year ended on that date.
- 18.5 The Accounts contain either provision adequate to cover to the extent required by the Companies Act 2006 and the relevant Financial Reporting Standards, or full particulars in notes of, all Taxation (including deferred Taxation) and other liabilities (whether quantified, contingent, disputed or otherwise) of the Company as at the Accounts Date.
- 18.6 The Accounts are not affected by any extraordinary, exceptional or non-recurring items or any other factor that would make the financial position and results shown by the Accounts unusual or misleading in any material respect.
- 18.7 The Accounts have been filed and laid before the Company (as the case may be) in general meeting in accordance with the requirements of all applicable laws and regulations.
- 18.8 The Accounts have been prepared on a basis consistent with the accounts of the Company, for the two prior accounting periods without any change in accounting policies used.

18.9 The Management Accounts fairly represent the assets and liabilities and the profits and losses of the Company as at and to the date for which they have been prepared, and use and/or apply the same accounting methods, practices, principles, policies and procedures (including classifications, judgments and valuation and estimation methodologies) as used and/or applied in the Accounts.

19. **Changes since Accounts Date**

Since the Accounts Date:

- (a) the Company has conducted the Business in its normal course and as a going concern;
- (b) there has been no material adverse change in the turnover or financial position of the Company;
- (c) the Company has not issued or agreed to issue any share or loan capital;
- (d) no dividend or other distribution of profits or assets has been, or agreed to be, declared, made or paid by the Company;
- (e) the Company has not borrowed or raised any money or given or taken any form of financial security;
- (f) no capital expenditure has been incurred on any individual item by the Company in excess of £5,000 and neither the Company has acquired, invested or disposed of (or agreed to acquire, invest or dispose of) any individual item in excess of £5,000;
- (g) no shareholder resolutions of the Company have been passed;
- (h) the Company has paid its creditors in accordance with the Company's normal practice and there are no amounts owing by the Company which have been outstanding for more than 90 days; and
- (i) there has been no reduction in the value of the net assets of the Company determined in accordance with the same accounting principles and policies as those applied in the Accounts (and on the basis that each of the assets is valued at a figure no greater than the value attributed to it in the Accounts or, in the case of any of the assets acquired by the Company after the Accounts Date, at a figure no greater than cost).

20. **Financial and other records**

20.1 All financial and other records of the Company ("**Records**"):

- (a) since 22 January 2014, have been properly prepared and maintained;
- (b) constitute an accurate record of all matters required by law to appear in them, and in the case of the accounting records, comply with the requirements of section 386 and section 388 of the Companies Act 2006;
- (c) do not contain any material discrepancies; and
- (d) are in the possession or control of the Company.

20.2 No notice has been received by the Seller or the Company or so far as the Seller is aware allegation made that any of the Records are incorrect or should be rectified.

20.3 To the extent that any of the Records are maintained or stored electronically:

- (a) the Company is the owner of any hardware and software required to access, maintain, copy and use such Records, and such ownership is not shared with any other person; and
- (b) such Records are adequately backed-up.

21.

Assets

- 21.1 The assets included in the Accounts, together with any assets acquired since the Accounts Date and all other assets used by the Company in connection with the Business (except for those disposed of since the Accounts Date in the normal course of business) are:
- (a) legally and beneficially owned by either the Company, and the relevant owner has good and marketable title to such assets;
 - (b) not the subject of any lease, lease hire agreement, hire purchase agreement or agreement for payment on deferred terms, or any licence or factoring arrangement; and
 - (c) in the possession and control of the Company.

21.2 None of the assets, undertaking or goodwill of the Company is subject to an Encumbrance or any agreement or commitment to create an Encumbrance, and no person has claimed to be entitled to create such an Encumbrance.

21.3 The Company either owns or has licensed to it all assets necessary for the continuation of the Business as it is carried on at the date of this agreement.

22. **Equipment**

22.1 The vehicles, office and other equipment used by the Company in connection with the Business are:

- (a) in good working order (fair wear and tear excepted) and have been regularly and properly maintained;
- (b) capable of doing the work for which they are used by the Company; and
- (c) not surplus to the current requirements of the Company.

23. **Intellectual Property**

23.1 The definition in this paragraph applies in this agreement:

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

23.2 Complete and accurate particulars are set out in Schedule 7 respectively of all registered Intellectual Property Rights (including applications for such rights) and all material unregistered Intellectual Property Rights owned, used or held for use by the Company. In addition, nothing has been extracted or copied from the files or databases or source code repositories used by and owned by the Company prior to Completion which would materially affect or prejudice the ability of the Company to carry on its Business as efficiently as it had done before Completion.

23.3 The Company does not rely upon any specific third party vendor preferential or exclusive licence or application access for any commercial advantage when providing e-commerce solutions for its clients and complete and accurate particulars are set out in Part 3 and Part 4 of Schedule 7 of all material licences, agreements, authorisations and permissions (in whatever form and whether express or implied) under which the Company:

- (a) uses or exploits Intellectual Property Rights owned by any third party; and/or
- (b) has licensed or agreed to license Intellectual Property Rights to, or otherwise permitted the use of any Intellectual Property Rights by, any third party.

- 23.4 Except as set out in Schedule 7, the Company is the sole legal and beneficial owner of (or applicant for) the Intellectual Property Rights set out in Part 1 and Part 2 of Schedule 7, free from all Encumbrances.
- 23.5 The Company does not require any Intellectual Property Rights other than those set out in parts Part 1, Part 2, Part 3 and Part 5 of Schedule 7 in order to carry on the Business as it is conducted at the date of this agreement.
- 23.6 The Intellectual Property Rights set out in Part 1 and Part 2 of Schedule 7 are valid, subsisting and enforceable and so far as the Seller is aware nothing has been done, or not been done, as a result of which any of them has ceased or might cease to be valid, subsisting or enforceable. In particular:
- (a) all application and renewal fees and other steps required for the maintenance or protection of such rights by the Company have been paid on time or taken;
 - (b) so far as the Seller is aware, all confidential information (including know-how and trade secrets) owned or used by the Company has been kept confidential and has not been disclosed to third parties (other than parties who have signed written confidentiality undertakings in respect of such information, details of which are set out in the Disclosure Letter);
 - (c) so far as the Seller is aware, no mark, trade name or domain name identical or similar to any such rights has been registered, or is being used by any person in the same or a similar business to that of the Company, in any country in which the Company has registered or is using that mark, trade name or domain name;
 - (d) so far as the Seller is aware, nothing has been done, or not been done, which might render any registered trademark owned or used by the Company liable to be revoked or declared invalid;
 - (e) there are no outstanding or so far as the Seller is aware potential claims against the Company under any contract or under section 40 of the Patents Act 1977 for employee compensation in respect of any Intellectual Property Rights; and
 - (f) so far as the Seller is aware, there are and have been no claims, challenges disputes or proceedings, pending or threatened, in relation to the ownership, validity or use of such rights.
- 23.7 So far as the Seller is aware nothing is due to be done within 30 days of the date of this agreement the omission of which would jeopardise the maintenance or prosecution of any of the Intellectual Property Rights owned or used by the Company which are registered or the subject of an application for registration.
- 23.8 So far as the Seller is aware, there has been no infringement by any third party of any of the Intellectual Property Rights set out in Part 1, Part 2 and Part 4 of Schedule 7, nor any third party breach of confidence, passing off or actionable act of unfair competition in relation to the business and assets of the Company, and no such infringement, breach of confidence, passing off or actionable act of unfair competition is current or anticipated.
- 23.9 The agreements and licences set out in Part 3 and Part 4 of Schedule 7:
- (a) are valid and binding on the Company and so far as the Seller is aware, the relevant counterparty;
 - (b) so far as the Seller is aware, have not been the subject of any breach or default by any party or of any event which, with the giving of notice or lapse of time, would constitute a default;
 - (c) so far as the Seller is aware, are not the subject of any claim, dispute or proceeding, pending or threatened; and
 - (d) have, where required, been duly recorded or registered.
- 23.10 A change of Control of the Company will not result in the termination of, or have a material effect on, any of the Intellectual Property Rights set out in Schedule 7.

- 23.11 The activities of the Company, and so far as the Seller is aware the activities of any licensee of Intellectual Property Rights granted by the Company:
- (a) have not infringed, do not infringe and are not likely to infringe the Intellectual Property Rights of any third party;
 - (b) have not constituted, do not constitute and are not likely to constitute any breach of confidence, passing off or actionable act of unfair competition; and
 - (c) have not given and do not give rise to any obligation to pay any royalty, fee, compensation or any other sum whatsoever.
- 23.12 The Company does not require any Intellectual Property Rights which were assigned (or purportedly assigned) to third parties referred to by clause 23.3(b) of the disclosure letter sent by Paul Sessions and Edward Bersey to the Seller on 22 January 2014 (document 1.4 of the supplemental documents included in the Disclosure Bundle) in order to carry on the Business as it is conducted at the date of this agreement.
- 24. Information technology.**
- 24.1 The definitions in this paragraph apply in this agreement.
- “**IT Contracts**” means all written and oral arrangements and agreements (including those currently being negotiated) under which any third party (including without limitation any source code deposit agents) provides or will provide any element of, or services relating to, the IT System, including leasing, hire purchase, licensing, maintenance, hosting, outsourcing, security, back-up, disaster recovery, insurance, development, support and services agreements.
- “**IT System**” means all computer hardware (including network and telecommunications equipment), databases (“**Databases**”) and software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software (“**Source Code**”)) (“**Software**”) owned, used, leased or licensed by or to the Company.
- “**Virus**” means any program which contains malicious code or infiltrates or damages a computer system without the owner’s informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.
- 24.2 Accurate particulars of the IT System and IT Contracts and Databases and a summary of the Software are set out in Part 1 and the Seller has no reason to believe that any of the IT Contracts are not adequate for the purposes of the Business.
- 24.3 Except to the extent provided in the IT Contracts, the Company are the owners of and in possession of the IT System free from Encumbrances. The Company has all necessary rights from third parties to enable it to use the IT System for the purposes of the Business as would customarily be expected by a business similar to the Business.
- 24.4 The IT Contracts are valid and binding and, so far as the Seller is aware, no act or omission has occurred which would, if necessary with the giving of notice or lapse of time, constitute a breach of any such contract.
- 24.5 There are and have been no claims, disputes or proceedings arising or so far as the Seller is aware, threatened under any of the IT Contracts.
- 24.6 None of the IT Contracts is liable to be terminated or otherwise materially affected by a change of Control of the Company, and the Seller has no reason to believe that any of the IT Contracts will not be renewed on the same or substantially the same terms when they expire. Each IT Contract which has an aggregate future liability on the part of the Company of more than £8,500 is terminable by the Company by giving notice of not more than 60 days for a cost of less than £8,500.

- 24.7 The Company has either:
- (a) possession or control of the Source Code of all Software, and so far as the Seller is aware there has been no disclosure of such Source Code; or
 - (b) the right to gain access to the Source Code of all Software under the terms of source code deposit agreements with the owners of the rights in the relevant Software and reputable deposit agents (particulars of which are set out in Part 1).
- 24.8 The elements of the IT System:
- (a) are functioning properly and in accordance with all applicable specifications and with the service levels set out in the IT Contracts, and are fit for the purposes of the Business;
 - (b) are not defective in any respect and have not been materially defective or materially failed to function since 22 January 2014;
 - (c) so far as the Seller is aware do not contain any Virus and have not within the last 12 months been infected by any Virus or accessed by any unauthorised person;
 - (d) have sufficient capacity, scalability and performance to meet the current requirements of the Business;
 - (e) include sufficient user information to enable reasonably skilled personnel in the field to use and operate the IT System without the need for further assistance; and
 - (f) have been satisfactorily and regularly maintained, all versions of the Software used by the Business are currently supported by the respective owners of the Software and the IT System has the benefit of appropriate maintenance and support agreements, accurate particulars of which are set out in Part 1.
- 24.9 Save where expressly indicated in Schedule 7, there has not been included or used any open-source software (as defined at <http://opensource.org/docs/osd>) or any libraries or code licensed from time to time under the General Public Licence (as set out at <http://www.gnu.org/licenses/gpl.html>) or any similar licence in, or in the development of, the IT System, nor does any element of the IT System operate in such a way that it is compiled with or linked to any of the foregoing.
- 24.10 The Company has implemented appropriate procedures in accordance with industry practice (including in relation to off-site working where applicable) for ensuring the security of the IT System and the confidentiality and integrity of all data stored in it with regard to use of the IT System for the purposes of the Business.
- 24.11 The Company has in place a disaster recovery plan which is fully documented and would enable the Business to continue if there were significant damage to or destruction of some or all of the IT System, and a data security breach plan, each of which was made in accordance with industry practice. A copy of each plan is attached to the Disclosure Letter.
- 24.12 The performance and functionality of the IT System (and any other equipment and systems owned or used by the Company or their respective suppliers or customers which depend on date-programmed control devices) has not been affected by any changes in dates (past or present). In particular:
- (a) no value for a current date has caused any interruption in operation;
 - (b) date-based functionality has behaved consistently for all dates;
 - (c) in all interfaces and data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules; and
 - (d) all leap years have been recognised as such.
- 24.13 All Databases are accurate and none has suffered any loss or corruption and/or have not been materially deleted, encrypted, extracted or copied or licensed to any third party in the 12 (twelve) month period prior to Completion and are sufficient to enable the Company to carry on its business in the same manner as it had done in such period.

25. **Data protection**

25.1 Since 22 January 2014, the Company has notified registrable particulars under the DPA 1998 of all personal data held by them and:

- (a) has renewed such notifications and has notified any changes occurring in between such notifications as required by the DPA 1998;
- (b) has paid all fees payable in respect of such notifications;
- (c) the contents of such notifications (copies of which are included in the Disclosure Letter) are accurate; and
- (d) there has been no unauthorised disclosure of personal data outside the terms of such notifications.

25.2 The Company has not transferred any personal data outside the European Economic Area.

25.3 Since 22 January 2014, the Company has:

- (a) complied in all respects with the Data Protection Act 1984 and the DPA 1998 including in relation to any manual data in respect of which the transitional exemptions under Part 1 of the DPA 1998 have now expired;
- (b) satisfied any requests for access to personal data subject to paragraph 25.3(a);
- (c) established the procedures necessary to ensure continued compliance with the Data Protection Act 1984 and the DPA 1998; and
- (d) complied with the requirements of the seventh principle of the DPA 1998 in respect of any processing of data carried out by a data processor on behalf of the Company, including by entering into a written contract with the data processor confirming that the data processor will only act on the instructions of the Company, and requiring the data processor to comply with obligations relating to security measures equivalent to those imposed on the Company by the seventh principle as mentioned above.

25.4 Since 22 January 2014, the Company has not received any:

- (a) notice or complaint under the DPA 1998 alleging non-compliance with that Act (including any information or enforcement notice, or any transfer prohibition notice); or
- (b) claim for compensation for loss or unauthorised disclosure of data; or
- (c) notification of an application for rectification or erasure of personal data,

and so far as the Seller is aware, there are no circumstances which may give rise to the giving of any such notice or the making of any such notification.

25.5 Since 22 January 2014, the Company has complied in all material aspects with its obligations under the Privacy and Electronic Communications (EC Directive) Regulations 2003 in respect of the use of electronic communications (including e-mail, text messaging, fax machines, automated calling systems and non-automated telephone calls) for direct marketing purposes.

25.6 The Company is not aware of any circumstances in relation to which the Company has suffered a security breach, vulnerability or incident relating to any personal data, confidential or other sensitive commercial information, either owned by the Company or any third party (“**Commercial Data**”).

25.7 The Company has in place all adequate technical and operational processes and procedures, including appropriate due diligence and verification checks in accordance with best practice in the IT industry and all applicable laws, both internally and externally, in relation to its engagement of contractors and suppliers, as well as its employees, to protect against the unauthorised disclosure, access or accidental loss of Commercial Data.

26. **Employment**

26.1 The definitions in this paragraph apply in this agreement.

“**Employment Legislation**” means legislation applying in England and Wales affecting contractual or other relations between employers and their employees or workers including (but not limited to) any legislation (and any amendment, extension or re-enactment of such legislation) and any claim arising under European treaty provisions or directives enforceable against the Company by any Employee or Worker.

“**Employee**” means any person employed by the Company under a contract of employment.

“**Worker**” means any person who personally performs work for the Company but who is not in business on their own account or in a client/customer relationship.

26.2 The name of each Director is set out in Schedule 1.

26.3 The Disclosure Letter includes anonymised particulars of each Employee and Worker and the principal terms of their contract including:

- (a) the company which employs or engages them;
- (b) their current remuneration (including any benefits and privileges that the Company provides or is bound to provide to them or their dependants, whether now or in the future);
- (c) the commencement date of each contract and, if an Employee, the date on which their continuous service began;
- (d) the length of notice necessary to terminate each contract or, if a fixed term, the expiry date of the fixed term and details of any previous renewals;
- (e) the type of contract (whether full or part-time or other);
- (f) their date of birth; and

such particulars are accurate in all respects.

26.4 The Disclosure Letter includes anonymised details of all persons who are not Workers and who are providing services to the Company under an agreement which is not a contract of employment with the Company (including, in particular, where the individual acts as a consultant or is on secondment from another employer) and the particulars of the terms on which the individual provides services, including:

- (a) the company which engages them;
- (b) the remuneration of each individual (including any benefits and privileges that the Company provides or is bound to provide) to them or their dependants, whether now or in the future; and
- (c) the length of notice necessary to terminate each agreement or, if a fixed term, the expiry date of the fixed term and details of any previous renewals.

26.5 The Disclosure Letter includes anonymised details of all Employees and Workers who are on secondment, maternity, paternity, adoption or other leave or who are absent due to ill-health or for any other reason.

- 26.6 No notice to terminate the contract of employment of any Employee or Worker (whether given by the relevant employer or by the Employee or Worker) is pending, outstanding or threatened and no dispute under any Employment Legislation or otherwise is outstanding between the Company and any current or former:
- (a) Employee relating to their employment, its termination or any reference given by the Company regarding such Employee; or
 - (b) Worker relating to their contract, its termination or any reference given by the Company regarding such Worker.
- 26.7 No questionnaire has been served on the Company by an Employee or Worker under any Employment Legislation which remains unanswered in full or in part.
- 26.8 Every Employee or Worker who requires permission to work in the UK has current and appropriate permission to work in the UK.
- 26.9 No offer of employment or engagement has been made by the Company that has not yet been accepted, or which has been accepted but where the employment or engagement has not yet started.
- 26.10 The acquisition of the Sale Shares by the Buyer and compliance with the terms of this agreement will not entitle any Directors, officers or senior Employees of the Company to terminate their employment or receive any payment or other benefit.
- 26.11 All contracts between the Company and its Employees and Workers are terminable at any time on not more than three months' notice without compensation (other than for unfair dismissal or a statutory redundancy payment) or any liability on the part of the Company other than wages, commission or pension.
- 26.12 All contracts between the Company and its Directors, Employees or Workers comply with any relevant requirements of section 188 of the Companies Act 2006.
- 26.13 The Company is not a party to, bound by or proposing to introduce in respect of any Director or Employee any redundancy payment scheme in addition to statutory redundancy pay, nor is there any agreed procedure for redundancy selection.
- 26.14 Since 22 January 2014, the Company (nor any predecessor or owner of any part of its businesses) has not been a party to a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Transfer of Undertakings (Protection of Employment) Regulations 2006 affecting any of the Employees or any other persons engaged in the business of the Company and no event has occurred which may involve such persons in the future being a party to such a transfer. No such persons have had their terms or employment varied for any reason as a result of or connected with such a transfer.
- 26.15 The Company is not a party to, bound by or proposing to introduce in respect of any current or former director, Employees or Workers of the Company any incentive scheme or arrangement (including, without limitation, any share option arrangements, commission, profit sharing or bonus scheme).
- 26.16 There are no incentive schemes or other incentive arrangements (including, without limitation, any share option arrangements, commission, profit sharing or bonus scheme) established by the Company or any other person in which any current or former director, Employee or Worker of the Company participates.
- 26.17 The Company has not incurred any actual or contingent liability in connection with the termination of the employment of any of its Employees (including redundancy payments) or for a failure to comply with any order for the reinstatement or re-engagement of any Employee.
- 26.18 The Company has not incurred any liability for a failure to provide information or to consult with Employees under any Employment Legislation.
- 26.19 The Company has not made or agreed to make a payment or provided or agreed to provide a benefit to a current or former director, officer, Employee or Worker or to their dependants in connection with the actual or proposed termination or suspension of employment or variation of an employment contract.

- 26.20 The Company is not involved in any material industrial or trade dispute or negotiation regarding a claim with any trade union, group or organisation of employees or their representatives representing Employees or Workers and there is nothing likely to give rise to such a dispute or claim.
- 26.21 No subject access requests made to the Company pursuant to the DPA 1998 by Employees or Workers are outstanding and the Company has complied with the provisions of the DPA 1998 in respect of all personal data held or processed by them relating to their current or former Employees and Workers.
- 26.22 The Company has not altered any of the terms of employment or engagement of its Employees or Workers, nor has it offered, promised or agreed to any future variation in the contract of any Employee or Worker.
- 26.23 The Company has not transferred or agreed to transfer any Employee or Worker from working for the Company or induced any Employee or Worker to resign their employment with the Company.
- 26.24 There are no sums owing to or from any current or former Employee or Worker other than reimbursement of expenses, wages for the current salary period, commission and bonus payments, and holiday pay that are not provided for in the Management Accounts.
- 26.25 There are no loans or notional loans to any current or former director, Employee or Worker or any of their nominees or associates made or arranged by the Company.
- 26.26 The Disclosure Letter includes:
- (a) anonymised copies of all different categories of contracts, handbooks, policies and other documents which apply to any of the Employees and Workers; and
 - (b) copies of all agreements or arrangements with any trade union, employee representative or body of employees or their representatives (whether binding or not) and details of any unwritten agreements or arrangements which may affect any Employee or Worker.
- 26.27 In respect of each Employee and Worker, the Company has:
- (a) performed all legally binding obligations and duties they are required to perform (and settled all outstanding claims), whether arising under contract, statute, at common law or in equity or under any treaties including the EU Treaty or the Treaty on the Functioning of the European Union or laws of the European Union or otherwise;
 - (b) complied with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not); and
 - (c) maintained adequate, suitable and up to date records.
- 26.28 No Employee is subject to a current disciplinary warning or procedure.
- 26.29 No employment-related securities or securities options (as defined in Part 7 of ITEPA 2003) (including, without limitation, shares in the Company and options over them) have been issued, granted or transferred by any person in connection with any current, former or proposed employment or office with the Company.
- 26.30 There are no securities, options over securities or interests in securities (other than those securities or options referred to in paragraph 26.29 above) in respect of which the Company may have to account for income tax or national insurance contributions liabilities (or equivalent obligations in any jurisdiction) issued, granted or transferred to any current or former director, Employee or Worker.
- 26.31 There are no employee benefit trusts, family benefit trusts or similar arrangements under which any current or former director, Employee or Worker or any of their nominees or associates may benefit in any form.
- 26.32 No payments have been made to Symotive in connection with the employment of Edward Bersey and/or Paul Sessions in respect of which PAYE or national insurance should have and have not been paid.

27. **Retirement benefits**

27.1 The Pension Scheme is the only arrangement under which the Company has or may have any obligation (whether or not legally binding) to provide or contribute towards pension, lump-sum, death, ill-health, disability or accident benefits in respect of its past or present officers and employees (“**Pensionable Employees**”). No proposal or announcement has been made to any employee or officer of the Company as to the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any other pension, lump-sum, death, ill-health, disability or accident benefit.

27.2 Accurate details of the Pension Scheme are set out in the Disclosure Letter, including (but not limited to):

- (a) copies of all documents governing the Pension Scheme and of any related announcements and explanatory booklets;
- (b) the two latest annual reports and accounts of the Pension Scheme;
- (c) a list of all Pensionable Employees who are members of the Pension Scheme with all details relevant to their membership and necessary to establish their entitlements under the Pension Scheme;
- (d) for each Pension Scheme that provides defined benefits, a true and complete copy of the most recent actuarial valuation of the Pension Scheme and a true and complete copy of all subsequent actuarial advice;
- (e) for each Pension Scheme that is an occupational pension scheme, all reports relating to the investment of the assets of the Pension Scheme during the last year and a list showing each asset of the Pension Scheme and its market value as at a date no earlier than one month before the date of this agreement; and
- (f) all agreements for the provision of services and any insurance contracts relating to the Pension Scheme.

The documents listed above contain complete details of all benefits payable in respect of the Pensionable Employees under the Pension Scheme (including any benefits payable to any Pensionable Employee on early retirement or redundancy under the Pension Scheme, or any previous scheme of which the Pensionable Employee was a member). No power to increase those benefits or to provide different benefits has been exercised, and there are no circumstances in which there is a practice of exercising such a power under the Pension Scheme.

27.3 The Company has complied with its automatic enrolment obligations as required by the Pensions Act 2008 (“PA 2008”) and associated legislation. No notices, fines, or other sanctions have been issued by the Pensions Regulator and no instances of non-compliance with the automatic enrolment obligations have been notified to the Pension Regulator in respect of the Company. Details of this compliance are set out in the Disclosure Letter, including (but not limited to):

- (a) any documents relating to the staging date for the Company;
- (b) copies of any correspondence between the Company and the Pensions Regulator regarding auto-enrolment, including details of their respective registration in accordance with regulation 3 of the Employers’ Duties (Registration and Compliance) Regulations 2010 (“**2010 Regulations**”);
- (c) copies of any records kept in accordance with regulations 5 to 8 of the 2010 Regulations in respect of the Employees;
- (d) if a personal pension scheme was used as a qualifying scheme (within the meaning of section 16(1) of the PA 2008), copies of any agreements between the provider and the jobholder under section 26 of the PA 2008;
- (e) details of any Employees who have opted out and copies of any opt-out letters in respect of those employees;
- (f) if a money purchase scheme is being used, a copy of any certification under section 28 of the PA 2008; and
- (g) if a defined benefit scheme is being used, a copy of the actuary’s or employer’s certificate that the scheme is a qualifying scheme, or a copy of the contracting-out certificate.

- 27.4 All contributions, insurance premiums, tax and expenses due to and in respect of the Pension Scheme have been duly paid. There are no liabilities outstanding in respect of the Pension Scheme at the date of this agreement. The contributions in respect of the Pension Scheme have been paid at the rates set out in the most recent schedule of contributions or the most recent payment schedule.
- 27.5 All death and disability benefits provided to the employees of the Company are fully insured by an insurance policy with an insurer of good repute. The Seller is not aware of any reason why these policies might be invalidated, or why the insurer might try to set them aside.
- 27.6 The Disclosure Letter contains details of the rates at which the contributions to the Pension Scheme of each of the Company and the employees are being paid and how they are calculated, and whether they are paid in advance or in arrear. All amounts due to the Pension Scheme have been paid.
- 27.7 No contribution notice or financial support direction under the Pensions Act 2004 has been issued to the Company or to any other person in respect of the Pension Scheme and there is no fact or circumstance likely to give rise to any such notice or direction.
- 27.8 The Pension Scheme is a registered pension scheme for the purposes of Chapter 2 of Part 4 of the Finance Act 2004 and there is no reason why HM Revenue & Customs might de-register the scheme.
- 27.9 If the Pension Scheme is a contracted-out scheme within the meaning of the Pension Schemes Act 1993, there is in force a contracting-out certificate covering the Company and there is no reason why the certificate might be cancelled. No Pension Scheme that provides money purchase benefits is contracted out on a final salary basis.
- 27.10 The Pension Scheme has been designed to comply with, and has been administered in accordance with, all applicable legal and administrative requirements and in compliance with its governing documents. The Company has complied in all material respects with its obligations under and in respect of the Pension Scheme.
- 27.11 For any Pension Scheme that provides defined benefits, the Actuary's report on the latest actuarial valuation describes the financial position of that Pension Scheme at its effective date. Nothing has happened since that date which would affect, to a material extent, the level of funding of that Pension Scheme. Since that date, contributions have been paid to that Pension Scheme at the rates recommended by the Actuary. No assets have been withdrawn from that Pension Scheme (except to pay benefits) since the effective date of the list of assets disclosed in the Disclosure Letter.
- 27.12 Prior to 1 October 2012, the Company provided access to a designated stakeholder scheme for their Pensionable Employees who are not members of the Pension Scheme, as required by section 3 of the Welfare Reform and Pensions Act 1999.
- 27.13 The Company has not discriminated against, or in relation to, any Pensionable Employee on grounds of age, sex, disability, marital status, hours of work, fixed-term or temporary agency worker status, sexual orientation, religion or belief in providing pension, lump-sum, death, ill-health, disability or accident benefits.
- 27.14 No claims or complaints have been made or so far as the Seller is aware, are pending or threatened in relation to the Pension Scheme or otherwise in respect of the provision of (or failure to provide) pension, lump-sum, death, ill-health, disability or accident benefits by the Company in relation to any of the Pensionable Employees. So far as the Seller is aware, there are no facts or circumstances likely to give rise to such claims or complaints.
- 27.15 No acts, omissions or other events have been reported to the Pensions Regulator under sections 69 or 70 of the Pensions Act 2004 and so far as the Seller is aware there is no fact or circumstance likely to give rise to such reports.
- 27.16 The Pension Scheme does not and has not accepted any contributions from a European employer as defined for the purposes of Part 7 of the Pensions Act 2004.
- 27.17 For any Pension Scheme that provides defined benefits, there has been no arrangement which might be construed as a compromise or a reduction of a statutory debt under section 75 or 75A of the Pensions Act 1995.
- 27.18 For any Pension Scheme that provides defined benefits, there is no amount that is treated as a debt due to the trustees of that Pension Scheme, or from the Company to the trustees of any other pension scheme, under section 75 or 75A of the Pensions

Act 1995 (or its predecessor, section 144 of the Pension Schemes Act 1993). The Company has never participated in any occupational pension scheme other than the Pension Scheme.

27.19 If the Pension Scheme is a money purchase scheme, that scheme provides money purchase benefits only as defined in section 181 of the Pension Schemes Act 1993.

28. Property

28.1 The definitions in this paragraph apply in this agreement.

“**Current Use**” means the permitted use under the terms of the Lease.

“**Leases**” means the leases under which the Property is held dated 23 January 2009, and 28 July 2014, and made between The Borough Council of Basingstoke and Deane (1) and the Company (2) and any and all supplemental documents.

“**Previously-owned Land and Buildings**” means land and buildings that have, at any time before the date of this agreement, been owned (under whatever tenure) and/or occupied and/or used by the Company, but which are either no longer owned, occupied or used by the Company, or are owned, occupied or used by it but pursuant to a different lease, licence, transfer or conveyance.

“**Planning Acts**” means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, and any other legislation from time to time regulating the use or development of land.

“**Property**” means the leasehold property comprised in the Leases, known as Ground and First Floor Premises at Eastlands One, 2 London Road, Basingstoke, Hampshire, as registered (insofar as required) at the Land Registry with title absolute under the number HP714160 and held pursuant to the Leases. Only the 2009 Lease was compulsorily registerable at grant and is therefore referred to in the register of title, the area demised in the 2014 Lease was demised for a term that did not trigger registration at grant.

“**Property Statutes**” means the Public Health Acts, Occupiers Liability Act 1957, Offices, Shops and Railway Premises Act 1963, Health and Safety at Work etc. Act 1974, Control of Pollution Act 1974, Occupiers Liability Act 1984, Environmental Protection Act 1990, Construction (Design and Management) Regulations 1994, Environmental Protection Act 1995, Equality Act 2010, Control of Asbestos Regulations 2012, Construction (Design and Management) Regulations 2007 and all other regulations, rules and delegated legislation under, or relating to, such statutes.

“**Statutory Agreement**” means agreement or undertaking entered into under section 18 of the Public Health Act 1936, section 52 of the Town and Country Planning Act 1971, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 106 of the Town and Country Planning Act 1990, section 104 of the Water Industry Act 1991 and any other legislation (later or earlier) similar to these statutes.

28.2 The Property is the only land and buildings owned, used or occupied by the Company. The Property comprises two units in the same building above one another, so that in effect the Company has the whole of the ground and first floor units of the building, save for the common parts.

28.3 The plans to the Leases look virtually identical, but they each demise similar areas at ground and first floor level. The 2014 lease was a later lease adding on the new space. The 2009 space is the only area with a repair responsibility limited by a schedule of condition. In the 2014 lease there is a stepped rent rather than an open market rent review as contained in the 2009 Lease.

28.4 The Company has no right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right, estate or interest in, or affecting, any land or buildings other than the Property.

28.5 Neither the Company nor any other company that has at any time been a subsidiary of the Company, has any subsisting actual or contingent liability in respect of Previously-owned Land and Buildings.

- 28.6 Save for indemnities given by the Company under the terms of the Leases, neither the Company nor any other company that has at any time been a subsidiary of the Company has given any subsisting guarantee or indemnity for any liability relating to any of the Property, any Previously-owned Land and Buildings or any other land or buildings.
- 28.7 All replies given in writing by or on behalf of the Seller in response to any enquiries raised in writing by or on behalf of the Buyer in relation to the Property were complete and accurate at the date they were given, and would still be complete and accurate if the replies were instead being given on the date of this agreement. In this paragraph 28.7, the expression in writing shall include e-mail.
- 28.8 The Company is solely legally and beneficially entitled to the Property.
- 28.9 The Company is in possession and actual occupation of the Property on an exclusive basis, and the Company has not granted, or agreed to grant, any right of occupation or enjoyment in respect of the Property to any third party.
- 28.10 So far as the Seller is aware there are no circumstance that could render any transaction affecting the title of the Company to the Property liable to be set aside under the Insolvency Act 1986.
- 28.11 The unexpired residue of the term granted by the Leases is vested in the Company.
- 28.12 In relation to the Leases, all principal rent and demanded additional rent and all demanded other sums payable by the lessee under the Leases ("**Lease Sums**") have been paid as and when they became due and no Lease Sums have been:
- (a) set off or withheld; or
 - (b) commuted or waived (save as revealed in replies to enquiries).
- 28.13 Save as revealed in replies to enquiries, no collateral assurances, undertakings or concessions have been made by any party to any of the Leases.
- 28.14 The Property (and the proceeds of sale from them) is free from:
- (a) any mortgage, debenture, charge (whether legal or equitable and whether fixed or floating), rent charge, lien or other right in the nature of security; and
 - (b) any agreement for sale, estate contract, option, right of pre-emption or right of first refusal,
- and there is no agreement or commitment to give or create any of them.
- 28.15 Save for public requirements and matters contained or referred to in the Lease or the registered title to the Property, the Seller is not aware of any covenants, restrictions, stipulations, easements, profits à prendre, wayleaves, licences, grants or other encumbrances (whether of a private or public nature, and whether legal or equitable) affecting the Property which conflict with the Current Use of the Property.
- 28.16 So far as the Seller is aware the Property is not subject to the payment of any outgoing other than non-domestic local business rates and water and sewerage charges, electricity, telephone, broadband and all other utility outgoing and charges incurred, principal rent, insurance premiums and service charges and all outgoing and payments as contained or referred to in the Leases. So far as the Seller is aware all outgoing that have been properly demanded against the Property during the term of the Leases have been paid when due and none is disputed.
- 28.17 So far as the Seller is aware there are no circumstances which (with or without taking other action), would entitle any third party to exercise a right of entry to, or take possession of all or any part of the Property, or which would in any other way affect or restrict the continued possession, enjoyment or use of any of the Property.
- 28.18 So far as the Seller is aware the Company has not (and nobody on its behalf has) expressly or impliedly waived any breach by any person of any covenant, agreement, restriction, stipulation or obligation relating to the Property or of which the Property has the benefit.
- 28.19 The Property is actively used by the Company in connection with the Business.

- 28.20 So far as the Seller is aware, there are no environmental risks that have had an impact on the use and enjoyment of the Property since the Company's occupation and no environmental notices have been received by the Company in relation to the Property itself and/or the areas surrounding the Property.
- 28.21 So far as the Seller is aware the Company has not received any notices, complaints or requirements issued or made (whether formally or informally) by any competent authority or undertaking exercising statutory or delegated powers in relation to the Property, the Current Use of the Property or any machinery, plant or equipment in them, and so far as the Seller is aware there is no matter or circumstance which could lead to any such notice, complaint or requirement being issued or made.
- 28.22 There exists no dispute between the Company and the owner or occupier of any other premises adjacent to or neighbouring the Property and the Seller has no actual knowledge of any matter or circumstance that could give rise to any such dispute.
- 29. Environment and health and safety**
- 29.1 The definitions in this paragraph apply in this agreement.
- "Environment"** means the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media.
- "EHS Laws"** means all applicable laws, statutes, regulations, subordinate legislation, bye-laws, common law and other national, international, federal, European Union, state and local laws, judgments, decisions and injunctions of any court or tribunal, codes of practice and guidance notes that are legally binding and in force as at the date of this agreement to the extent that they relate to or apply to the Environment or to the health and safety of any person.
- "EHS Matters:"** means all matters relating to:
- (a) pollution or contamination of the Environment;
 - (b) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or Waste;
 - (c) the exposure of any person to any Hazardous Substances or Waste;
 - (d) the health and safety of any person, including any accidents, injuries, illnesses and diseases;
 - (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment; or
 - (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it.
- "EHS Permits"** means any permits, licences, consents, certificates, registrations, notifications or other authorisations required under any EHS Laws for the operation of the Business or in relation to the Property.
- "Harm"** means harm to the Environment, and in the case of man, this includes offence caused to any of his senses or harm to his property.
- "Hazardous Substances"** means any material, substances or organism which, alone or in combination with others, is capable of causing Harm, including radioactive substances and materials containing asbestos.
- "Waste"** means any waste, including any bye-product of an industrial process and anything that is discarded, disposed of, spoiled, abandoned, unwanted or surplus, irrespective of whether it is capable of being recovered or recycled or has any value.
- 29.2 The Company has obtained and materially complied at all times since 22 January 2014 with all EHS Permits. All EHS Permits are in full force and effect, and there are no facts or circumstances that may lead to the revocation, suspension, variation or non-renewal of, or the inability to transfer, any EHS Permits.

- 29.3 The Company has at all times since 22 January 2014 operated materially in compliance with all EHS Laws and there are no facts or circumstances that may lead to any breach of or liability under any EHS Laws or any claim or liability in respect of EHS Matters.
- 29.4 So far as the Seller is aware there are no Hazardous Substances at, on or under, nor have any Hazardous Substances been emitted, escaped or migrated from the Property or any Previously-owned Land or Buildings.
- 30. Anti-corruption**
- 30.1 The definition in this paragraph applies in this agreement.
- “Associated Person” means in relation to a company, a person (including an employee, agent or subsidiary) who performs or has performed services for or on behalf of that company.
- 30.2 The Company is not, nor has it, at any time since 22 January 2014, engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.
- 30.3 No Associated Person of the Company has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of business for the Company, and the Company has in place adequate procedures in line with the guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent their Associated Persons from undertaking any such conduct.
- 30.4 The Company nor any of its Associated Persons is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.
- 30.5 The Company is eligible to be awarded any contract or business under section 23 of the Public Contracts Regulations 2006 or section 26 of the Utilities Contracts Regulations 2006 (each as amended).
- 31. Position since 31 May 2016**
- 31.1 Since 31 May 2016:
- (a) there has been no material adverse change in the business, assets, financial condition or trading position of the Company which has resulted or will result in a loss of revenue or liability for the Company in excess of £20,000 in aggregate;
 - (b) no transfers of value (including, without limitation, dividends, distributions, returns of capital and any acquisition or disposal of assets) have been made to the Seller or any person Connected with it by the Company;
 - (c) no debt or other amount owing to the Company by the Seller or any person Connected with it has been waived, forgiven or otherwise released (in whole or in part);
 - (d) no indemnity or waiver has been granted by the Company in favour of the Seller or any person Connected with it;
 - (e) the Company has not entered into any agreement or arrangement with the Seller or any person Connected with it in connection with any of the matters referred to in subparagraphs (b) to (d) inclusive above;
 - (f) the Company is not nor will it become obliged to pay any bonus or incentive, or to make or provide any other payment or benefit of any nature, to the Seller or any person Connected with it as a result of, or in connection with, the Transaction; and
 - (g) the Company has not incurred or paid, or will incur or pay, any costs or expenses to any person in connection with the Transaction, including any fees or expenses of any professional or other advisers.

Part 2. Tax warranties

1. Tax returns and compliance

- 1.1 The Company has within the relevant time limits correctly made all returns, given all notices and submitted all computations, accounts or other information required to be made, given or submitted to any Tax Authority and all such returns and other documentation were and are true, complete and accurate in all material respects.
- 1.2 All claims, elections and disclaimers assumed for the purposes of the Accounts or the returns have within the relevant time limits been correctly made and submitted, and remain valid in all respects and the Disclosure Letter contains details of any claims, elections, disclaimers, returns or other documentation which need to be submitted to a Tax Authority, where the time limit has not expired at Completion.
- 1.3 The Company has made no agreement or arrangement with a Tax Authority whereby it is assessed to or accounts for Tax other than in accordance with the strict terms of relevant legislation or published practice of the relevant Tax Authority.
- 1.4 The Company is not a qualifying company within the meaning of Schedule 46 of Finance Act 2009 (Duties of Senior Accounting Officers of Qualifying Companies).
- 1.5 The Company is not subject to a legally binding obligation (whether or not conditional) that it has entered into prior to Completion outside of the ordinary course of business that is likely to result in an Event after Completion that will give rise to a Liability for Taxation (as such terms are defined in the Tax Covenant).

2. Deductions and Payments of Tax

- 2.1 The Company has:
- (a) properly deducted and/or withheld from payments made by it all Tax required to be deducted and/or withheld; and
 - (b) within the relevant time limits paid or accounted for all Tax which it is or was liable to pay or account for (including Tax required to be deducted or withheld from payments).
- 2.2 The Company is not liable to pay corporation tax in instalments for the accounting period which will be current at Completion.

3. Records

- 3.1 The Company has maintained and is in possession of all records required for Tax purposes and all such records remain true, complete and accurate. In particular, without limitation, the Company has sufficient records to enable it to calculate any present or, so far as possible, future liability for Tax or its entitlement to any deduction, relief or repayment of Tax and any claims or elections it has made relating to Tax.

4. Penalties, disputes and investigations

- 4.1 The Company is not, and has not been liable to pay any fine, interest, surcharge or penalty in relation to Tax, nor has it been involved in any dispute with, or the subject of an enquiry or investigation by, a Tax Authority and there are no facts which are likely to cause it to become liable to pay any fine, interest, surcharge or penalty nor so far as the Seller is aware to give rise to any such dispute, enquiry or investigation.
- 4.2 No enquiry which has been made into a Tax return of the Company remains outstanding.

5. Secondary Liabilities

- 5.1 No Tax has been or may be assessed on or required to be paid by the Company where the amount in question is the primary liability of another person, and where such assessment or requirement arises or arose by reason of the failure by any other person to satisfy a Tax liability.

6. Close Company

6.1 The Company is a close company for the purposes of United Kingdom Tax but:

- (a) it is not and has never been a close investment holding company for the purposes of Section 34 CTA 2010; and
- (b) it has not made any loan to any participator or any associate for the purposes of Section 455 CTA 2010 or provided any payment or benefit to a participator which has or could be treated as a distribution for the purposes of Section 1064 CTA 2010.

7. Residence and Overseas Matters

7.1 The Company is, and has always has been, resident only in the United Kingdom for Tax purposes (and has never been treated as resident outside the United Kingdom for the purposes of any double tax convention).

7.2 The Company is not carrying on and has never carried on any trade or otherwise been liable to Tax other than in the United Kingdom, or is acting or has ever acted as the branch, agent, factor, or tax representative of any person resident outside the United Kingdom for Tax purposes and no such person carries on any trade or business through the Company.

8. Employment Taxes

8.1 The Company has properly operated the PAYE system and complied in all material respects with all its obligations in respect of national insurance contributions and has complied in all material aspects with all its reporting, accounting and payment obligations to the relevant authorities in connection with payments (including notional payments), expenses and benefits provided to or on behalf of employees, workers, consultants, officers or directors (including former employees, workers, consultants, officers or directors) of the Company or others.

8.2 No employee or director or former employee or director of the Company or any person associated with any of them holds or has ever held any shares or securities or options over or interests in any shares or securities of the Company and the Company could not be liable after Completion to pay national insurance contributions or account for income tax or national insurance under the PAYE system in respect of, or in consequence of any event occurring in relation to, any such shares, securities, options or interests.

8.3 In relation to all employment-related securities (as defined in section 421B(8) ITEPA 2003) in relation to which the Company is or has been or will be the employer (as defined in section 421B(8) ITEPA 2003), each relevant employee has entered into an election pursuant to section 431(1) ITEPA 2003 in the form approved by HMRC within 14 days of the acquisition of the employment-related securities (by him or any other person) and in relation to all securities options, such an election is required to be entered into by the relevant employee as a condition of exercise of the option.

8.4 No event has occurred, or will or may occur on or after Completion in respect of any employment related securities (as defined in section 421 B(8) ITEPA 2003) or any securities option (as defined in section 420 ITEPA 2003) which are in existence at or before Completion, which has or will, or may give rise to any current or former employee or director of the Company (or any person who is or may be treated for the purposes of any Tax as a current or former employee or director of the Company) being treated as having employment income under any of the provisions of Part 7 ITEPA 2003.

8.5 The Company has complied with all relevant reporting obligations contained in part 7 of ITEPA 2003 and the schedules referred to in that Part. Any event or circumstance occurring or existing on or prior to Completion which the Company will or may be required to report pursuant to Part 7 is set out in the Disclosure Letter providing all such information and details as may be required to comply in full with Part 7.

8.6 No payments or loans have been made to, nor any assets made available or transferred to, nor any assets earmarked, however informally, for the benefit of, any employee or former employee (or any associate of such employee or former employee) of the Company by an employee benefit trust or another third party, falling within the provisions of Part 7A ITEPA 2003.

8.7 There are no trusts or other arrangements in place, whether funded or established by the Company, under which any employees or former employees of the Company or any persons associated with such employees or former employees can obtain a benefit in any form.

9. VAT and Indirect Taxes

- 9.1 The Company is registered in the United Kingdom for the purposes of the legislation relating to VAT and is not registered, and is not required to register, in any other jurisdiction in respect of VAT or any similar tax
- 9.2 The Company is not a member of a group for VAT purposes and no other companies are or have been treated as a member of the same group of companies as the Company for the purposes of Section 43 VATA 1994, and neither Section 43(1AA) VATA 1994 nor Section 43(2A) VATA 1994 has applied or could apply in relation to a member of such groups.
- 9.3 The Company:
- (a) has not been given any penalty liability notice within Section 64 VATA 1994, any surcharge liability notice within Section 59 or 59A VATA 1994 or any written warning within Section 76(2) VATA 1994; and
 - (b) is not required to make payments on account of VAT pursuant to the Value Added Tax (Payments on Account) Order 1993 or to give security to a Tax Authority in relation to VAT or customs or excise duties.
- 9.4 All supplies made by the Company are taxable supplies.
- 9.5 There are no restrictions on the Company opting to tax or making a real estate election and so from charging VAT on any payment made by the tenant, licensee or occupier under any lease, tenancy, licence or agreement to which any of the Property is subject.
- 9.6 The Company is not bound and has not agreed to become bound by any contract, lease or licence under the terms of which, or in respect of which, by virtue of section 89 VATA 1994 the Company is or could become liable to pay any increased consideration as a result of the making in the future of an option to tax or real estate election under paragraphs 2 or 21 (respectively) of schedule 10 VATA 1994.
- 9.7 All Intrastat returns and declarations that the Company is required by law to file with, or deliver to, any authority in any jurisdiction have been correctly made up and duly filed or delivered.
- 9.8 The Company has complied with all statutory provisions, rules, regulations, orders and directions in respect of VAT, promptly submitted accurate returns, and maintained full and accurate VAT records, invoices and other requisite documents. The Company has not been:
- (a) subject to any interest, forfeiture, surcharge or penalty;
 - (b) given any notice under sections 59, 59A or 64 of VATA 1994;
 - (c) given a warning within section 76(2) of VATA 1994; or
 - (d) required to give security under paragraph 4 of Schedule 11 to VATA 1994.
- 9.9 In relation to the cross-border VAT changes which took effect from 1 January 2010 under the provisions of section 76 to 78 of and Schedule 36 to the Finance Act 2009:
- (a) the Company has a record of the VAT registration number of all EU business customers and has provided its own VAT registration number to all its suppliers who are resident in an EU Member State;
 - (b) the accounting system of the Company produces promptly and accurately the information required for completion of the EC sales lists;
 - (c) the Company does not supply or purchase cross-border services the VAT treatment of has been or will be affected by the changes in the place or time of supply rules; and
 - (d) no repayments of VAT have been claimed by the Company in the 12 months ending on the date of this agreement from the tax authorities of any EU Member State other than the UK, and as at Completion, the Company will not have any outstanding entitlement to make such a claim.

10. Chargeable Gains

10.1 Neither the execution nor completion of this agreement, nor any other event since the Accounts Date, will result in any chargeable asset being deemed to have been disposed of and re-acquired by the Company or any Subsidiary for Tax purposes under:

- (a) section 179 of TCGA 1992;
- (b) sections 345 and 346 of CTA 2009;
- (c) sections 630-632 of CTA 2009;
- (d) section 780 or 785 of CTA 2009 (or under paragraph 58 or 60 of Schedule 29 to the Finance Act 2002); or
- (e) as a result of any other Event (as defined in the Tax Covenant) since the Accounts Date.

10.2 There has been no transaction to which any of the following provisions applies, or could apply, in respect of any asset held by the Company:

- (a) section 23 of TCGA 1992 (compensation and insurance monies);
- (b) section 135 and 136 of TCGA 1992 (reconstructions and amalgamations);
- (c) section 139 of TCGA 1992 (transfers of assets on reconstructions and amalgamations);
- (d) section 152-154 (inclusive) of TCGA 1992 (replacement of business assets);
- (e) sections 140A and 140C of TCGA 1992 (transfer of a trade);
- (f) section 165 of TCGA 1992 (gifts of business assets);
- (g) section 171-171(c) and 173 of TCGA 1992 (intra-group transfers);
- (h) section 247-248 of TCGA 1992 (compulsory acquisitions); and
- (i) section 242(2) of TCGA 1992 (small part disposals of land).

11. Groups

11.1 The Company has no outstanding obligation to make or any entitlement to receive any payment to or from another company in respect of any amounts surrendered, or agreed to be surrendered, by way of group relief, either to or by the Company.

11.2 No liability to Tax (disregarding any statutory right to make any election, or to claim any allowance or relief) will or may arise to the Company or be increased as a result of or in consequence of the entry into this Agreement and/or the sale of the Company pursuant to this Agreement.

11.3 The Company is not a party to any group payment arrangement made under section 59F of the TMA 1970.

12. Intangible Assets

12.1 The amounts at which intangible fixed assets (as defined in Part 8 CTA 2009) are included in the Accounts and/or the amounts of consideration given on the acquisition of any intangible assets by the Company since the Accounts Date are such that on the disposal of any intangible asset for a consideration equal to such amount (disregarding any statutory right to make any election or to claim any allowance or relief), no liability to Tax will arise.

12.2 All debits and credits in respect of the Company's intangible fixed assets are brought into account by the Company as debits or credits (as the case may be) for the purpose of Part 8 to the CTA 2009 at the time and to the extent that such debits and credits are recognised in the statutory accounts of the Company.

13. Loan Relationships and Derivative Contracts

- 13.1 All debits and credits in respect of the Company's loan relationships or derivative contracts are brought into account by the Company as debits or credits for the purposes of Part 5 CTA 2009 (Loan Relationships) or Part 7 CTA 2009 (Derivative Contracts) as the case may be) at the time and to the extent that such debits and credits are recognised in the statutory accounts of the Company.
- 13.2 The carrying value of any loan relationship or derivative contract in the statutory accounts of the Company is equal to the face value of the debt or the amount or value of the consideration given for the acquisition of the rights under that loan relationship or contract.

14. Stamp Taxes

- 14.1 All instruments executed by the Company which are subject to stamp duty or stamp duty land tax and by virtue of which the Company has any rights have been duly stamped and, where appropriate, stamped with the particulars delivered stamp by HM Revenue & Customs and the Company has not executed outside the United Kingdom any instrument relating to any property situated or to any matter or thing done, or to be done, in any part of the United Kingdom.
- 14.2 No relief from stamp duty or stamp duty land tax previously granted will or may be withdrawn on or in connection with the sale of the Company pursuant to this Agreement.
- 14.3 Any document that may be necessary or desirable in proving the title of the Company to any asset which is owned by the Company at the date of this agreement, and each document which the Company may wish to enforce or produce in evidence, is duly stamped for stamp duty purposes. No such documents which are outside the UK would attract stamp duty if they were brought into the UK
- 14.4 The Company has not:
- (a) entered into a contract to purchase any land or an agreement to take a lease of any land which in either case has not been completed by a conveyance or the grant of a lease; or
 - (b) entered into a land transaction where there will or may be an obligation in the future to make a further land transaction return; or
 - (c) applied to defer payment of stamp duty land tax under section 90 Finance Act 2003.

15. Inheritance Tax

- 15.1 Neither the assets nor the shares of the Company are or may be subject to any charge by virtue of section 237 IHTA 1984, no person has or may have the power under section 212 IHTA 1984 to raise inheritance tax by sale or mortgage of, or a terminable charge on, the Company's assets or shares and the Company has not made any transfer of value to which Part IV IHTA 1984 might apply.

16. Anti-avoidance

- 16.1 Neither the Company nor any connected company within the meaning of section 1122 CTA 2010 has carried out, been party to, or otherwise involved in any transaction:
- (a) which could give rise to a liability to Tax under any legislation introduced to counter tax avoidance;
 - (b) where the sole or main purpose or one of the main purposes was the avoidance of Tax or the obtaining of a tax advantage, whether as part of a scheme, arrangement, series of transactions or otherwise; and/or
 - (c) in relation to which the Company considered or was advised that there was a risk of a liability or increased liability to Tax in accordance with principles established in relation to tax avoidance in case law.

- 16.2 The Company has not been party to any transaction in respect of which a different amount or value than the amount or value of the actual consideration given or received by the Company should or could be substituted for Tax purposes including, for the avoidance of doubt, any transaction to which Part 4 TIOPA 2010 does or might apply.
- 16.3 The Company has not been party to or otherwise involved in any transaction in respect of which disclosure has been made or is required pursuant to Part 7 Finance Act 2004 or Schedule 11A VATA 1994.
- 16.4 In relation to each transaction for the supply of goods or services or the lending or borrowing of money into which the Company has entered with a party with which it was connected, the Company has full contemporaneous documentary evidence of the process used to establish that arm's length terms applied.

17. **Loan Relationships**

- 17.1 All interests, discounts and premiums payable by the Company in respect of its loan relationships (within the meaning of section 302 of CTA 2009) are eligible to be brought into account by the Company as a debit for the purposes of Part 5 of CTA 2009 at the time, and to the extent that such debits are recognised in the statutory accounts of the Company.
- 17.2 The Company is not, nor has it been in the seven years prior to the date of this agreement, party to a debtor relationship (within the meaning of section 302(6) of CTA 2009), to which Chapter 8 of Part 5 of CTA 2009 applies or may apply.
- 17.3 The Company is not party to a loan relationship made other than on arm's length terms. There are no circumstances in which section 445 or 447 of CTA 2009 could apply to require an adjustment of debits and/or credits brought into account by the Company.
- 17.4 The Company has not been a party to a loan relationship which had an unallowable purpose (within the meaning of section 442 of CTA 2009).

18. **Other Taxes**

The Company is not registered or required to register for insurance premium tax, landfill tax, climate change levy or aggregates levy.

1. **Interpretation**

1.1 The definitions and rules of interpretation in this paragraph apply in this Tax Covenant.

“**Accounts Relief**” means:

- (a) any Relief (including the right to a repayment of Tax) shown as an asset in the Completion Date Balance Sheet; and
- (b) any Relief that has been taken into account in computing (and so reducing or eliminating) any provision for deferred Tax in the Completion Date Balance Sheet.

“**Buyer’s Relief**” means:

- (a) any Accounts Relief;
- (b) any Relief which arises in connection with any Event occurring after Completion; and
- (c) any Relief, whenever arising, of the Buyer or any member of the Buyer’s Tax Group other than the Company.

“**Buyer’s Tax Group**” means the Buyer and any other company or companies which are from time to time treated as members of the same group as, or otherwise connected or associated in any way with, the Buyer for any Tax purpose.

“**Dispute**” means any dispute, appeal, negotiations or other proceedings in connection with a Tax Claim.

“**Event**” includes (without limitation) the expiry of a period of time, the Company becoming or ceasing to be associated with any other person for any Tax purpose or ceasing to be or becoming resident in any country for any Tax purpose, the death or the winding up or dissolution of any person, the earning, receipt or accrual for any Tax purpose of any income, profit or gains, the incurring of any loss or expenditure, and any transaction (including the execution and completion of all provisions of this agreement), event, act or omission whatsoever, and any reference to an Event occurring on or before a particular date shall include Events which, for Tax purposes, are deemed to have, or are treated or regarded as having, occurred on or before that date.

“**Group Relief**” means any or all of the following:

- (a) relief surrendered or claimed under Part 5 of the CTA 2010 (Chapter IV of Part X of ICTA 1988);
- (b) advance corporation tax capable of being surrendered or claimed under regulation 13 of the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (SI 1999/358);
- (c) a Tax refund capable of being surrendered or claimed under section 963 of the CTA 2010 (section 102 of the Finance Act 1989);
- (d) the notional transfer of an asset or reallocation of a gain or loss under sections 171A or 179A of TCGA 1992 and the notional reallocation of a gain under section 792 of the CTA 2009 (paragraph 66 of Schedule 29 to the Finance Act 2002 for accounting periods ending before 1 April 2009); and
- (e) any other Relief available between members of a group for Tax purposes.

“**HMRC**” means HM Revenue & Customs.

“**ICTA 1988**” means the Income and Corporation Taxes Act 1988.

“Liability for Taxation” means:

- (a) any liability of the Company to make a payment of Tax, whether or not the same is primarily payable by the Company and whether or not the Company has or may have any right of reimbursement against any other person or persons, in which case the amount of the Liability for Taxation shall be the amount of the actual payment;
- (b) the Loss, otherwise than by use of setting off, of any Accounts Relief in which case the amount of the Liability for Taxation will be the amount of Tax which would (on the basis of Tax rates current at the date of such Loss) have been saved but for such Loss, assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief or where the Relief is the right to repayment of Tax, the amount of the repayment; and
- (c) the use or setting off of any Buyer’s Relief in circumstances where, but for such set off or use, the Company would have had a liability to make a payment of or in respect of Tax for which the Buyer would have been able to make a claim against the Seller under this Tax Covenant, in which case, the amount of the Liability for Taxation shall be the amount of Tax for which the Seller would have been liable but for such set off or utilisation.

“Loss” means any reduction, modification, loss, counteraction, nullification, utilisation, disallowance or clawback for whatever reason.

“Overprovisions” means the amount by which any provision for tax (other than deferred tax) in the Completion Date Balance Sheet is overstated, except where that overstatement arises due to:

- (a) a change in law;
- (b) a change in the accounting bases on which the Company values its assets;
- (c) a voluntary act or omission of the Buyer of any employee or officer of the Buyer or any member of the Buyer’s Tax Group, that, in each case, occurs after Completion.

“Relief” includes any loss, relief, allowance, credit, exemption or set off in respect of Tax or any deduction in computing income, profits or gains for the purposes of Tax and any right to a repayment of Tax.

“Saving” means the reduction or elimination of any liability of the Company to make an actual payment of corporation tax in respect of which the Seller would not have been liable under paragraph 2, by the use of any Relief arising wholly as a result of a Liability for Taxation in respect of which the Seller has made a payment under paragraph 2 of this Tax Covenant or from the circumstances giving rise to such payment.

“Seller’s Group” means the Seller and any other company or companies (other than the Company) that are (or become) after Completion, or have in the seven years ending at Completion been members of the same group, or otherwise connected or associated in any way with the Seller for Tax purposes.

“Seller’s VAT Group” means the VAT Group, within the meaning of sections 43A to 43C of the VATA 1994, of which a member of the Seller’s Group is the representative member.

“Tax or Taxation” means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction (including, for the avoidance of doubt, employer’s and employee’s National Insurance contributions in the UK and corresponding obligations elsewhere) but excluding rates and business rates and any penalty, fine, surcharge and interest, relating thereto (including interest and penalties arising from the failure of the Company to make adequate instalment payments under the Corporation Tax (Instalments Payments) Regulations 1998 (SI 1998/3175) in any period ending on or before Completion).

“Tax Claim” means any assessment, notice, demand, letter or other document issued or action taken by or on behalf of any Taxation Authority, self-assessment or other occurrence from which it appears that the Buyer, the Company is or may be subject to a Liability for Taxation or other liability in respect of which the Seller is or may be liable under this Tax Covenant.

“**Taxation Authority**” means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect Tax in the UK or elsewhere.

“**Taxation Statute**” means any directive, statute, enactment, law or regulation wheresoever enacted or issued, coming into force or entered into providing for or imposing any Tax and shall include orders, regulations, instruments, bye-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

1.2 References to gross receipts, income, profits or gains earned, accrued or received shall include any gross receipts, income, profits or gains deemed under the relevant Taxation Statute to have been or treated or regarded as earned, accrued or received. References to a repayment of Tax shall include any repayment supplement or interest in respect of it.

1.3 Any reference to something occurring in the ordinary course of business shall not include:

- (a) anything that involves, or leads directly or indirectly to, any liability of the Company to Tax that is, or but for an election would have been, the primary liability of, or properly attributable to, or due from another person (other than a member of the Buyer’s Tax Group);
- (b) anything that relates to or involves the acquisition or disposal (or deemed acquisition or disposal) of an asset or the supply of services (including the lending of money, or the hiring or licensing of tangible or intangible property) in a transaction which is not entered into on arm’s length terms;
- (c) anything that relates to or involves the making of a distribution or deemed distribution for Tax purposes, the creation, cancellation or re-organisation of share or loan capital, the creation, cancellation or repayment of any connected-party or intra-group debt or the Company becoming or ceasing to be or being treated as ceasing to be a member of a group of companies or becoming or ceasing to be associated or connected with any other company for any Tax purposes;
- (d) anything which relates to any scheme, transaction or arrangement designed partly or wholly or containing steps or stages partly or wholly for the purpose of avoiding or reducing or deferring a Liability for Taxation;
- (e) anything that gives rise to a Liability for Taxation on deemed (as opposed to actual) profits or to the extent that it gives rise to a Liability for Taxation on an amount of profits greater than the difference between the sale proceeds of an asset and the amount attributable to that asset in the Accounts or, in the case of an asset acquired since the Accounts Date, the cost of that asset; or
- (f) anything that involves, or leads directly or indirectly to, a change of residence of the Company for Tax purposes;
- (g) any liability arising as a result of the failure to properly deduct or account for Tax, or to comply with the provisions of any Tax legislation or subordinate legislation (including regulations) and any act, omission or transaction that gives rise to any fine, penalty, surcharge, interest or other imposition relating to any Tax; or
- (h) any de-grouping charges arising or triggered as a result of Completion.

1.4 Unless the contrary intention appears, words and expressions defined in this agreement have the same meaning in this Tax Covenant and any provisions in this agreement concerning matters of construction or interpretation also apply in this Tax Covenant.

1.5 Any stamp duty which is charged on any document, or in the case of a document which is outside the UK, any stamp duty which would be charged on the document if it were brought into the UK, which is necessary to establish the title of the Company to any asset, and any interest fine or penalty relating to such stamp duty, shall be deemed to be a liability of the Company to make an actual payment of Taxation in consequence of an Event arising on the last day on which it would have been necessary to pay such stamp duty in order to avoid any liability to interest or penalties arising on it.

1.6 References to the due date for payment of any Tax shall mean the last day on which that Tax may, by law, be paid without incurring any penalty, fine, surcharge, interest, charges, costs or other similar imposition (after taking into account any postponement of the date that was obtained for the payment of that Tax).

1.7 It is anticipated by the Buyer that the accounting reference date of the Company will be changed so as to coincide with Completion but in the event that this does not take place it shall be assumed for the purposes of determining whether a Liability for Taxation or any Relief arises on, before or after Completion, that the date of Completion is the end of an accounting period for the purposes of section 10 CTA 2009.

2. **Covenant**

2.1 The Seller covenants with the Buyer that, subject to the provisions of this Tax Covenant, the Seller shall pay to the Buyer an amount equal to any:

- (a) Liability for Taxation resulting from or by reference to Completion or any Event occurring on or before Completion or in respect of any gross receipts, income, profits or gains earned, accrued or received by the Company on or before Completion, whether or not such liability has been discharged on or before Completion;
- (b) Liability for Taxation, including liability for payments in respect of Taxation, which arises solely as a result of the relationship for Tax purposes of the Company with any person other than a member of the Buyer's Tax Group, whensoever arising;
- (c) Liability for Taxation which arises at any time (being a liability for the Company to account for income tax or National Insurance contributions) in respect of the grant, exercise, surrender, exchange or other disposal of an option or other right to acquire securities or in respect of any acquisition, holding or disposal of employment-related securities (as defined for the purposes of Part 7 of ITEPA 2003) where the acquisition of the security or the grant of the option or other right to acquire the security occurred on or before Completion;
- (d) Liability for Taxation that arises at any time under Part 7A of ITEPA 2003 including any liability arising as a consequence of any payments or loans made to, any assets made available or transferred to, or any assets earmarked, however informally, for the benefit of, any employee or former employee of the Company, or for the benefit of any relevant person, by an employee benefit trust or another third party where the arrangement giving rise to the charge was entered into at a time when the third party was acting on the instructions of, or for the benefit of, the Seller or an associate of the Seller;
- (e) liability of the Company to make a payment, or to make a repayment of the whole or any part of any payment, to any person (other than a member of the Buyer's Tax Group) in respect of Group Relief under any arrangement or agreement entered into by the Company on or before Completion save to the extent that the payment or repayment is reflected in the Completion Date Balance Sheet;
- (f) loss, in whole or in part, of the right of the Company to receive any payment (other than from a member of the Buyer's Tax Group) for Group Relief under any arrangement or agreement entered into on or before Completion where the payment was taken into account in the Completion Date Balance Sheet;
- (g) Liability for Taxation being a liability for inheritance tax which:
 - (i) is a liability of the Company and arises as a result of a transfer of value occurring or being deemed to occur on or before Completion (whether or not in conjunction with the death of any person whensoever occurring);
 - (ii) has given rise at Completion to a charge on, or a power to sell, mortgage or charge, any of the Sale Shares or assets of the Company; or
 - (iii) gives rise after Completion to a charge on, or a power to sell, mortgage or charge, any of the Sale Shares in or assets of the Company as a result of the death of any person within seven years of a transfer of value which occurred before Completion;

- (h) reasonable costs and expenses (including legal costs) properly and reasonably incurred by the Buyer or the Company in connection with any Liability for Taxation or other liability in respect of which the Seller is liable under this Schedule, any Tax Claim or in successfully taking or defending any action under this Tax Covenant.

2.2 For the purposes of this Tax Covenant, in determining whether a charge on the shares in or assets of the Company arises at any time or whether there is a liability for inheritance tax, the fact that any Tax may be paid in instalments shall be disregarded and such Tax shall be treated for the purposes of this Tax Covenant as becoming due or to have become due and a charge as arising or having arisen on the date of the transfer of value or other date or Event on or in respect of which it becomes payable or arises.

2.3 The provisions of section 213 of IHTA 1984 (refund by instalments) shall be deemed not to apply to any liability for inheritance tax within this paragraph 2.

3. **Payment Date and Interest**

3.1 Payment by the Seller in respect of any liability under this Schedule must be made in cleared and immediately available funds on the following days:

- (a) in the case of a Liability for Taxation that involves an actual payment of or in respect of Tax, the later of two Business Days before the due date for payment and seven Business Days after the date on which the Buyer serves notice on the Seller requesting payment;
- (b) in the case of the loss of a right to repayment of Tax or a liability under paragraph 2.1(e), paragraph 2.1(f) or paragraph 2.1(g) seven Business Days following the date on which the Buyer serves notice on the Seller requesting payment;
- (c) in a case that involves the loss of a Relief (other than a right to repayment of Tax), the last date on which the Tax is or would have been required to be paid to the relevant Taxation Authority in respect of the earlier of:
 - (i) the period in which the Loss of the Relief gives rise to an actual liability to pay tax; or
 - (ii) the period in which the Loss of the Relief occurs (assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief); or
- (d) in a case that falls within paragraph (c) of the definition of Liability for Taxation, the date on which the Tax saved by the Company is or would have been required to be paid to the relevant Taxation Authority.

3.2 If the Liability for Tax is a liability to corporation tax payable by instalments under the Corporation Tax (Instalment Payments) Regulations 1998 (SI 1998/3175):

- (a) the notice served by the Buyer on the Seller under paragraph 3.1 shall state the amount of the liability due for payment on each instalment date for the accounting period in which the Liability for Tax arises; and
- (b) the due dates for payment of the Tax in paragraph 3.1(a) to paragraph 3.1(d) shall be the due dates for payment of each of the instalments.

3.3 If any sums required to be paid by the Seller under this Tax Covenant are not paid on the date specified in paragraph 3.1, then, except to the extent that the Seller's liability under paragraph 2 compensates the Buyer for the late payment by virtue of it extending to interest and penalties, such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 4% per annum over the base rate from time to time of Lloyds Bank plc or (in the absence thereof) at such similar rate as the Buyer shall select from the day following the due date up to and including the day of actual payment of such sums, such interest to be compounded quarterly

4. **Exclusions**

4.1 The covenant contained in paragraph 2 above shall not cover any Liability for Taxation to the extent that:

- (a) provision or reserve (other than a provision for deferred tax) in respect of the liability is made or reflected in the Completion Date Balance Sheet;
- (b) such Liability for Taxation was discharged on or before Completion and the discharge of such Liability for Taxation was reflected in the Completion Date Balance Sheet;
- (c) it arises as a result of a transaction in the ordinary course of business of the Company between the Accounts Date and Completion and is not an interest or penalty;
- (d) it arises or is increased as a result only of any change in the law of Tax (other than a change targeted specifically at countering a tax avoidance scheme) announced and coming into force after Completion (whether relating to rates of Tax or otherwise) or the withdrawal of any extra-statutory concession previously made by a Taxation Authority (whether or not the change purports to be effective retrospectively in whole or in part);
- (e) it would not have arisen but for a change in accounting policies (including a change in accounting reference date) or accounting bases on which the Company values its assets (other than a change made to comply with UK GAAP) after Completion;
- (f) the Buyer is compensated for any such matter under any other provision of this agreement;
- (g) a Relief other than a Buyer's Relief is available to the Company to reduce or eliminate the liability in question or would have been so available had it not been utilised by the Company or the Buyer after Completion in relation to a liability for which the Seller would not be liable under paragraph 2;
- (h) it would not have arisen but for a voluntary act, transaction or omission of the Company or the Buyer or any member of the Buyer's Tax Group or any employee or officer of them outside the ordinary course of business after Completion and which the Buyer or the relevant party was aware or ought reasonably to have been aware would give rise to the Liability for Taxation or other liability in question (and for this purpose ceasing to trade or changing the nature of the trade at any time before January 2017 is a voluntary act which the Buyer is aware could give rise to a Liability for Taxation); or
- (i) the liability in question is interest and/or penalties which arise only because the Buyer has failed to comply with its obligations under paragraph 9; and
- (j) the liability in question arises or is increased by reason of or in consequence of:
 - (i) any claim, disclaimer, election or surrender made or notice or consent given or any other thing done by the Buyer or any member of the Buyer's Tax Group after Completion, including (without prejudice to the generality of the foregoing) any disclaimer of capital allowances, in circumstances where such claim, disclaimer, election, notice or consent was not taken into account in the preparation of the Completion Date Balance Sheet; or
 - (ii) any failure by the Buyer or a member of the Buyer's Tax Group after the date of this Schedule 4 to make any claim, disclaimer, election or surrender or give any notice or consent or do any other thing after Completion, the making, giving or doing of which was taken into account in the Completion Date Balance Sheet; or
 - (iii) the amendment after Completion of any claim, disclaimer, election, surrender, notice or consent made or given on or before Completion;
- (k) the liability in question arises or is increased as a result of the failure of the Buyer to comply with the provisions of paragraphs 9 and 11 of this Schedule 4; or

- (l) the liability is a liability for interest or a penalty under the Corporation Tax (Instalment Payments) Regulation 1998 referable to any instalment payment due on or before Completion which:
 - (i) would not have arisen but for the entering into of the Agreement or the income, profits or gains earned, accrued or received by the Company after Completion proving to be greater than the income, profits or gains expected to be earned, accrued or received by the Company after Completion; or
 - (ii) is otherwise attributable to any delay or default on the part of the Buyer or the Company after Completion; or
- (m) the liability in question has been made good by insurers or otherwise compensated for without cost to the Buyer or the Company.

4.2 For the purposes of paragraph 4.1(h), an act will not be regarded as voluntary if undertaken pursuant to a legally binding obligation entered into by the Company on or before Completion or imposed on the Company by any legislation whether coming into force before, on or after Completion or for the purpose of avoiding or mitigating a penalty imposed by such legislation, or if carried out at the written request of the Seller shall not be regarded as a voluntary act.

5. Limitations

5.1 The parties recognise that the provisions of clause 9.2 of this agreement govern the maximum liability of the Seller under the Tax Covenant and all Substantiated Claims.

5.2 The liability of the Seller under paragraph 2 will terminate on:

- (a) the twenty-second anniversary of Completion, in respect of any claim under paragraph 2 for a liability arising from a loss of tax brought about fraudulently or deliberately by the Company or any related person, including a liability arising from an arrangement caught by Part 7A of ITEPA 2003 or from a failure by the Company to comply with an obligation under section 309, 310 or 313 of the Finance Act 2004 to disclose information about a tax avoidance scheme to which it has been a party; or
- (b) the seventh anniversary of Completion, in any other case, except in respect of any claim under paragraph 2 of which notice in writing is given to the Seller before that relevant date containing, to the extent reasonably practicable, a description of such claim and the estimated total amount of the claim.

6. Overprovisions and Savings

6.1 If, on or before the seventh anniversary of Completion, the Buyer believes that there is an Overprovision or a Saving, the Buyer shall notify the Seller and if the auditors for the time being of the Company determine (at the request and expense of the Seller) that there is an Overprovision or Saving, then:

- (a) the amount of any Overprovision or Saving shall first be set off against any payment then due from the Seller under this Tax Covenant;
- (b) to the extent that there is an excess, a refund shall be made to the Seller of any previous payment or payments made by the Seller under this Tax Covenant (and not previously refunded under this Tax Covenant) up to the amount of that excess; and
- (c) to the extent that the excess referred to in paragraph 6.1(b) is not exhausted, the remainder of that excess will be carried forward and set off against any future payment or payments that become due from the Seller under this Tax Covenant.

6.2 After the Company's auditors have made a determination under paragraph 6.1, the Seller or the Buyer may, at any time before the seventh anniversary of Completion, request the auditors for the time being of the Company to review and, if necessary and as appropriate, amend the original determination (at the expense of the party requesting the review, or where a payment becomes due under this paragraph 6.2, at the expense of the party required to make that payment) and an adjusting payment equal to the amount of any disparity between the original and revised determinations shall be made by or to the Seller as soon as reasonably practicable.

7. **Recovery from third parties**

7.1 Where the Seller is or may be liable to pay an amount in full discharge of a liability under paragraph 2 in respect of any Liability for Taxation and the Buyer or the Company is or becomes entitled to recover from some other person (not being the Buyer, the Company or any other company within the Buyer's Tax Group or any officer or employee of any of them and not pursuant to the terms of the OLR Share Purchase Agreement which shall be dealt with pursuant to clause 12), any amount in respect of such Liability for Taxation, the Buyer shall or procure that the Company shall:

- (a) notify the Seller of its entitlement as soon as reasonably practicable; and
- (b) if required by the Seller and, subject to the Buyer and the Company being indemnified by the Seller against any Tax that may be suffered on receipt of that amount and any costs and expenses incurred in recovering that amount, take or procure that the Company takes all reasonable steps to enforce that recovery against the person in question (keeping the Seller fully informed of the progress of any action taken) provided that the Buyer shall not be required to take any action under this paragraph 7.1 (other than an action against:
 - (i) a Taxation Authority; or
 - (ii) a person who has given Tax advice to the Company on or before Completion), which, in the Buyer's reasonable opinion, is likely to harm its or the Company's commercial or employment relationship (potential or actual) with that or any other person.

7.2 If the Buyer, or the Company recovers any amount referred to in paragraph 7.1 the Buyer shall account to the Seller for the lesser of:

- (a) any amount recovered (including any related interest or related repayment supplement) less any Tax suffered in respect of that amount and any costs and expenses incurred in recovering that amount (except to the extent that amount has already been made good by the Seller under paragraph 7.1(b)); and
- (b) any amount paid by the Seller under paragraph 2 in respect of the Liability for Taxation in question.

8. **Surrender of group relief or other election**

8.1 Subject to, and in accordance with, the provisions of this paragraph 8, if any liability of the Seller under this Tax Covenant or for any claim under the Tax Warranties can be reduced or eliminated by:

- (a) the surrender of Group Relief by the Seller or any other company (other than a member of the Buyer's Tax Group or a company connected with the Buyer), to the Company; or
- (b) the making of an election for any gain on the disposal or notional disposal of an asset by the Company to be treated as accruing to a member of the Seller's Group, the Seller may make, or procure the making of, any surrender or election and the Buyer shall procure that the Company shall take any action that the Seller reasonably request on reasonable notice to ensure that the surrender or election is validly made.

8.2 The Company shall not be liable to give any consideration for any surrender of or election in relation to Group Relief under paragraph 8.1.

9. **Corporation tax returns**

9.1 The Seller or its duly authorised agents shall, at the Company's cost and expense, prepare the corporation tax returns and computations of the Company for all accounting periods ended on or before Completion and submit them to the Buyer.

9.2 The Buyer shall procure that the returns and computations referred to in paragraph 9.1 shall be authorised, signed and submitted to the relevant Tax Authority without amendment or with any amendments as the Buyer reasonably considers to be necessary and shall give the Seller or its agents all reasonable assistance (at the Seller's cost and expense) to finalise those returns and computations, save where the return or computation is not full, true and accurate in all material respects.

- 9.3 The Seller or its duly authorised agent(s) shall, at the Company's cost and expense, prepare all documents and shall have conduct of all matters (including correspondence) relating to the corporation tax returns and computations of the Company for all accounting periods ended on or before the Completion provided that the Seller shall not, without the prior written consent of the Buyer (not to be unreasonably withheld or delayed), transmit any communication (written or otherwise) to the relevant Tax Authority or agree any matter with the relevant Tax Authority.
- 9.4 The Buyer shall procure that the Company provide such access to the Company's books, accounts and records as is necessary and reasonable to enable the Seller or its duly authorised agents to prepare the corporation tax returns and computations of the Company for all accounting periods ended on or before the Completion and conduct matters relating to them in accordance with this paragraph 9.
- 9.5 The Seller shall take all reasonable steps to ensure that the corporation tax returns and computations of the Company for all accounting periods ended on or before the Completion are prepared and submitted to the relevant Tax Authority as soon as possible.
- 9.6 For the avoidance of doubt:
- (a) where any matter relating to Tax gives rise to a Tax Claim, the provisions of paragraph 10 shall take precedence over the provisions of this paragraph 9; and
 - (b) the provisions of this paragraph 9 shall not prejudice the rights of the Buyer to make a Tax Claim under this Tax Covenant in respect of any Liability for Taxation.

10. Conduct of Tax Claims

- 10.1 Subject to paragraph 10.2, if the Buyer or the Company becomes aware of a Tax Claim, the Buyer shall give or procure that notice in writing is given to the Seller as soon as is reasonably practicable, provided always that the giving of such notice shall not be a condition precedent to the Seller's liability under this Tax Covenant.
- 10.2 If the Seller becomes aware of a Tax Claim, it shall notify the Buyer in writing as soon as reasonably practicable, and, on receipt of such notice, the Buyer shall be deemed to have given the Seller notice of the Tax Claim in accordance with the provisions of paragraph 10.1.
- 10.3 Subject to paragraph 10.4, provided the Seller indemnifies the Buyer and the Company to the Buyer's reasonable satisfaction against all liabilities, costs, damages or expenses which may be incurred thereby including any additional Liability for Taxation, the Buyer shall (subject to, if the Buyer acting reasonably so elects and only in relation to an instruction appealing a Claim before any court or tribunal, the Seller producing a satisfactory opinion from a barrister of not less than 10 years standing that the matter in question has a better than even chance of success) take and shall procure that the Company shall take such action that the Seller may reasonably request by notice in writing given to the Buyer to avoid, dispute, defend, resist, appeal, request an internal HMRC review or compromise any Tax Claim. The Seller shall be entitled to request that conduct is delegated to it or take action in the name of the Company.
- 10.4 Neither the Buyer nor the Company shall be obliged to appeal or procure an appeal against any assessment to Tax if the Buyer, having given the Seller written notice of such assessment, does not receive written instructions from the Seller in 20 Business Days to do so.
- 10.5 If:
- (a) the Seller does not request the Buyer to take any action under paragraph 10.3 or fails to indemnify the Buyer, or the Company to the Buyer's reasonable satisfaction within a period of time (commencing with the date of the notice given to the Seller) that is reasonable, having regard to the nature of the Tax Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing, requesting a review or compromising such Tax Claim, and which period shall not in any event exceed a period of 20 days; or
 - (b) the Seller (or the Company before Completion) has been involved in a case involving fraudulent conduct or deliberate default in respect of the Liability for Taxation which is the subject matter of the Dispute, the Buyer or the Company shall have the conduct of the Dispute absolutely (without prejudice to its rights under this Tax Covenant) and shall be free to pay or settle the Tax Claim on such terms as the Buyer or the Company may in its absolute discretion consider fit.

- 10.6 Where the Dispute involves an appeal against a determination by the Tax Chamber of the First-tier Tribunal (or, for appeals lodged before 1 April 2009, a determination by the Tax Chamber of the First-tier Tribunal or Higher Tribunal), the matter shall not be pursued unless the Seller has obtained the opinion of Tax counsel of at least ten years' standing that there is a reasonable prospect that the appeal will succeed.
- 10.7 The Buyer shall provide and shall procure that the Company provides to the Seller and the Seller's professional advisors reasonable access to premises and personnel, and to any relevant assets, documents and records in their power, possession or control to investigate the matter and enable the Seller to take any action referred to in this paragraph 10.7.
- 10.8 Neither the Buyer nor the Company shall be subject to any claim by or liability to the Seller for non-compliance with any of the foregoing provisions of this paragraph 10 if the Buyer or the Company has bona fide acted in accordance with the instructions of the Seller.
- 11. Grossing up**
- 11.1 All sums payable by the Seller to the Buyer under this Tax Covenant shall be paid free and clear of all deductions or withholdings whatsoever unless the deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any of the sums payable under this Tax Covenant, the Seller shall pay to the Buyer such sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 11.2 If the Buyer incurs a taxation liability which results from, or is calculated by reference to, any sum paid under this Tax Covenant, the amount so payable shall be increased by such amount as will ensure that, after payment of the taxation liability, the Buyer is left with a net sum equal to the sum it would have received had no such taxation liability arisen.
- 11.3 If the Buyer would, but for the availability of a Buyer's Relief, incur a taxation liability falling within paragraph 11.2, it shall be deemed for the purposes of that paragraph to have incurred and paid that liability.
- 11.4 In the event that the Buyer assigns the benefit of this Agreement amounts payable under this paragraph shall be no greater than if no such assignment had not been made.
- 12. Value added tax groups**
- 12.1 The Seller will, on or before Completion, give notice to HMRC (copying the notice to the Buyer) that the Company will cease to be under its control with effect from Completion and will use its best endeavours to procure that the date on which the Company ceases to be a member of the Seller's VAT Group, falls on Completion.
- 12.2 The Buyer will procure that the Company provides to the representative member of the Seller's VAT Group all information relating to the Company required to prepare the VAT return of the Seller's VAT Group for any period that the Company has been a member of that VAT Group at least ten Business Days before the last date for submission of that return.
- 12.3 The Buyer will procure that the Company contribute to the representative member of the Seller's VAT Group that proportion of any VAT for which the representative member of the Seller's VAT Group is accountable that is properly attributable to supplies, acquisitions and importations ("**Supplies**") made before Completion by the Company (less any amount of deductible input tax that is attributable to those Supplies) and for which specific provision is made in the Completion Date Balance Sheet.
- 12.4 Any contribution made under paragraph 12.3 shall be made in cleared funds the later of ten Business Days after demand is made for it and ten Business Days before the day on which the representative member must account for that VAT to HMRC.
- 12.5 The Seller shall pay, or shall procure to be paid, to the Company an amount equivalent to the proportion of any repayment of VAT received by the representative member from HMRC or of any credit obtained by reference to an excess of deductible input tax over output tax that is attributable to Supplies made, or deemed to be made, by the Company while a member of the Seller's VAT Group (ignoring, for this purpose, the deeming provisions in section 43(1) of VATA 1994) within ten Business Days of receipt by, or offset against a liability of, the representative member.

- 12.6 The Company shall make no contribution, under this paragraph 12, to the extent that it relates to an amount for which the Seller is liable to the Buyer under this agreement (disregarding any limitations on claims imposed under this agreement) or would have been so liable had the Company never been a member of the Seller's VAT Group and had instead been separately registered for VAT.
- 12.7 The Seller shall procure that an amount equal to any payment made by the Buyer under this paragraph shall be promptly and duly accounted for to HMRC.
- 13. Buyer's covenants**
- 13.1 Subject to paragraph 13.2 the Buyer covenants with the Seller to pay to the Seller an amount equal to any Liability for Tax of the Company (disregarding for these purposes any Relief of the Seller's Group which is available to mitigate such Liability for Tax), which is assessed on the Seller or member of the Seller's Group or any controlling director of a Seller as a result of the Company failing to pay any Tax for which it is primarily liable, including all costs and expenses incurred by the relevant person in connection therewith and any liability arising as a result of the failure of the Buyer or the Company to apply an amount paid by the Seller to the Buyer under this Schedule 4 or in satisfaction of a claim for breach of the Tax Warranties to discharge a liability to which the amount relates.
- 13.2 Paragraph 13.1 shall not apply in respect of any Tax which gives rise to a liability for the Sellers to make a payment to the Buyer under this Schedule 4 or the Agreement and which has not yet been paid.
- 13.3 Any payment which the Buyer is obliged to make pursuant to paragraph 13.1 shall be made on or before the date which is five Business Days before the Seller is obliged to pay the Tax in question in order to avoid interest or penalties and any payment not made on or before the due date for payment pursuant to this paragraph shall carry interest at the rate of 4% above the base rate of Lloyds Bank plc from the due date until payment.
- 13.4 If any payment received by the Seller under this paragraph is subject to Tax, the Buyer shall pay to the Seller such additional amount (after taking into account any Tax payable in respect of such additional amount) as will ensure that the Seller receive and retain a net amount equal to the full amount which they would have received and retained had the payment not been subject to tax and in applying this paragraph 13.4 no account shall be taken of the extent to which any Liability to Tax may be mitigated or offset by any Relief available to the Seller so that where any Relief is available the additional amount payable under this paragraph 13.4 shall be the amount which would have been payable in the absence of such Relief.
- 13.5 The Buyer agrees to procure that the Company will continue trading during the 30 days after Completion.
- 14. General**
- 14.1 All payments made by the Seller to the Buyer or by the Buyer to the Seller in accordance with this Tax Covenant will be treated, to the extent possible, as an adjustment to the consideration for the Sale Shares.
- 14.2 The Buyer shall in its absolute discretion decide whether to make a claim under this Tax Covenant or the Tax Warranties or both but for the avoidance of doubt there shall be no double recover in respect of the same subject matter.

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Schedule 7 Intellectual Property Rights

Part 1. Registered Intellectual Property Rights

“Conexus” Trademark (no 2495984) filing date 22 August 2008

Domain name	Registered owner
cnxs.us	Seller
conexuslimited.com	Seller
conexushybris.com	Seller
conexus-commerce.com	Seller
conexuscommerce.com	Seller
conexus.co.uk	Company
conexuscommerce.co.uk	Company
olrconexus.com	Seller

Part 2. Material unregistered Intellectual Property Rights

“Keystone” unregistered trade mark owned by the Company.

Conexus project delivery process document – see documents 8.3 and 8.9 in the data room is owned by the Company.

Keystone methodology document – see document 5.1.5 in the data room is owned by the Company.

All Databases created by the Company that are held in the following software: Kimble (salesforce light) – SAAS; Microsoft NAV – Part of the Barker Tilly service; Glasscubes – online collaboration software; Atlassian – JIRA; Atlassian – Confluence; Atlassian Mercurial/Bitbucket; MySQL for development, Jenkins used in connection with the Business, are owned by the Company.

All material marketing materials, methodologies, know-how and technical designs and approach documents as may be employed by the Company to carry on its Business and market its services to prospective and existing clients.

All confidential information as may be used by the Business to implement its business plan and product/service roadmap.

All credentials, configuration data, licence and cryptographic keys, used in connection with the Business are owned by the Company apart from any of the foregoing owned or supplied by any third party including by Hybris/SAP.

All contract templates, template specifications, SOWs and internal policies and procedures which are material to the Company’s Business.

Conexus SCA Template – see document 5.16.2 in the data room is owned by the Company.

Conexus EWA Template – see document 5.16.1 in the data room is owned by the Company.

Conexus marketing presentation template – see document 10.1 in the data room is owned by the Company apart from any customer or supplier trade marks used.

Part 3. Third party licences, agreements, authorisations and permissions

Third party	Licensed rights
Hybris	Licence to use the software and documentation – see document 5.1.3 in the data room
Secure Trading	To use promotional documents or other branded materials – see document 5.1.17 in the data room
SAP Partner Edge	Trade mark licence for the use of the SAP logo and to resell SAP products – see documents 5.1.11 to 5.1.16 (inclusive) in the data room
Rackspace	Rackspace trade marks and associated materials – see document 5.1.10 in the data room
Ingenico	Licence to use the software related to the Ogone service – see document 5.1.4 in the data room
Cybersource	Licence to use Cybersource trade marks, service marks and marketing documentation – see document 5.1.2 in the data room

The list of software in Schedule 8 is owned by the relevant third party supplier and used by the Company under licence.

Part 4. Licenses and consents in favour of third parties

[deleted]

Part 5. Third Party Intellectual Property Rights

The Company uses some registered Intellectual Property Rights including registered trade marks owned by its customers and suppliers on marketing materials.

“Velocity” unregistered trade mark owned by the Seller and used by the Seller and the Company.

The list of software in Schedule 8 is owned by the relevant third party supplier and is used by the Company under licence.

Open source software – Open source helpdesk providing portal access for customers pursuant to the following terms at <https://www.otrs.com/company/terms-of-use/>.

Schedule 8 Particulars of IT System and IT Contracts

[deleted]

Schedule 9 The Property

Description of the Property	Parts of Ground Floor and First Floor Eastlands One, London Road, Basingstoke, Hampshire RG21 4BE
Description of Leases (lease, underlease, licence, date and parties)	Leases dated 23 January 2009 and 28 July 2014 in each case made between The Borough Council of Basingstoke and Deane (1) and Conexus Limited (2)
Owner	Basingstoke and Deane Borough Council
Registered/unregistered	Registered (2009 lease), Unregistered (2014 lease)
Title number (if registered)	HP714160
Contractual date of termination of lease	22 January 2019 (in respect of both Leases)
Occupier	Conexus Limited
Current Use	Office accommodation within class B1(a) of the Schedule to the Town & Country Planning (Use Classes) Order 1987 as amended by the Use Classes (Amendment) Order 2005

Schedule 10 Buyer Warranties

1. Organisation of the Buyer

- 1.1 The Buyer is a corporation duly organised, validly existing and in good standing under the laws of the State of Delaware, and has the requisite corporate power and authority to carry on its business as now conducted by it.
- 1.2 The Buyer is duly licensed or qualified in each jurisdiction in which the ownership or operation of its assets or the character of its activities is such as to require it to be so licensed or qualified, except where such failures to be so licensed or qualified would not reasonably be expected, individually or in the aggregate, to interfere with, prevent or delay the ability of the Buyer to enter into and perform its obligations under this agreement or the other documents referred to in it or consummate the transactions contemplated hereby or thereby.

2. Due Authorisation

- 2.1 The execution, delivery and performance by the Buyer of this agreement and the other documents referred to in it and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of the Buyer and have been duly authorised by all necessary corporate action on the part of the Buyer. This agreement has been duly and validly executed and delivered by the Buyer and, assuming due authorisation, execution and delivery of this agreement by the Seller, the Covenantor and the Guarantor, constitutes a valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as limited by Applicable Law affecting the enforcement of creditors' rights generally, by general equitable principles or by the discretion of any Governmental Entity before which any proceedings seeking enforcement may be brought. Each other document referred to in this agreement to which the Buyer is a party shall be duly and validly executed by the Buyer at or prior to the date hereof and, upon the execution and delivery thereof by the Buyer and the due authorisation and valid execution and delivery of such document by each other party thereto, shall constitute a legal, valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms, except as limited by Applicable Law affecting the enforcement of creditors' rights generally, by general equitable principles or by the discretion of any Governmental Entity before which any proceedings seeking enforcement may be brought.

3. Governmental Authorisation

- 3.1 The execution, delivery and performance by the Buyer of this agreement and the other documents referred to in it to which it is a party and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Entity, other than any such action or filing as to which the failure to make or obtain would not reasonably be expected, individually or in the aggregate, to interfere with, prevent or delay the ability of the Buyer to enter into and perform its obligations under this agreement or the other documents referred to in it or consummate the transactions contemplated hereby or thereby.

4. Noncontravention

- 4.1 The execution, delivery and performance by the Buyer of this agreement and the other documents referred to in it to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and shall not (a) violate the certificate of incorporation or bylaws of the Buyer, (b) assuming compliance with the matters referred to in paragraph 3, violate any Applicable Law or (c) constitute a material default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit to which the Buyer is entitled under any provision of any contract binding upon the Buyer, except, in the case of sub-paragraph (b) and this paragraph (c), as would not reasonably be expected, individually or in the aggregate, to interfere with, prevent or delay the ability of the Buyer to enter into and perform its obligations under this agreement or the other documents referred to in it or consummate the transactions contemplated hereby or thereby.

5. Financial Ability

- 5.1 The Buyer has access to sufficient cash to fund the consummation of the transactions contemplated by this agreement (including the payment of the Completion Cash Payment, as such amount is adjusted pursuant to the terms herein), perform its obligations under this agreement and satisfy all other costs and expenses arising in connection therewith.

6. **Litigation**

6.1 There are no proceedings or investigations pending against or, so far as the Buyer is aware, threatened against, the Buyer, except for such proceedings as would not reasonably be expected, individually or in the aggregate, to interfere with, prevent or delay the ability of the Buyer to enter into and perform its obligations under this agreement or the other documents referred to in it or consummate the transactions contemplated hereby or thereby.

7. **Financial Statements**

7.1 The Buyer's audited consolidated financial statements for the fiscal year ended December 31, 2015 and unaudited consolidated interim financial statements for the three-month period ended 31 March, 2016 (including, in each case, any related notes and schedules thereto) (collectively, the "**Buyer Financial Statements**") (i) have been prepared in accordance with US GAAP, consistently applied during the periods involved (except as otherwise stated in the footnotes related thereto or, in the case of interim financial statements, for normal year-end adjustments) and (ii) fairly present, on such bases, in all material respects the financial position of the Buyer for the time periods indicated.

8. **Buyer Stock**

8.1 All Buyer Stock, when issued in accordance with this agreement, will be validly issued, fully paid, and non-assessable.

9. **Finders' Fees**

9.1 There is no investment banker, broker, finder or other intermediary which has been retained by or is authorised to act on behalf of the Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this agreement or the other documents referred to in it, except as shall be paid directly by the Buyer and for which the Seller has no liability.

10. **Purchase for Investment**

10.1 The Buyer is purchasing the Sale Shares for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof.

1. **Insurance**

The Seller shall not be liable in respect of a Claim where the Buyer or the Company recovers under a policy of insurance in respect of any matter or circumstance giving rise to the Claim. The Seller's liability in respect of any such Claim shall be reduced by the amount so recovered under such policy of insurance (less all reasonable costs, charges and expenses incurred by the Buyer in recovering that sum), or extinguished if the amount so recovered exceeds the amount of the Claim.

2. **Change in law**

The Seller shall not be liable in respect of any Claim to the extent that it arises, or its value is increased, as a result of a change in any law, legislation, rule or regulation (including any new law, legislation, rule or regulation) that comes into force or otherwise takes effect after the date of this agreement. The provisions of this paragraph shall not apply in respect of: (a) any primary legislation which has received Royal Assent before the date of this agreement, but which comes into force after Completion; or (b) any subordinate legislation of which a draft has been laid before the House of Commons before the date of this agreement.

3. **Voluntary acts**

3.1 The Seller shall not be liable in respect of any Claim to the extent that the matter or circumstance giving rise to such Claim arises, occurs or is otherwise attributable to, or the Seller's liability pursuant to such Claim is increased as a result of:

- (a) any voluntary act, omission, transaction or arrangement of the Buyer or the Company (or their respective directors, employees or agents) on or after Completion except where such act, transaction, omission or arrangement was:
 - (i) carried out or effected pursuant to a legally binding obligation entered into on or before the date of this agreement; or
 - (ii) in the ordinary course of business of the Company as carried on at Completion; or
- (b) any voluntary act, omission, transaction or arrangement carried out at the written request or with the written consent of the Buyer before Completion; or
- (c) any change in the accounting bases, policies, practices or methods applied in preparing any accounts or valuing any assets or liabilities of the Company introduced or having effect after Completion (other than to the extent necessary to comply with the law or UK GAAP applying and in force on or prior to Completion).

3.2 The Seller shall not be liable in respect of any Claim to the extent that the liability pursuant to such Claim comprises penalties, charges or interest arising directly or indirectly from any act, omission, transaction or arrangement of the Buyer or the Company after Completion.

4. **Conduct of third party claims**

4.1 The provision of this paragraph 4 shall apply in the event that any third party brings or makes (or threatens to bring or make) any claim, demand, action or proceedings against either of the Buyer or the Company which may reasonably be considered likely to give rise to a Claim (a "**Third Party Claim**").

4.2 In the event of a Third Party Claim, the Buyer shall:

- (a) as soon as reasonably practicable, give written notice of the Third Party Claim to the Seller, specifying in reasonable detail the nature of the claim;
- (b) keep the Seller reasonably informed of the progress of the Third Party Claim and of any material developments in relation to the Third Party Claim;

- (c) if requested by the Seller, provide to the Seller (at the Seller's expense) copies of any material correspondence or other documents relating to the Third Party Claim (subject to legal professional privilege and any obligations of confidence that are binding on the Buyer or any other member of its Group); and
- (d) use reasonable endeavours to consult with the Seller regarding the conduct of the Third Party Claim.

4.3 Subject to paragraph 4.4, the Buyer shall not (and shall procure that no other member of the Buyer's Group shall) agree any compromise or settlement, or make any payment in relation to, a Third Party Claim without the prior written consent of the Seller, such consent not to be unreasonably withheld or delayed, provided that nothing in this paragraph shall prevent the Buyer from agreeing (or permitting to be agreed) any compromise or settlement, or from making any payment in respect of a Third Party Claim if the Buyer considers that a failure to do so would be prejudicial to its interests (or the interests of any other member of its Group), or would otherwise damage the goodwill of its business (or of any other member of its Group).

4.4 The provisions of paragraphs 4.1 and 4.2 shall not apply in relation to a Third Party Claim if and to the extent that it would render any policy of insurance maintained by or available to the Buyer or the Company (or any other member of the Buyer's Group) void or voidable, or entitle the relevant insurer to repudiate or rescind any such policy in whole or in part, or in the event that a relevant insurer exercises its right to take over conduct of the Third Party Claim.

4.5 Any failure by the Buyer to comply with its obligations in paragraph 4.1 in relation to a Third Party Claim shall not relieve the Seller from, or reduce its liability in respect of, any related Claim.

5. **No Rescission**

The Buyer agrees that rescission shall not be available as a remedy for any breach of this agreement and the Buyer shall not be entitled to rescind or terminate this agreement (in each case save in the event of fraud).

Executed (but not delivered until the date hereof) as a deed by **OLR (UK) LIMITED** acting by a director, in the presence of: _____

Signature of witness _____
Name of witness _____
Address _____

Signed (but not delivered until the date hereof) as a deed by **KENNETH WILLIAM WEHR** in the presence of: _____

Signature of witness _____
Name of witness _____
Address _____

Signed (but not delivered until the date hereof) as a deed on behalf of **PFSWEB INC**, a company incorporated in the State of Delaware, by a person who, in accordance with the laws of that territory, is acting under the authority of the company, in the presence of: _____

Signature of witness _____
Name of witness _____
Address _____

Signed (but not delivered until the date hereof) as a deed on behalf of **OLR GROUP PTY LTD**, a company incorporated in Australia, by two directors who, in accordance with the laws of that territory, are acting under the authority of the company, in the presence of: _____
Director

Director

Signature of witness _____
Name of witness _____
Address _____

INDUSTRIAL LEASE AGREEMENT
BETWEEN
US INDUSTRIAL REIT III - MIDWEST
AS LANDLORD
AND
PRIORITY FULFILLMENT SERVICES, INC.
AS TENANT

Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
Bldg. H

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Exhibit "A" -	Demised Premises
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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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INDUSTRIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "**Lease**") is made as of the "**Lease Date**" (as defined in Section 37 herein) by and between US INDUSTRIAL REIT III - MIDWEST, a Texas real estate investment trust ("**Landlord**"), and PRIORITY FULFILLMENT SERVICES, INC., a Delaware corporation ("**Tenant**") (the words "**Landlord**" and "**Tenant**" to include their respective legal representatives, successors and permitted assigns where the context requires or permits).

W I T N E S S E T H:

1. Basic Lease Provisions. The following constitute the basic provisions of this Lease:

- (a) Demised Premises Address: 1560 E. Stateline Road
Suite 101
Southaven, Mississippi 38671
- (b) Demised Premises Square Footage: approximately 198,162 sq. ft.
- (c) Building Square Footage: approximately 373,644 sq. ft.
- (d) Annual Base Rent: Annualized payments of the Monthly Base Rent Payments described in subsection (e) below.
- (e) Monthly Base Rent Installments:

The 60-day period commencing on the Lease Commencement Date (the " First Period "):	\$0.00 (subject to <u>Section 1(g)</u> , which governs the abatement of the monthly Base Rent of \$53,668.88 for the First Period)
The approximately 10-month period commencing on the Base Rent Commencement Date and ending on the last day of the 10 th full calendar month thereafter and includes any Fractional Month (as defined below in this section)* (the " Second Period "):	\$53,668.88
The 12-month period commencing on the day following the last day of the Second Period (the " Third Period "):	\$54,876.42
The 12-month period commencing on the day following the last day of the Third Period (the " Fourth Period "):	\$56,111.14

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The 12-month period commencing on the day following the last day of the Fourth Period (the "Fifth Period"):	\$57,373.64
The 14-month period commencing on the day following the last day of the Fifth Period (the "Sixth Period"):	\$58,664.55

*As used in this Lease, a "Fractional Month" (i) shall occur if the Second Period does not commence on the first (1st) day of a calendar month and (ii) is comprised of the period commencing on the first day of the Second Period and ending on the last day of the calendar month in which the Second Period commences. By way of example, if the Lease Commencement Date occurs on June 15, 2016, then (i) the First Period shall end on August 14, 2016, (ii) the Base Rent Commencement Date and first day of the Second Period shall occur on August 15, 2016, (iii) the Second Period (which includes the Fractional Month comprised of August 15-31, 2016) shall end on June 30, 2017, (iv) the Third Period shall commence on July 1, 2017 and end on June 30, 2018, (v) the Fourth Period shall commence on July 1, 2018 and end on June 30, 2019, (vi) the Fifth Period shall commence on July 1, 2019 and end on June 30, 2020, and (vii) the Sixth Period shall commence on July 1, 2020 and end on August 31, 2021. The Base Rent applicable to the Second Period shall include the prorated amount applicable to any such Fractional Month, which prorated amount shall be due on the first day of the Fractional Month. Upon the request of either party after the Lease Commencement Date, Landlord and Tenant shall promptly execute **Exhibit F** Notice of Lease Term Dates in order to confirm the Lease Commencement Date, Base Rent Commencement Date, the Expiration Date and the first and last days of the First Period, Second Period, Third Period, Fourth Period, Fifth Period, Sixth Period, and any Fractional Month.

(f) Lease Commencement Date: The later of (i) the date Landlord delivers possession of the Demised Premises to Tenant; or (ii) June 15, 2016; provided that completion of Improvements (as hereafter defined) shall not be required prior to delivery to Tenant.

(g) Base Rent Commencement Date: The 61st day following the Lease Commencement Date, subject to the terms of this Section 1(g). If any Event of Default occurs under this Lease prior to the Base Rent Commencement Date, the Base Rent abatement provided for herein shall immediately terminate, and all Base Rent which has then previously been abated shall immediately become due and payable.

(h) Expiration Date: The last day of the Sixth Period.

(i) Primary Term: Sixty-two (62) months plus any Fractional Month.

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(j) Tenant's Operating Expense Percentage:

During the First Period:	53.04%
During the Second Period:	53.04%
During the Third Period:	53.04%
During the Fourth Period:	53.04%
During the Fifth Period:	53.04%
During the Sixth Period:	53.04%

(k) Security Deposit: \$50,000.00, subject to the terms of Section 5 hereof.

(l) Permitted Use: Storage and distribution of durable and non-durable consumer and business goods and products, and office and administrative uses reasonably ancillary thereto, all to be conducted in compliance with the other terms of this Lease and applicable governmental regulations, restrictions and permitting (without the necessity of obtaining any zoning changes, conditional use permits or other special use permits), (collectively, the "**Initial Use**"), or, subject to the limitations hereinafter specified, for any other lawful distribution center and/or warehousing use; provided, however, that Tenant shall obtain Landlord's prior written consent to a use which is different from the Initial Use and which involves the distribution, warehousing or other handling or use of either (1) Hazardous Substances (as defined in Section 16) not used by Tenant in its Initial Use and which would materially increase the risk of Contamination (as defined in Section 16) or materially adversely affect the value or marketability of the Demised Premises if a Contamination involving such Hazardous Substances were to occur, or (2) noxious substances not used by Tenant in its Initial Use and which would likely cause or create a nuisance or trespass for, or otherwise disturb the quiet enjoyment of, any other tenant and occupant of the Building (as hereinafter defined), and provided further, however, that Tenant's use of the Demised Premises (i) shall never include any use prohibited by any provision contained in this Lease (including, without limitation, Section 16 hereof), (ii) shall never extend to or allow the use or storage of radioactive or biohazardous materials at the Demised Premises, or any use wherein a Hazardous Substance (as defined in Section 16) constitutes the principal or primary product of the business to be conducted at the Demised Premises, (iii) shall never include any heavy manufacturing, and (iv) must not result in a material increase in the wear and tear on the Demised Premises, as compared to the Initial Use.

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(m) Address for notice:

Landlord: US Industrial REIT III - Midwest
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attention: VP Real Estate Counsel
Attention: VP Portfolio Management

Tenant: Priority Fulfillment Services, Inc.
505 Millennium Drive
Allen, Texas 75013
Attn: Chief Financial Officer

(n) Address for rental payments:

US Industrial REIT III - Midwest
P. O. Box 202235
Dept. 23508
Dallas, TX 75320-2235

(o) Broker(s):

Tenant: Jack Wohrman
Jones Lang LaSalle
1661 International Drive, Suite 330
Memphis, TN 38120

Landlord: Mark Jenkins
Commercial Advisors Asset Services, LLC
5101 Wheelis Drive, Suite 320
Memphis, TN 38117

(p) Guarantor(s):

PFSweb, Inc.
505 Millennium Drive
Allen, Texas 75013
Attn: Chief Financial Officer

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2. **Demised Premises.** For and in consideration of the rent hereinafter reserved and the mutual covenants hereinafter contained, Landlord does hereby lease and demise unto Tenant, and Tenant does hereby hire, lease and accept, from Landlord all upon the terms and conditions hereinafter set forth the following premises, referred to as the "**Demised Premises**", as outlined on **Exhibit A** attached hereto and incorporated herein: an agreed upon approximately 198,162 square feet of space, having an address as set forth in Section 1(a), located within Building H (the "**Building**"), which contains a total of an agreed upon approximately 373,644 square feet and is located within Stateline Business Park (the "**Project**"), located in DeSoto County, Mississippi. The parties acknowledge that the number of square feet recited above has been conclusively determined and is not subject to contest by either party.

3. **Term.** To have and to hold the Demised Premises for a preliminary term (the "**Preliminary Term**") commencing on the Lease Date and ending on the day immediately preceding the Lease Commencement Date as set forth in Section 1(f), and a primary term (the "**Primary Term**") commencing on the Lease Commencement Date and terminating on the Expiration Date as set forth in Section 1(h) (the Preliminary Term, the Primary Term, and any and all extensions thereof, herein referred to as the "**Term**").

4. **Base Rent.** Tenant shall pay to Landlord at the address set forth in Section 1(n), as base rent for the Demised Premises, commencing on the Base Rent Commencement Date and continuing throughout the Term in lawful money of the United States, the annual amount set forth in Section 1(d) payable in equal monthly installments as set forth in Section 1(e) (the "**Base Rent**"), payable in advance, without demand and, except as otherwise expressly set forth herein, without abatement, reduction, set-off or deduction, on the first day of each calendar month during the Term. As provided in Section 1(e), if the Base Rent Commencement Date shall fall on a day other than the first day of a calendar month, the Base Rent shall be apportioned pro rata on a per diem basis for the resulting Fractional Month in the Second Period (which pro rata payment shall be due and payable on the first day of the Fractional Month). No payment by Tenant or receipt by Landlord of rent hereunder shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction, and Landlord may accept such check as payment without prejudice to Landlord's right to recover the balance of such installment or payment of rent or pursue any other remedies available to Landlord.

5. **Security Deposit.**

(a) Within five (5) business days of the date of Tenant's execution of this Lease, Tenant will pay to Landlord the sum set forth in Section 1(k) (the "**Cash Security Deposit**") as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease.

(b) In the alternative to a Cash Security Deposit, Tenant shall have the right, within five (5) business days of Tenant's execution of this Lease, to deliver to Landlord an Irrevocable Letter of Credit (the "**Letter of Credit**") in the amount set forth in Section 1(k) (the "**LC Security Deposit**"; the Cash Security Deposit or the LC Security Deposit, as applicable, being referred to herein as the "**Security Deposit**"), in a form and from a financial institution acceptable to Landlord, and shall cause the same to be maintained in full force and effect throughout the Term, as may be extended, and during the thirty (30) day period after the later of (a) the Expiration Date or (b) the date that Tenant delivers possession of the

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Demised Premises to Landlord, as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. Tenant shall, upon demand, pay directly or reimburse Landlord for all expenses incurred by Landlord in connection with the Security Deposit being in the form of a Letter of Credit, including, but not limited to, any transfer fee due upon the transfer of the Letter of Credit upon a sale of the Building by Landlord. In the event that, during the Term, Tenant fails to deliver to Landlord a renewal of or replacement to the Letter of Credit by a date no later than thirty (30) days prior to its expiration date, Landlord shall have the right to demand and receive payment in full under the Letter of Credit and to hold the cash proceeds as the Security Deposit under this Lease.

(c) The acceptance by Landlord of the Security Deposit paid by Tenant shall not render this Lease effective unless and until Landlord shall have executed and delivered to Tenant a fully executed copy of this Lease. The Cash Security Deposit may be commingled with Landlord's other funds or held by Landlord in a separate interest bearing account, with interest paid to Landlord, as Landlord may elect. In the event that Tenant is in default under this Lease, Landlord may, after the expiration of any notice and cure periods set forth in this Lease, retain or draw on the Security Deposit for the payment of any sum due Landlord or which Landlord may expend or be required to expend by reason of Tenant's default or failure to perform; provided, however, that any such retention by Landlord shall not be or be deemed to be an election of remedies by Landlord or viewed as liquidated damages, it being expressly understood and agreed that Landlord shall have the right to pursue any and all other remedies available to it under the terms of this Lease or otherwise. In the event all or any portion of the Security Deposit is so retained by Landlord, Tenant shall, within five (5) days after receipt of a written demand therefor from Landlord, replenish the Security Deposit to the full amount set forth in Section 1(k) (and Tenant's failure to do so shall constitute an immediate Event of Default, without any further notice or demand from Landlord). In the event that Tenant shall comply with all of the terms, covenants and conditions of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the later of (a) the Expiration Date or (b) the date that Tenant delivers possession of the Demised Premises to Landlord. In the event of a sale of the Building, Landlord shall have the right to transfer the Security Deposit to the purchaser, and upon acceptance by such purchaser, Landlord shall be released from all liability for the return of the Security Deposit. Tenant shall not assign or encumber the money deposited as security, and neither Landlord nor its successors or assigns shall be bound by any such assignment or encumbrance.

6. Operating Expenses and Additional Rent.

(a) Commencing on the Base Rent Commencement Date, subject to the terms of Section 1(j), and continuing during the balance of the Primary Term and any extension thereof, Tenant agrees to pay as Additional Rent (as defined in Section 6(c) below) its proportionate share of Operating Expenses (as hereinafter defined). "**Operating Expenses**" shall be defined as, without duplication, all reasonable expenses for operation, repair, replacement and maintenance as necessary to keep the Building and the common areas, driveways, and parking areas associated therewith (collectively, the "**Building Common Area**") fully operational and in good order, condition and repair, including but not limited to, utilities for the Building Common Area, expenses associated with the driveways and parking areas (including sealing and restriping, and trash, snow and ice removal), roof (including seals between skylights), security systems, fire detection and prevention systems, lighting facilities, landscaped areas, walkways, painting and caulking, directional signage, curbs, drainage strips, sewer lines, all charges assessed against or attributed to the Building pursuant to any applicable easements, covenants, restrictions, agreements, declaration of protective covenants or development standards, property

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management fees described herein [in an amount not to exceed three (3%) percent of total Rent (including Base Rent and Additional Rent) charged by Landlord annually], all real property taxes and special assessments imposed upon the Building, the Building Common Area and the land on which the Building and the Building Common Area are constructed, all costs of insurance paid by Landlord with respect to the Building and the Building Common Area (including, without limitation, commercially reasonable deductibles), and costs of improvements to the Building and the Building Common Area required by any law, ordinance or regulation enacted or promulgated after the Lease Commencement Date and applicable to the Building and the Building Common Area generally (and not because of the particular use of the Building or the Building Common Area by a particular tenant), which cost shall be amortized on a straight line basis over the useful life of such improvement, as reasonably determined by Landlord in accordance with GAAP (defined below). Operating Expenses shall not include (1) expenses for the costs of any maintenance, repair or replacement required to be performed by Landlord at its own expense under Section 10(b), (2) advertising, marketing, promotional, or commission expenses, (3) ground rents or underlying lease rental, if any; or (4) interest, principal, points and fees or amortization on any mortgage or any other debt instrument encumbering the Building and any associated costs of financing or mortgaging any of Landlord's interest in the Building. Further, Operating Expenses shall not include the costs for capital improvements unless such costs are incurred for the purpose of causing a material decrease in the Operating Expenses of the Building or the Building Common Area or are incurred with respect to improvements made to comply with laws, ordinances or regulations as described above. Operating Expenses shall be accounted for in accordance with sound management accounting principles, ("SMP"). The proportionate share of Operating Expenses to be paid by Tenant shall be a percentage of the Operating Expenses based upon the proportion that the square footage of the Demised Premises bears to the total square footage of the Building (such figure referred to as "**Tenant's Operating Expense Percentage**" and set forth in Section 1(j)). Notwithstanding the foregoing, Landlord shall, in Landlord's reasonable discretion, have the right to adjust Tenant's proportionate share of individual components of Operating Expenses based on historical usage, usage by other Building tenants and other relevant factors, if Tenant's Operating Expense Percentage thereof would not equitably allocate to Tenant its share of such component of Operating Expenses in light of Tenant's particular use of, manner of use of and/or level of tenant improvements in the Demised Premises. Prior to or promptly after the beginning of each calendar year during the Term, Landlord shall estimate the total amount of Operating Expenses to be paid by Tenant during each such calendar year and Tenant shall pay to Landlord one-twelfth (1/12) of such sum on the first day of each calendar month during each such calendar year, or part thereof, during the Term. Within a reasonable time after the end of each calendar year, Landlord shall submit to Tenant a statement of the actual amount of Operating Expenses for such calendar year, and the actual amount owed by Tenant, and within thirty (30) days after receipt of such statement, Tenant shall pay any deficiency between the actual amount owed and the estimates paid during such calendar year, or in the event of overpayment, Landlord shall credit the amount of such overpayment toward the next installment of Operating Expenses owed by Tenant or remit such overpayment to Tenant if the Term has expired or has been terminated and no Event of Default exists hereunder; subject, however, to Tenant's right to audit Landlord's calculation of the Tenant's proportionate share of the Operating Expenses in accordance with Paragraph 7 of Exhibit C of this Lease. The obligations in the immediately preceding sentence shall survive the expiration or any earlier termination of this Lease. If the Lease Commencement Date shall fall on other than the first day of the calendar year, and/or if the Expiration Date shall fall on other than the last day of the calendar year, Tenant's proportionate share of the Operating Expenses for such calendar year shall be apportioned prorata. It is intended that this Lease is a "net lease" and that the Rent provided for in this Lease shall be an absolutely net return to Landlord for the Term of this Lease and any renewals

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or extensions thereof, free of any and all expenses or charges with respect to the Demised Premises except for those obligations of Landlord expressly set forth herein.

(b) Anything in Section 6(a) of this Lease to the contrary notwithstanding, for purposes of determining Tenant's proportionate share of Operating Expenses, in no event shall Controllable Operating Expenses (as hereinafter defined) be deemed to have increased during any calendar year (or prorated portion thereof) of the Primary Term by more than an amount equal to Controllable Operating Expenses for the first full calendar year of the Primary Term increased by six percent (6%) per annum, compounded annually on a cumulative basis. For purposes of this Section 6(b), "**Controllable Operating Expenses**" are expressly limited to all Operating Expenses, except taxes, insurance, utilities, costs of snow removal or janitorial services or costs resulting from changes in applicable laws, rules, regulations or ordinances; provided, however, that any increases in Operating Expenses not recovered by Landlord based solely on the foregoing cap on Controllable Operating Expenses shall be carried forward into all succeeding calendar years during the Term.

(c) Any amounts required to be paid by Tenant hereunder (in addition to Base Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease shall be considered "**Additional Rent**" payable in the same manner and upon the same terms and conditions as the Base Rent reserved hereunder except as set forth herein to the contrary (all such Base Rent and Additional Rent sometimes being referred to collectively herein as "**Rent**"). Any failure on the part of Tenant to pay such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Base Rent. Tenant's obligations for payment of Additional Rent shall begin to accrue on the Lease Commencement Date.

(d) If applicable in the jurisdiction where the Demised Premises are located, Tenant shall pay and be liable for all rental, sales, use and inventory taxes or other similar taxes, if any, on the amounts payable by Tenant hereunder levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Such payment shall be made by Tenant directly to such governmental body if billed to Tenant, or if billed to Landlord, such payment shall be paid concurrently with the payment of the Base Rent, Additional Rent, or such other charge upon which the tax is based, all as set forth herein.

7. Use of Demised Premises.

(a) The Demised Premises shall be used for the Permitted Use set forth in Section 1(l) and for no other purpose without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Tenant will permit no liens to attach or exist against the Demised Premises, and shall not commit any waste.

(c) The Demised Premises shall not be used for any illegal purposes, and Tenant shall not allow, suffer, or permit any vibration, noise, odor, light or other effect to occur within or around the Demised Premises that could constitute a nuisance or trespass for Landlord or any occupant of the Building or an adjoining building, its customers, agents, or invitees. Upon notice by Landlord to Tenant

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that any of the aforesaid prohibited uses are occurring, Tenant agrees to promptly remove or control the same.

(d) Tenant shall not in any way violate any law, ordinance or restrictive covenant affecting the Demised Premises, and shall not in any manner use the Demised Premises so as to cause cancellation of, prevent the use of, or increase the rate of, the fire and extended coverage insurance policy required hereunder Landlord makes no (and does hereby expressly disclaim any) covenant, representation or warranty as to the Permitted Use or the Initial Use being allowed by or being in compliance with any applicable laws, rules, ordinances or restrictive covenants now or hereafter affecting the Demised Premises, and any zoning letters, copies of zoning ordinances or other information from any governmental agency or other third party provided to Tenant by Landlord or any of Landlord's agents or employees shall be for informational purposes only, and, Tenant hereby expressly acknowledging and agreeing that Tenant shall conduct and rely solely on its own due diligence and investigation with respect to the compliance of the Permitted Use and the Initial Use with all such applicable laws, rules, ordinances and restrictive covenants and not on any such information provided by Landlord or any of its agents or employees.

(e) In the event insurance premiums pertaining to the Demised Premises, the Building, or the Building Common Area, whether paid by Landlord or Tenant, are increased over the least hazardous rate available due to the nature of the use of the Demised Premises by Tenant, Tenant shall pay such additional amount as Additional Rent. Landlord shall promptly notify Tenant of any such increase, but any failure to so notify shall not operate to relieve Tenant of the obligation to pay such additional amount.

8. Insurance.

(a) At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the types of insurance coverage required and in the amounts specified on **Schedule 8** attached to this Lease and made a part hereof for all purposes. All insurance required under this **Section 8** shall be issued by such good and reputable insurance companies qualified to do and doing business in the state in which the Demised Premises are located and having a rating not less than A:VIII as rated in the most current copy of Best's Insurance Report in the form customary to this locality.

(b) Landlord, Landlord's management company and such other parties as Landlord shall designate to Tenant who have an insurable interest in the Demised Premises or Project shall be (i) named as additional insured with respect to the coverages provided for under paragraphs A., B., C. and D. of Schedule 8 (other than Worker's Compensation), and (ii) as loss payees as their interest may appear with respect to the coverage provided under paragraph G. of Schedule 8. Certificates of insurance naming Landlord, Landlord's management company, and any others specified by Landlord as additional insureds or loss payee (as the case may be) will be delivered to Landlord prior to Tenant's occupancy of the Demised Premises and from time to time at least thirty (30) days prior to the expiration of the term or reduction in coverage of each such policy; provided that in the event of a claim Landlord may request and Tenant shall deliver to Landlord copies of the policies and any endorsements. Each insurance policy required hereunder shall be issued by and on forms reasonably satisfactory to Landlord and will specifically provide that such insurance policy cannot be terminated without giving at least thirty (30) days prior written notice to Landlord and Landlord's Mortgagee. All policies required to be maintained by

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Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. Commercial general liability insurance required to be maintained by Tenant by this Section 8 will not be subject to a deductible or self-insured retention. In the event Tenant fails to purchase and maintain any of the insurance required hereunder, Landlord reserves the right, but not the obligation, to purchase such insurance on behalf of Tenant, and at Tenant's expense, with any expenses incurred by Landlord in connection therewith being reimbursed to Landlord by Tenant within thirty (30) days of written demand thereof. In addition, the coverage limits of policies of insurance required hereunder shall be subject to change upon Landlord's reasonable request from time to time.

(c) **Landlord and Tenant each waive and shall cause their respective insurance carriers to waive any and all rights to recover against the other or against the officers, partners, directors, employees, agents, licensees, contractors, customers and invitees; to the extent customers and invitees are under the control of the principal (collectively, "Agents") of such other party for any loss or damage to such waiving party (including deductible amounts) arising from any cause covered by any property insurance required to be carried by such party pursuant to this Section 8 or any other property insurance actually carried by such party to the extent of the limits of such policy.** Tenant and Landlord, from time to time, will cause its respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Project or the Demised Premises or the contents of the Project or the Demised Premises. Tenant agrees to cause all other occupants of the Demised Premises claiming by, under or through Tenant, to execute and deliver to Landlord and Landlord's management company such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

(d) Landlord and its Agents make no representation that the limits of liability specified to be carried by Tenant pursuant to this Section 8 are adequate to protect Tenant. If Tenant believes that any of such insurance coverage is inadequate, Tenant will obtain such additional insurance coverage as Tenant deems adequate, at Tenant's sole expense. Furthermore, in no way does the insurance required herein limit the liability of Tenant assumed elsewhere in this Lease.

9. Utilities. During the Term, Tenant shall promptly pay as billed to Tenant all rents and charges for water and sewer services and all costs and charges for gas, steam, electricity, fuel, light, power, telephone, heat and any other utility or service used or consumed in or servicing the Demised Premises and all other costs and expenses involved in the care, management and use thereof as charged by the applicable utility companies to Tenant. All such utilities except for sewer and water shall be separately metered and billed to Tenant, and Tenant shall establish an account with the utility provider with respect to each such separately metered utility. Sewer and water shall not be separately metered, and shall be billed to Tenant by Landlord, at Landlord's actual cost, in an amount equal to reasonable estimation of such utilities actually used by Tenant in excess of the average use by other tenants. Landlord shall have right to install a meter for any such utility not separately metered, at Landlord's expense, and bill Tenant for Tenant's actual use. Tenant's obligation for payment of all utilities shall commence on the earlier of the Lease Commencement Date or the date of Tenant's actual occupancy of all or any portion of the Demised Premises, including any period of occupancy prior to the Lease Commencement Date, regardless of whether or not Tenant conducts business operations during such period of occupancy. If Tenant fails to pay any utility bills or charges, Landlord may, at its option and upon reasonable written notice to Tenant, pay the same and in such event, the amount of such payment, together with interest

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thereon at the Interest Rate as defined in Section 32 from the date of such payment by Landlord, will be added to Tenant's next payment due as Additional Rent.

10. Maintenance and Repairs.

(a) Tenant shall, at its own cost and expense, maintain in good condition and repair, reasonable wear and tear excepted, and replace as necessary the interior of the Demised Premises, including but not limited to the heating, air conditioning and ventilation systems, glass, windows and doors, sprinkler, all plumbing and sewage systems, fixtures, interior walls, floors (including floor slabs), ceilings, storefronts, plate glass, skylights (excluding seals between skylights and the roof, which shall be Landlord's obligation as provided in Section 10(b)), all electrical facilities and equipment including, without limitation, lighting fixtures, lamps, fans and any exhaust equipment and systems, electrical motors, and all other appliances and equipment (including, without limitation, dock levelers, dock shelters, dock seals and dock lighting) of every kind and nature located in, upon or about the Demised Premises, except as to such maintenance, repair and replacement as is the obligation of Landlord pursuant to Section 10(b). During the Term, Tenant shall maintain in full force and effect a service contract for the maintenance of the heating, ventilation and air conditioning systems with an entity reasonably acceptable to Landlord. Tenant shall deliver to Landlord (i) a copy of said service contract prior to the Lease Commencement Date, and (ii) thereafter, a copy of a renewal or substitute service contract within thirty (30) days prior to the expiration of the existing service contract. Tenant's obligation shall exclude any maintenance, repair and replacement required because of the act or negligence of Landlord, its employees, contractors or agents, which shall be the responsibility of Landlord.

(b) Landlord shall, at its own cost and expense (except that the cost of such items shall be an Operating Expense to the extent permitted by the provisions of Section 6(a)), maintain in good condition and repair and replace as necessary, reasonable wear and tear excepted, the foundation (beneath the floor slab), structural frame, structural portions of the external walls (exclusive of all painting and caulking, the cost of which will be included in Operating Expenses in accordance with Section 6 hereof, and all glass and exterior doors) and repair and replace the roof (including the seals between the skylights and the roof), if and when necessary, Landlord's obligation shall exclude the cost of any maintenance or repair required because of the act (exclusive of ordinary wear and tear resulting from the Permitted Use) or negligence of Tenant or any of Tenant's subsidiaries or affiliates, or any of Tenant's or such subsidiaries' or affiliates' agents, contractors, employees, licensees or invitees (collectively, "**Tenant's Affiliates**"), the cost of which shall be the responsibility of Tenant, Landlord shall never have any obligation to repair, maintain or replace, pursuant to this subsection 10(b) or any other provision of this Lease, any Tenant's Change (as defined in Section 18 hereof).

(c) Unless the same is caused solely by the negligent action or inaction of Landlord, its employees or agents, and is not covered by the insurance required to be carried by Tenant pursuant to the terms of this Lease, Landlord shall not be liable to Tenant or to any other person for any damage occasioned by failure in any utility system or by the bursting or leaking of any vessel or pipe in or about the Demised Premises, or for any damage occasioned by water coming into the Demised Premises or arising from the acts or neglects of occupants of adjacent property or the public.

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11. Tenant's Personal Property; Indemnity. All of Tenant's personal property in the Demised Premises shall be and remain at Tenant's sole risk. Landlord, its agents, employees and contractors, shall not be liable for, and Tenant hereby releases Landlord from, any and all liability for theft thereof or any damage thereto occasioned by any act of God or by any acts, omissions or negligence of any third party. Tenant expressly agrees to indemnify and save Landlord, its agents, employees and contractors, harmless, in all such cases, except, in the case of personal injury or property damage, to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees and contractors, subject to the waiver of subrogation. Tenant further agrees to indemnify and reimburse Landlord for any costs or expenses, including, without limitation, reasonable attorneys' fees, that Landlord reasonably may incur in investigating, handling or litigating any such claim against Landlord by a third person, unless such claim arose from the negligence or willful misconduct of Landlord, its agents, employees or contractors, subject to the waiver of subrogation. The provisions of this Section 11 shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or termination.

12. Tenant's Fixtures. Tenant shall have the right to install in the Demised Premises trade fixtures required by Tenant or used by it in its business, and if installed by Tenant, to remove any or all such trade fixtures from time to time during and upon termination or expiration of this Lease, provided no Event of Default, as defined in Section 22, then exists; provided, however that Tenant shall repair and restore any damage or injury to the Demised Premises (to the condition in which the Demised Premises existed prior to such installation) caused by the installation and/or removal of any such trade fixtures.

13. Signs. No sign, advertisement or notice shall be inscribed, painted, affixed, or displayed on the windows or exterior walls of the Demised Premises or on any public area of the Building, except in such places, numbers, sizes, colors and styles as are approved in advance in writing by Landlord (which will not be unreasonably withheld, conditioned, or delayed), and which conform to all applicable laws, ordinances, signage criteria and covenants affecting the Demised Premises. Notwithstanding the foregoing, Tenant shall have the right to affix one (1) identification sign to the exterior of the Demised Premises and to install one (1) monument identification sign in the Building Common Area, provided Tenant and such signs otherwise comply with the terms and conditions of this Section 13. Any and all signs installed or constructed by or on behalf of Tenant pursuant hereto shall be installed, maintained and removed by Tenant at Tenant's sole cost and expense.

14. Parking Allocation. During the Term, Tenant shall have the exclusive right to use for the parking of passenger vehicles one hundred fifteen (115) parking spaces located to the south of the main entrance of the Demised Premises and the non-exclusive right to use for the parking of passenger vehicles up to thirty-one (31) of the forty-five (45) unreserved parking spaces located on the west side of the middle of the Building, which unreserved spaces shall be used in common with other tenants in the Project and thirty-six (36) unreserved trailer spaces, subject to the Rules and Regulations set forth in Exhibit D and validation, key-card sticker or other identification systems set forth by Landlord from time to time. Notwithstanding the foregoing, Landlord shall not be responsible for policing the use of the foregoing parking spaces.

15. Governmental Regulations. Tenant shall comply throughout the Term, at Tenant's sole cost and expense, with all present and future laws, ordinances, orders, rules, regulations or requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and

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officers thereof (collectively, "Governmental Requirements") relating to (a) all or any part of the Demised Premises, and (b) the use or manner of use of the Demised Premises and the Building Common Area; provided, however, that Landlord shall be solely responsible for making all changes necessitated by violations of applicable Governmental Requirements that are in effect as of the Lease Commencement Date to the extent any such violation existed as of such date. Tenant shall also observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Demised Premises. Without limiting the foregoing, if as a result of one or more Governmental Requirements it is necessary, from time to time during the Term, to perform an alteration or modification of the Demised Premises, the Building or the Building Common Area (a "Code Modification") which is made necessary as a result of the specific use being made by Tenant of the Demised Premises or a Tenant's Change, then such Code Modification shall be the sole and exclusive responsibility of Tenant in all respects; any such Code Modification shall be promptly performed by Tenant at its expense in accordance with the applicable Governmental Requirement and with Section 18 hereof. If as a result of one or more Governmental Requirements it is necessary from time to time during the Term to perform a Code Modification which (i) would be characterized as a capital expenditure under generally accepted accounting principles ("GAAP") and (ii) is not made necessary as a result of the specific use being made by Tenant of the Demised Premises (as distinguished from an alteration or modification which would be required to be made by the owner of any warehouse-office building comparable to the Building irrespective of the use thereof by any particular occupant) or a Tenant's Change, then (a) Landlord shall have the obligation to perform the Code Modification at its expense, (b) the cost of such Code Modification shall be amortized on a straight-line basis over the useful life of the item in question, in accordance with GAAP, and (c) to the extent the Code Modification relates to the Building or the Building Common Area (and not to any portion of the Demised Premises), Tenant shall be obligated to pay (as Additional Rent, payable in the same manner and upon the same terms and conditions as the Base Rent reserved hereunder) for (i) Tenant's proportionate share (based on Tenant's Operating Expense Percentage) of the portion of such amortized costs attributable to the remainder of the Term, including any extensions thereof, with respect to any Code Modification respecting the Building or the Building Common Area, and (ii) to the extent the Code Modification relates to the Demised Premises (and not any other portion of the Building), the entire portion of such amortized costs attributable to the remainder of the Term, including any extensions thereof, with respect to any Code Modification respecting the Demised Premises. Tenant shall promptly send to Landlord a copy of any written notice received by Tenant requiring a Code Modification.

16. Environmental Matters.

(a) For purposes of this Lease:

(i) "Contamination" as used herein means the presence of or release of Hazardous Substances (as hereinafter defined) into any environmental media from, upon, within, below, into or on any portion of the Demised Premises, the Building, the Building Common Area or the Project so as to require remediation, cleanup or investigation under any applicable Environmental Law (as hereinafter defined).

(ii) "Environmental Laws" as used herein means all federal, state, and local laws, regulations, orders, permits, ordinances or other requirements, which exist now or as may exist hereafter, concerning protection of human health, safety and the environment, all as may be amended

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from time to time including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("CERCLA") and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. ("RCRA").

(iii) "Hazardous Substances" as used herein means any hazardous or toxic substance, material, chemical, pollutant, contaminant or waste as those terms are defined by any applicable Environmental Laws and any solid wastes, polychlorinated biphenyls, urea formaldehyde, asbestos, radioactive materials, radon, explosives, petroleum products and oil.

(b) Intentionally deleted.

(c) Tenant covenants that all its activities, and the activities of Tenant's Affiliates (as defined herein), on the Demised Premises, the Building, or the Project during the Term will be conducted in compliance with Environmental Laws. Tenant warrants that it is currently in compliance with all applicable Environmental Laws and that there are no pending or threatened notices of deficiency, notices of violation, orders, or judicial or administrative actions involving alleged violations by Tenant of any Environmental Laws. Tenant, at Tenant's sole cost and expense, shall be responsible for obtaining all permits or licenses or approvals under Environmental Laws necessary for Tenant's operation of its business on the Demised Premises and shall make all notifications and registrations required by any applicable Environmental Laws. Tenant, at Tenant's sole cost and expense, shall at all times comply with the terms and conditions of all such permits, licenses, approvals, notifications and registrations and with any other applicable Environmental Laws. Tenant warrants that it has obtained, or will obtain prior to the date required by the applicable Governmental Requirements, all such permits, licenses or approvals and made, or will make prior to the date required by the applicable Governmental Requirements, all such notifications and registrations required by any applicable Environmental Laws necessary for Tenant's operation of its business on the Demised Premises.

(d) Tenant shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Demised Premises, the Building, or the Project in violation of any Environmental Law without the prior written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that the consent of Landlord shall not be required for the use at the Demised Premises of cleaning supplies, toner for photocopying machines and other similar materials, in containers and quantities reasonably necessary for and consistent with normal and ordinary use by Tenant in the routine operation or maintenance of Tenant's office equipment or in the routine janitorial service, cleaning and maintenance for the Demised Premises. For purposes of this Section 16, Landlord shall be deemed to have reasonably withheld consent if Landlord determines that the presence of such Hazardous Substance within the Demised Premises could result in a risk of harm to person or property or otherwise negatively affect the value or marketability of the Building or the Project.

(e) Tenant shall not cause or permit the release of any Hazardous Substances by Tenant or Tenant's Affiliates into any environmental media such as air, water or land, or into or on the Demised Premises, the Building or the Project in any manner that violates any Environmental Laws. If such release shall occur, Tenant shall (i) take all steps reasonably necessary to contain and control such release and any associated Contamination, (ii) clean up or otherwise remedy such release and any associated Contamination to the extent required by, and take any and all other actions required under,

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applicable Environmental Laws and (iii) notify and keep Landlord reasonably informed of such release and response.

(f) Regardless of any consents granted by Landlord pursuant to Section 16(d) allowing Hazardous Substances upon the Demised Premises, Tenant shall under no circumstances whatsoever cause or permit (i) any activity on the Demised Premises which would cause the Demised Premises to become subject to regulation as a hazardous waste treatment, storage or disposal facility under RCRA or the regulations promulgated thereunder, (ii) the discharge of Hazardous Substances into the storm sewer system serving the Project, or (iii) the installation of any underground storage tank or underground piping on or under the Demised Premises.

(g) Tenant shall and hereby does indemnify Landlord and hold Landlord harmless from and against any and all expense, loss, and liability suffered by Landlord (except to the extent that such expenses, losses, and liabilities arise out of Landlord's own negligence or willful act, or from any condition existing at the Project prior to the Lease Date, unless covered by insurance required to be obtained and maintained by Tenant pursuant to this Lease, in which event the indemnification and hold harmless agreements set forth in this Section shall apply, subject to the waiver of subrogation), by reason of the storage, generation, release, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Substances (whether accidental, intentional or negligent) by Tenant or Tenant's Affiliates or by reason of Tenant's breach of any of the provisions of this Section 16. Such expenses, losses and liabilities shall include, without limitation, (i) any and all reasonable expenses that Landlord may incur to comply with any Environmental Laws; (ii) any and all reasonable costs that Landlord may incur in studying or remedying any Contamination at or arising from the Demised Premises, the Building, or the Project; (iii) any and all reasonable costs that Landlord may incur in studying, removing, disposing or otherwise addressing any Hazardous Substances; (iv) any and all fines, penalties or other sanctions assessed upon Landlord; and (v) any and all reasonable legal and professional fees and costs incurred by Landlord in connection with the foregoing. The indemnity contained herein shall survive the expiration or earlier termination of this Lease.

17. Construction of Improvements by Landlord.

(a) Promptly following the Lease Date, Landlord shall, at its sole cost and expense, cause to be prepared a set of plans and specifications and/or construction drawings (collectively, the "**Plans and Specifications**") based on the preliminary plans and specifications and/or preliminary floor plans set forth on **Exhibit B-1** attached hereto and incorporated herein ("**Preliminary Plans**"), covering all work to be performed by Landlord (collectively, the "**Improvements**") and shall submit such Plans and Specifications to Tenant, for Tenant's approval, such approval not to be unreasonably withheld, delayed, conditioned or denied. Tenant shall have no right to disapprove the Plans and Specifications unless the same are materially inconsistent with the Preliminary Plans nor to request any changes to the Plans and Specifications which would materially alter either the Demised Premises or the exterior appearance or basic nature of the Building, as the same are contemplated by the Preliminary Plans. If Tenant requests any changes to the Plans and Specifications because the same are materially inconsistent with the Preliminary Plans, Tenant must give written notice of such request within five (5) business days of receipt thereof by Tenant, whereupon Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (10) days of its receipt of such request submit the revised portion of the Plans and Specifications to Tenant. Tenant may not thereafter disapprove the revised portions of

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the Plans and Specifications unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the Plans and Specifications, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Landlord and Tenant shall at all times in their respective preparation or review of the Plans and Specifications, and of any revisions thereto, act reasonably and in good faith. After the Plans and Specifications or the Plans and Specifications have been finalized pursuant to the procedures set forth hereinabove, any subsequent changes to the Plans and Specifications requested by Tenant (herein referred to as a "Change Order") shall be at Tenant's sole cost and expense and subject to Landlord's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Landlord approves any such requested Change Order, Landlord shall give written notice thereof to Tenant, which notice will specify the Change Order approved by Landlord as well as the estimated incremental cost thereof. The cost to Tenant for Change Orders shall be Landlord's incremental cost plus five percent (5%) of such amount as Landlord's overhead. Tenant acknowledges and agrees that Landlord shall be under no obligation to proceed with any work related to the approved Change Order unless and until Tenant delivers to Landlord an amount equal to the full estimated incremental cost of such approved Change Order (including Landlord's overhead) as set forth in Landlord's notice. When the final incremental cost of any such Change Order has been determined and incurred, Landlord and Tenant each agree to pay or refund the amounts owed to the other with respect to such Change Order, based on the estimated payment made to Landlord.

(b) Landlord shall use reasonable speed and diligence to Substantially Complete the Improvements set forth on **Exhibit B-1** hereto, at Landlord's sole cost and expense, which the parties anticipate will be Substantially Complete within sixty (60) days after the Lease Date. If the Landlord Work is not Substantially Complete on that date, then, commencing with the sixty-first (61st) day following the Lease Date, Tenant's obligation to pay Base Rent hereunder shall be abated for each day until Landlord Substantially Completes Landlord's Work. Except as set forth herein, no liability whatsoever shall arise or accrue against Landlord by reason of its failure to deliver or afford possession of the Demised Premises, and Tenant hereby releases and discharges Landlord from and of any claims for damage, loss, or injury of every kind whatsoever as if this Lease were never executed.

(c) Upon Substantial Completion of the Improvements, a representative of Landlord and a representative of Tenant together shall inspect the Demised Premises and generate a punchlist of defective or uncompleted items relating to the completion of construction of the Improvements (the "**Punchlist**"). Landlord shall, within a reasonable time after the Punchlist is prepared and agreed upon by Landlord and Tenant, complete such incomplete work and remedy such defective work as is set forth on the Punchlist. All construction work performed by Landlord shall be deemed approved by Tenant in all respects except for items of said work which are not completed or do not conform to the Plans and Specifications and which are included on the Punchlist.

(d) Tenant hereby covenants and agrees that Tenant is familiar with the condition of the Building and the Demised Premises as of the Lease Date. Except for Landlord's express obligations under this Lease, including, without limitation, Landlord's obligation to perform Landlord's Work, with respect to the Improvements and the maintenance and repair of the Building, Tenant agrees that Tenant is accepting the Demised Premises on an "AS-IS," "WHERE-IS" basis, and that except for Landlord's Work and except as otherwise expressly set forth in this Lease, Landlord is making absolutely no repairs, replacements or improvements of any kind or nature to the Demised Premises or the Building in connection with, or in consideration of, this Lease and that Landlord makes no representation or warranty

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regarding security at the Demised Premises or the Building. Notwithstanding the foregoing, Landlord shall, at its sole cost and expense (and such expense shall not be included in Operating Expense), perform all of the repairs to the heating, ventilation and cooling system ("HVAC") serving the Demised Premises described in that certain letter from Roy May Heating & Air Conditioning Co., Inc. to Tenant, dated June 2, 2016, a true copy of which is attached hereto and incorporated herein as **Exhibit I**. Landlord further hereby warrants that the HVAC shall be in good working condition for a period of six (6) months following the Lease Commencement Date, Landlord shall perform any and all maintenance, repairs and replacements of the HVAC during such six month period, at Landlord's sole cost and expense, and such expense shall not be included in Operating Expenses.

(e) Notwithstanding anything to the contrary set forth in this Lease, Landlord hereby warrants to Tenant, which warranty shall survive for the one (1) year period following the date of the Substantial Completion of the Improvements, that (i) the materials and equipment furnished by Landlord's contractors in the completion of the Improvements will be in good working condition, and (ii) such materials and equipment and the work of such contractors shall comply with all applicable laws, rules, regulations, building codes and insurance requirements in effect on the date Improvements were permitted and shall be completed in accordance with the Plans and Specifications in all material respects in a good and workmanlike manner and free from defects not inherent in the quality required or permitted hereunder. This warranty shall exclude damages or defects caused by Tenant or Tenant's Affiliates, improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage.

(f) For purposes of this Lease, the term "**Substantial Completion**" (or any variation thereof) shall mean completion of construction of the Improvements in accordance with the approved Plans and Specifications therefor, subject only to Punchlist items established pursuant to Section 17(c), as established by the delivery by Landlord to Tenant of a certificate of occupancy or its equivalent (or temporary certificate of occupancy or its equivalent) for the Demised Premises issued by the appropriate governmental authority, if a certificate is so required by a governmental authority, or if not so required or if unavailable because of unfinished work to be performed by Tenant, then by the delivery by Landlord to Tenant of a Certificate of Substantial Completion for the Improvements on Standard AIA Form G-704 certified by Landlord's architect.

18. Tenant Alterations and Additions.

(a) Tenant shall not make or permit to be made any alterations, improvements, or additions to the Demised Premises (a "**Tenant's Change**"), without first obtaining on each occasion Landlord's prior written consent (which consent Landlord agrees not to unreasonably withhold) and Lender's prior written consent (if such consent is required). As part of its approval process, Landlord may require that Tenant submit plans and specifications to Landlord, for Landlord's approval or disapproval, which approval shall not be unreasonably withheld. All Tenant's Changes shall be performed in accordance with all legal requirements applicable thereto and in a good and workmanlike manner with first-class materials. Tenant shall maintain insurance reasonably satisfactory to Landlord during the construction of all Tenant's Changes. If Landlord at the time of giving its approval to any Tenant's Change notifies Tenant in writing that approval is conditioned upon restoration, then Tenant shall, at its sole cost and expense and at Landlord's option upon the termination or expiration of this Lease, remove the same and restore the Demised Premises to its condition prior to such Tenant's Change. Landlord may withhold consent to any Tenant's Change which is structural in nature or impairs the structural strength of

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the Building, in Landlord's sole discretion, or reduces its value, in Landlord's reasonable discretion. Tenant shall pay the full cost of any Tenant's Change. Except as otherwise provided herein and in Section 12, or as otherwise agreed at the time of a Tenant's Change is approved, all Tenant's Changes and all repairs and all other property attached to the Demised Premises by or on behalf of Tenant (excluding racks, conveyers and related or similar equipment) shall immediately upon completion or installation thereof be and become part of the Demised Premises and the property of Landlord without payment therefor by Landlord and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease.

(b) To the extent permitted by law, all of Tenant's contracts and subcontracts for such Tenant's Changes shall provide that no lien shall attach to or be claimed against the Demised Premises or any interest therein other than Tenant's leasehold interest in the Demised Premises, and that all subcontracts let thereunder shall contain the same provision. Whether or not Tenant furnishes the foregoing, Tenant agrees to hold Landlord harmless from, and defend against (with legal counsel acceptable to Landlord) all liens, claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. Tenant shall not permit the Demised Premises to become subject to any mechanics', laborers' or materialmen's lien on account of labor, material or services furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed for the Demised Premises by, or at the direction or sufferance of Tenant and if any such liens are filed against the Demised Premises, Tenant shall promptly discharge the same; provided, however, that Tenant shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Tenant shall give to Landlord, within fifteen days after demand, such security as may be reasonably satisfactory to Landlord to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of Landlord's interest in the Demised Premises by reason of non-payment thereof; provided further that on final determination of the lien or claim for lien, Tenant shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Tenant fails to post such security or does not diligently contest such lien, Landlord may, without investigation of the validity of the lien claim, discharge such lien and Tenant shall reimburse Landlord upon demand for all costs and expenses incurred in connection therewith, which expenses shall include any attorneys' fees, paralegals' fees and any and all costs associated therewith, including litigation through all trial and appellate levels and any costs in posting bond to effect a discharge or release of the lien. Nothing contained in this Lease shall be construed as a consent on the part of Landlord to subject the Demised Premises to liability under any lien law now or hereafter existing of the state in which the Demised Premises are located.

(c) In addition to complying with the other provisions of this Section 18, all computer, telecommunications or other cabling, wiring and associated appurtenances ("**Cabling**") installed by Tenant inside any of the interior walls of the Demised Premises, above the ceiling of the Demised Premises, in any portion of the ceiling plenum above or below the Demised Premises, or in any portion of the Common Areas of the Building, including but not limited to any of the shafts or utility rooms of the Building, shall be clearly labeled or otherwise identified as having been installed by Tenant. All Cabling installed by Tenant shall comply with the requirements of the National Electric Code and any other applicable fire and safety codes. Upon the expiration or earlier termination of this Lease, Tenant shall remove all Cabling installed by Tenant anywhere in the Demised Premises or the Building to the point of the origin of such Cabling, and repair any damage to the Demised Premises or the Building resulting from such removal, except for the initial Cabling approved by Landlord for installation prior to

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the Commencement Date of this Lease and any additional Cabling that Landlord approves subsequently during the Term without the condition that such Cabling be removed.

19. Services by Landlord. Landlord shall be responsible for providing for maintenance of the Building Common Area, and, except as required by Section 10(b) hereof or as otherwise specifically provided for herein, Landlord shall be responsible for no other services whatsoever. Tenant, by payment of Tenant's share of the Operating Expenses, shall pay Tenant's pro rata share of the expenses incurred by Landlord hereunder. Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop any services required by Landlord under this Lease, whenever and for so long as may be reasonably necessary, by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord in good faith deems necessary, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord shall have no liability or responsibility for a cessation of services to the Demised Premises or in the Building which occurs as a result of causes beyond Landlord's control, provided, however, that Landlord shall use commercially reasonable efforts to restore or cause such services to be restored in the event of cessation of service for the reasons stated above. No such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Demised Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease including the obligation to pay Rent (except to the extent that Landlord is reimbursed by insurance proceeds for rent loss), unless Landlord fails to use commercially reasonable efforts to restore or cause such services to be restored in the event of cessation of service for the reasons stated above.

20. Fire and Other Casualty. In the event the Demised Premises are damaged by fire or other casualty insured by Landlord, Landlord agrees to promptly restore and repair the Demised Premises at Landlord's expense, including the Improvements to be insured by Tenant, but only to the extent Landlord receives insurance proceeds therefor, including the proceeds from the insurance required to be carried by Tenant on the Improvements. Notwithstanding the foregoing, in the event that the Demised Premises are (i) in the reasonable opinion of Landlord, so destroyed that they cannot be repaired or rebuilt within two hundred ten (210) days after the date of such damage; or (ii) destroyed by a casualty which is not covered by Landlord's insurance, or if such casualty is covered by Landlord's insurance but Lender or other party entitled to insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Demised Premises, then Landlord shall use commercially reasonable efforts to give written notice to Tenant of such determination (the "**Determination Notice**") within forty-five (45) days of such casualty. Either Landlord or Tenant may terminate and cancel this Lease effective as of the date of such casualty by giving written notice to the other party within thirty (30) days after Tenant's receipt of the Determination Notice. Upon the giving of such termination notice, all obligations hereunder with respect to periods from and after the effective date of termination shall thereupon cease and terminate. If no such termination notice is given, Landlord shall, to the extent of the available insurance proceeds, make such repair or restoration of the Demised Premises to the approximate condition existing prior to such casualty, promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Demised Premises (if Tenant is still occupying the Demised Premises). Base Rent and Additional Rent and all other amounts payable by Tenant hereunder shall equitably abate during the time that the Demised Premises or any part thereof are unusable by reason of any such damage thereto.

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21. Condemnation.

(a) If all of the Demised Premises is taken or condemned for a public or quasi-public use, or if a material portion of the Demised Premises is taken or condemned for a public or quasi-public use and the remaining portion thereof is not usable by Tenant in the reasonable opinion of Landlord, this Lease shall terminate as of the earlier of the date title to the condemned real estate vests in the condemnor or the date on which Tenant is deprived of possession of the Demised Premises. In such event, the Base Rent herein reserved and all Additional Rent and other sums payable hereunder shall be apportioned and paid in full by Tenant to Landlord to that date, all Base Rent, Additional Rent and other sums payable hereunder prepaid for periods beyond that date shall forthwith be repaid by Landlord to Tenant, and neither party shall thereafter have any liability hereunder, except that any obligation or liability of either party, actual or contingent, under this Lease which has accrued on or prior to such termination date shall survive.

(b) If only part of the Demised Premises is taken or condemned for a public or quasi-public use and this Lease does not terminate pursuant to Section 21(a), Landlord shall, to the extent of the award it receives, restore the Demised Premises to a condition and to a size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the taking, and there shall be an equitable adjustment to the Base Rent and Additional Rent based on the actual loss of use of the Demised Premises suffered by Tenant from the taking.

(c) Landlord shall be entitled to receive the entire award in any proceeding with respect to any taking provided for in this Section 21, without deduction therefrom for any estate vested in Tenant by this Lease, and Tenant shall receive no part of such award. Nothing herein contained shall be deemed to prohibit Tenant from making a separate claim, against the condemnor, to the extent permitted by law, for the value of Tenant's moveable trade fixtures, machinery and moving expenses, provided that the making of such claim shall not and does not adversely affect or diminish Landlord's award.

22. Tenant's Default.

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" of Tenant under this Lease:

(i) if Tenant fails to pay Base Rent or any Additional Rent hereunder as and when such rent becomes due and such failure shall continue for more than ten (10) days after Landlord gives written notice to Tenant of such failure; provided, however, that Landlord shall only be required to give such a notice of default three (3) times in any twelve (12) month period during the Term, it being understood and agreed that any failure to pay Base Rent or any Additional Rent on time thereafter within such twelve (12) month period shall constitute an immediate Event of Default hereunder;

(ii) if there shall occur an Event of Default by Tenant under that certain Industrial Lease Agreement with US Industrial REIT II ("USIR II") dated April 7, 2011, pursuant to which Tenant leases from USIR II space located at 8655 Commerce Drive, Suite 104, Southaven, MS 38671;

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(iii) if Tenant permits to be done anything which creates a lien upon the Demised Premises and fails to discharge or bond such lien, or post security with Landlord acceptable to Landlord within thirty (30) days after receipt by Tenant of written notice thereof;

(iv) if Tenant fails to maintain in force all policies of insurance required by this Lease and such failure shall continue for more than ten (10) business days after Landlord gives Tenant written notice of such failure;

(v) if any petition is filed by or against Tenant or any guarantor of this Lease under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within sixty (60) days of commencement with respect to Tenant's or a guarantor's filing or within ninety (90) days with respect to a filing made against Tenant or guarantor by another party), or if any order for relief shall be entered against Tenant or any guarantor of this Lease in any such proceedings;

(vi) if Tenant or any guarantor of this Lease becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;

(vii) if a receiver, custodian, or trustee is appointed for the Demised Premises or for all or substantially all of the assets of Tenant or of any guarantor of this Lease, which appointment is not vacated within ninety (90) days following the date of such appointment; or

(viii) if Tenant fails to perform or observe any other term of this Lease and such failure shall continue for more than thirty (30) days after Landlord gives Tenant written notice of such failure, or, if such failure cannot be corrected within such thirty (30) day period, if Tenant does not commence to correct such default within said thirty (30) day period and thereafter diligently prosecute the correction of same to completion within a reasonable time.

(b) Upon the occurrence of any one or more Events of Default, Landlord may, at Landlord's option, without any demand or notice whatsoever (except as expressly required in this Section 22):

(i) Terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination and all rights of Tenant under this Lease and in and to the Demised Premises shall terminate. Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Demised Premises to Landlord on the date specified in such notice; or

(ii) Terminate this Lease as provided in Section 22(b)(i) hereof and recover from Tenant all damages Landlord may incur by reason of Tenant's default, which shall be calculated at the date of such termination, as follows: (1) the value of the excess, if any, of (A) the Base Rent, Additional Rent and all other sums which would have been payable hereunder by Tenant for the period commencing with the day following the date of such termination and ending with the Expiration Date had this Lease not been terminated (the "**Remaining Term**"), over (B) the aggregate reasonable rental value of the Demised Premises for the Remaining Term (which excess, if any shall be discounted to present value at the "**Treasury Yield**" as defined below for the Remaining Term); plus (2) the costs of recovering

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possession of the Demised Premises and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, reasonable attorneys' fees; (3) the unpaid Base Rent and Additional Rent earned as of the date of termination plus any interest and late fees due hereunder, plus other sums of money and damages owing on the date of termination by Tenant to Landlord under this Lease or in connection with the Demised Premises. The amount as calculated above shall be deemed immediately due and payable. The payment of the amount calculated in subparagraph (ii)(1) shall not be deemed a penalty but shall merely constitute payment of liquidated damages, it being understood and acknowledged by Landlord and Tenant that actual damages to Landlord are extremely difficult, if not impossible, to ascertain. "Treasury Yield" shall mean the rate of return in percent per annum of Treasury Constant Maturities for the length of time specified as published in document H.15(519) (presently published by the Board of Governors of the U.S. Federal Reserve System titled "Federal Reserve Statistical Release") for the calendar week immediately preceding the calendar week in which the termination occurs. If the rate of return of Treasury Constant Maturities for the calendar week in question is not published on or before the business day preceding the date of the Treasury Yield in question is to become effective, then the Treasury Yield shall be based upon the rate of return of Treasury Constant Maturities for the length of time specified for the most recent calendar week for which such publication has occurred. If no rate of return for Treasury Constant Maturities is published for the specific length of time specified, the Treasury Yield for such length of time shall be the weighted average of the rates of return of Treasury Constant Maturities most nearly corresponding to the length of the applicable period specified. If the publishing of the rate of return of Treasury Constant Maturities is ever discontinued, then the Treasury Yield shall be based upon the index which is published by the Board of Governors of the U.S. Federal Reserve System in replacement thereof or, if no such replacement index is published, the index which, in Landlord's reasonable determination, most nearly corresponds to the rate of return of Treasury Constant Maturities. In determining the aggregate reasonable rental value pursuant to subparagraph (ii)(1)(B), above, the parties hereby agree that, at the time Landlord seeks to enforce this remedy, all relevant factors should be considered, including, but not limited to, (a) the length of time remaining in the Remaining Term, (b) the then current market conditions in the general area in which the Building is located, (c) the likelihood of reletting the Demised Premises for a period of time equal to the remainder of the Term, (d) the net effective rental rates then being obtained by landlords for similar type space of similar size in similar type buildings in the general area in which the Building is located, (e) the vacancy levels in the general area in which the Building is located, (f) current levels of new construction that will be completed during the Remaining Term and how this construction will likely affect vacancy rates and rental rates and (g) inflation; or

(iii) Without terminating this Lease, declare immediately due and payable the sum of the following: (1) the present value (calculated using the "Treasury Yield") of all Base Rent and Additional Rent due and coming due under this Lease for the entire Remaining Term (as if by the terms of this Lease they were payable in advance), plus (2) the cost of recovering and reletting the Demised Premises and all other expenses incurred by Landlord in connection with Tenant's default, plus (3) any unpaid Base Rent, Additional Rent and other rentals, charges, assessments and other sums owing by Tenant to Landlord under this Lease or in connection with the Demised Premises as of the date this provision is invoked by Landlord, plus (4) interest on all such amounts from the date due at the Interest Rate, and Landlord may immediately proceed to distrain, collect, or bring action for such sum, or may file a proof of claim in any bankruptcy or insolvency proceedings to enforce payment thereof; provided, however, that such payment shall not be deemed a penalty or liquidated damages, but shall merely constitute payment in advance of all Base Rent and Additional Rent payable hereunder throughout the

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Term, and provided further, however, that upon Landlord receiving such payment, Tenant shall be entitled to receive from Landlord all rents received by Landlord from other assignees, tenants and subtenants on account of said Demised Premises during the remainder of the Term (provided that the monies to which Tenant shall so become entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to this subparagraph (iii)), less all costs, expenses and attorneys' fees of Landlord incurred but not yet reimbursed by Tenant in connection with recovering and reletting the Demised Premises; or

(iv) Without terminating this Lease, in its own name but as agent for Tenant, enter into and upon and take possession of the Demised Premises or any part thereof. Any property remaining in the Demised Premises may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of, Tenant without Landlord being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby unless caused by Landlord's negligence; Thereafter, Landlord may, but shall not be obligated to, lease to a third party the Demised Premises or any portion thereof as the agent of Tenant upon such terms and conditions as Landlord may deem necessary or desirable in order to relet the Demised Premises. The remainder of any rentals received by Landlord from such reletting, after the payment of any indebtedness due hereunder from Tenant to Landlord, and the payment of any costs and expenses of such reletting, shall be held by Landlord to the extent of and for application in payment of future rent owed by Tenant, if any, as the same may become due and payable hereunder. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any such previous default provided same has not been cured; or

(v) Without terminating this Lease, and with or without notice to Tenant, enter into and upon the Demised Premises and, without being liable for prosecution or any claim for damages therefor, maintain the Demised Premises and repair or replace any damage thereto or do anything or make any payment for which Tenant is responsible hereunder. Tenant shall reimburse Landlord immediately upon demand for any expenses which Landlord incurs in thus effecting Tenant's compliance under this Lease and Landlord shall not be liable to Tenant for any damages with respect thereto; or

(vi) Without liability to Tenant or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Tenant any property, material, labor, utilities or other service, wherever Landlord is obligated to furnish or render the same as long as an Event of Default exists under this Lease; or

(vii) With or without terminating this Lease, allow the Demised Premises to remain unoccupied and collect rent from Tenant as it comes due; or

(viii) Pursue such other remedies as are available at law or equity.

(c) If this Lease shall terminate as a result of or while there exists an Event of Default hereunder, any funds of Tenant held by Landlord may be applied by Landlord to any damages payable by Tenant (whether provided for herein or by law) as a result of such termination or default.

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(d) Neither the commencement of any action or proceeding, nor the settlement thereof, nor entry of judgment thereon shall bar Landlord from bringing subsequent actions or proceedings from time to time, nor shall the failure to include in any action or proceeding any sum or sums then due be a bar to the maintenance of any subsequent actions or proceedings for the recovery of such sum or sums so omitted.

(e) No agreement to accept a surrender of the Demised Premises and no act or omission by Landlord or Landlord's agents during the Term shall constitute an acceptance or surrender of the Demised Premises unless made in writing and signed by Landlord. No re-entry or taking possession of the Demised Premises by Landlord shall constitute an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party making such waiver. Landlord's acceptance of Base Rent or Additional Rent in full or in part following an Event of Default hereunder shall not be construed as a waiver of such Event of Default. No custom or practice which may grow up between the parties in connection with the terms of this Lease shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Lease, without a written notice thereof to the other party.

(f) If an Event of Default shall occur, Tenant shall pay to Landlord, on demand, all reasonable expenses incurred by Landlord as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred.

(g) Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Demised Premises or to continue this Lease after being dispossessed or ejected from the Demised Premises.

23. Landlord's Right of Entry. Tenant agrees to permit Landlord and the authorized representatives of Landlord and of Lender to enter upon the Demised Premises at all reasonable times for the purposes of inspecting the Demised Premises and Tenant's compliance with this Lease, and making any necessary repairs thereto; provided that, except in the case of an emergency, Landlord shall give Tenant reasonable prior notice of Landlord's intended entry upon the Demised Premises. Nothing herein shall imply any duty upon the part of Landlord to do any work required of Tenant hereunder, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform it. Landlord shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant by reason of making such repairs or the performance of such work in the Demised Premises or on account of bringing materials, supplies and equipment into or through the Demised Premises during the course thereof, and the obligations of Tenant under this Lease shall not thereby be affected; provided, however, that Landlord shall use reasonable efforts not to disturb or otherwise interfere with Tenant's operations in the Demised Premises in making such inspections, repairs or performing such work. Landlord also shall have the right to enter the Demised Premises at all reasonable times to exhibit the Demised Premises to any prospective purchaser, mortgagee or, during the last six (6) months of the Term, tenant thereof.

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24. Lender's Rights.

(a) For purposes of this Lease:

(i) "**Lender**" as used herein means the holder of a Mortgage;

(ii) "**Mortgage**" as used herein means any or all mortgages, deeds to secure debt, deeds of trust or other instruments in the nature thereof which may now or hereafter affect or encumber Landlord's title to the Demised Premises, and any amendments, modifications, extensions or renewals thereof.

(b) Subject to the receipt by Tenant of a subordination, non-disturbance and attornment agreement, substantially in the form of **Exhibit H** attached hereto, along with such commercially reasonable revisions as may be requested by Lender (an "**SNDA**"), this Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien and security title of any Mortgage. Tenant hereby agrees to execute and promptly deliver to Landlord the SNDA. Tenant recognizes and acknowledges the right of Lender to foreclose or exercise the power of sale against the Demised Premises under any Mortgage.

(c) Tenant shall, in confirmation of the subordination set forth in Section 24(b) and notwithstanding the fact that such subordination is self-operative, and no further instrument or subordination shall be necessary, upon demand, at any time or times, execute, acknowledge, and deliver to Landlord or to Lender any and all reasonable instruments requested by either of them to evidence such subordination (provided such instruments do not materially and adversely affect the rights of Tenant hereunder).

(d) At any time during the Term, Lender may, by written notice to Tenant, make this Lease superior to the lien of its Mortgage. If requested by Lender, Tenant shall, upon demand, at any time or times, execute, acknowledge, and deliver to Lender, any and all reasonable instruments that may be necessary to make this Lease superior to the lien of any Mortgage.

(e) If Lender (or Lender's nominee, or other purchaser at foreclosure) shall hereafter succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease, Tenant shall, if requested by such successor, attorn to and recognize such successor as Tenant's landlord under this Lease without change in the terms and provisions of this Lease and shall promptly execute and deliver any reasonable instrument that may be necessary to evidence such attornment, provided that such successor shall not be bound by (i) any payment of Base Rent or Additional Rent for more than one month in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this Lease, and then only if such prepayments have been deposited with and are under the control of such successor, (ii) any provision of any amendment to the Lease to which Lender has not consented, (iii) the defaults of any prior landlord under this Lease, or (iv) any offset rights arising out of the defaults of any prior landlord under this Lease. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between each successor landlord and Tenant, subject to all of the terms, covenants and conditions of this Lease.

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25. Estoppel Certificate and Financial Statement.

(a) Landlord and Tenant agree, at any time, and from time to time, within twenty (20) days after written request of the other, to execute, acknowledge and deliver an accurate statement in writing in recordable form to the requesting party and/or its designee certifying that: (i) this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect, as modified), (ii) the dates to which Base Rent, Additional Rent and other charges have been paid, (iii) whether, to the best of its knowledge, there exists any failure by the requesting party to perform any term, covenant or condition contained in this Lease, and, if so, specifying each such failure, (iv) (if such be the case) Tenant has unconditionally accepted the Demised Premises and is conducting its business therein, and (v) and as to such additional matters as may be requested, it being intended that any such statement delivered pursuant hereto may be relied upon by the requesting party and by any purchaser of title to the Demised Premises or by any mortgagee or any assignee thereof or any party to any sale-leaseback of the Demised Premises, or the landlord under a ground lease affecting the Demised Premises. Notwithstanding the foregoing, neither Landlord nor Tenant shall be obligated to execute, acknowledge and deliver any such statement more than once in a 12-month period.

(b) If Landlord desires to finance, refinance, or sell the Building, an Event of Default exists, or, not more than once in any 12-month period, for any other reason Tenant and all guarantors of Tenant's obligations hereunder, if any, shall deliver to Landlord, any potential lender or any potential purchaser designated by Landlord such financial statements of Tenant and such guarantors as may be reasonably required by such lender or purchaser, including but not limited to Tenant's financial statements for the past 3 years; provided, however, that if Priority Fulfillment Services, Inc. is the Tenant, then it shall only be required to provide the publicly available financial statements of the Guarantor, in the manner described in this subsection (b). If Tenant or Guarantor makes its financial statement available on line via the internet at and provides Landlord with the then current website address and any other path information necessary for Landlord to access the same, then Tenant shall be deemed to have complied with all requirements of this paragraph. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and the information contained therein ("**Confidential Information**") shall be used only for the purposes herein set forth. Landlord agrees to reveal such Confidential Information only to such Landlord Representatives (as hereinafter defined) who need to know the Confidential Information and only to the extent to which such parties likewise agree to keep such information confidential. "Landlord Representatives" are defined as Landlord's partners, affiliates, lenders, investors, agents, employees, legal counsel, accounting advisors, property management company and any prospective transferee of Landlord's interest in the Building. The parties agree that the Confidential Information shall not include any information that (i) is already known to Landlord or the Landlord Representatives without obligation of confidentiality; (ii) is or becomes publicly known through no wrongful act by Landlord or the Landlord Representatives; (iii) is approved for release by Tenant by written authorization from Tenant; or (iv) is required to be disclosed by law or by regulatory or judicial process.

26. Landlord Liability. NO OWNER OF THE DEMISED PREMISES, WHETHER OR NOT NAMED HEREIN, SHALL HAVE LIABILITY HEREUNDER AFTER IT CEASES TO HOLD TITLE TO THE DEMISED PREMISES. NEITHER LANDLORD NOR ANY OFFICER, DIRECTOR, SHAREHOLDER, PARTNER OR PRINCIPAL OF LANDLORD, WHETHER DISCLOSED OR UNDISCLOSED, SHALL BE UNDER ANY PERSONAL LIABILITY WITH RESPECT TO ANY OF

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THE PROVISIONS OF THIS LEASE. IN THE EVENT LANDLORD IS IN BREACH OR DEFAULT WITH RESPECT TO LANDLORD'S OBLIGATIONS OR OTHERWISE UNDER THIS LEASE, TENANT SHALL LOOK SOLELY TO THE EQUITY OF LANDLORD IN THE BUILDING FOR THE SATISFACTION OF TENANT'S REMEDIES. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT LANDLORD'S LIABILITY UNDER ME TERMS, COVENANTS, CONDITIONS, WARRANTIES AND OBLIGATIONS OF THIS LEASE SHALL IN NO EVENT EXCEED LANDLORD'S EQUITY INTEREST IN THE BUILDING.

27. Notices. Any notice required or permitted to be given or served by either party to this Lease shall be deemed given when made in writing, and either (i) personally delivered, (ii) deposited with the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested, or (iii) delivered by a nationally recognized overnight delivery service providing proof of delivery, properly addressed to the address set forth in Section 1(m) (as the same may be changed by giving written notice of the aforesaid in accordance with this Section 27). If any notice mailed is properly addressed with appropriate postage but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Any notice required or permitted to be given or served by Landlord or Tenant to this Lease may be given by either an agent, law firm or attorney acting on behalf of Landlord or Tenant.

28. Brokers. Tenant represents and warrants to Landlord that, except for those parties set forth in Section 1(o) (the "**Brokers**"), Tenant has not engaged or had any conversations or negotiations with any broker, finder or other third party concerning the leasing of the Demised Premises to Tenant who would be entitled to any commission or fee based on the execution of this Lease. Tenant hereby further represents and warrants to Landlord that Tenant is not receiving and is not entitled to receive any rebate, payment or other remuneration, either directly or indirectly, from the Brokers, and that it is not otherwise sharing in or entitled to share in any commission or fee paid to the Brokers by Landlord or any other party in connection with the execution of this Lease, either directly or indirectly. Tenant hereby indemnifies Landlord against and from any claims for any brokerage commissions (except those payable to the Brokers, all of which are payable by Landlord pursuant to a separate agreement) and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. Landlord represents and warrants to Tenant that, except for those parties set forth in Section 1(o) (the "**Brokers**"), Landlord has not engaged or had any conversations or negotiations with any broker, finder or other third party concerning the leasing of the Demised Premises to Tenant who would be entitled to any commission or fee based on the execution of this Lease. Landlord hereby further represents and warrants to Tenant that Landlord, apart from the standard brokerage commission, is not receiving and is not entitled to receive any rebate, payment or other remuneration, either directly or indirectly, from the Brokers. Landlord hereby indemnifies Tenant against and from any claims for any brokerage commissions (except those payable to the Brokers, all of which are payable by Landlord pursuant to a separate agreement) and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination of this Lease for any reason.

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(a) Tenant may not assign, mortgage, pledge, encumber or otherwise transfer this Lease, or any interest hereunder, or sublet the Demised Premises, in whole or in part, without on each occasion first obtaining the prior express written consent of Landlord, which consent Landlord shall not unreasonably withhold, delay or condition. Any change in control of Tenant resulting from a merger, consolidation, stock transfer or asset sale shall be considered an assignment or transfer which requires Landlord's prior written consent. For purposes of this Section 29, by way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent if Landlord determines (i) that the prospective assignee or subtenant is not of a financial strength similar to Guarantor, as of the Effective Lease Date, (ii) that the prospective assignee or subtenant has a poor business reputation, (iii) that the proposed use of the Demised Premises by such prospective assignee or subtenant (including, without limitation, a use involving the use or handling of Hazardous Substances) will negatively affect the value or marketability of the Building or the Project or (iv) that the prospective assignee or subtenant is a current tenant in the Project or is a bona-fide third-party prospective tenant.

(b) If Tenant desires to assign this Lease or sublet the Demised Premises or any part thereof, Tenant shall give Landlord written notice no later than forty-five (45) days in advance of the proposed effective date of any proposed assignment or sublease, specifying (i) the name and business of the proposed assignee or sublessee, (ii) the amount and location of the space within the Demised Premises proposed to be subleased, (iii) the proposed effective date and duration of the assignment or subletting and (iv) the proposed rent or consideration to be paid to Tenant by such assignee or sublessee. Tenant shall promptly supply Landlord with financial statements and other information as Landlord may reasonably request to evaluate the proposed assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of such notice and other information requested by Landlord within which to notify Tenant in writing that Landlord elects whether to permit Tenant to assign or sublet such space; provided, however, that, if the rent rate agreed upon between Tenant and its proposed subtenant is greater than the rent rate that Tenant must pay Landlord hereunder for that portion of the Demised Premises, or if any consideration shall be promised to or received by Tenant in connection with such proposed assignment or sublease (in addition to rent), then one-half (1/2) of such excess rent and other consideration (after payment of brokerage commissions, attorneys' fees, and other disbursements reasonably incurred by Tenant for such assignment and subletting if acceptable evidence of such disbursements is delivered to Landlord) shall be considered Additional Rent owed by Tenant to Landlord, and shall be paid by Tenant to Landlord, in the case of excess rent, in the same manner that Tenant pays Base Rent and, in the case of any other consideration, within ten (10) business days after receipt thereof by Tenant; or (iii) to refuse, in Landlord's reasonable discretion (taking into account all relevant factors including, without limitation, the factors set forth in the Section 29(a) above), to consent to Tenant's assignment or subleasing of such space and to continue this Lease in full force and effect as to the entire Demised Premises. If Landlord should fail to notify Tenant in writing of such election within the aforesaid thirty (30) day period, Landlord shall be deemed to have elected option (iii) above. Tenant agrees to reimburse Landlord for reasonable legal fees and any other reasonable costs incurred by Landlord in connection with any requested assignment or subletting, and such payments shall not be deducted from the Additional Rent owed to Landlord pursuant to subsection (ii) above. Tenant shall deliver to Landlord copies of all documents executed in connection with any permitted assignment or subletting, which documents shall be in form and substance reasonably satisfactory to Landlord and

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which shall require such assignee to assume performance of all terms of this Lease on Tenant's part to be performed.

(c) No acceptance by Landlord of any rent or any other sum of money from any assignee, sublessee or other category of transferee shall be deemed to constitute Landlord's consent to any assignment, sublease, or transfer. Permitted subtenants or assignees shall become liable directly to Landlord for all obligations of Tenant hereunder, without, however, relieving Tenant of any of its liability hereunder. No such assignment, subletting, occupancy or collection shall be deemed the acceptance of the assignee, tenant or occupant, as Tenant, or a release of Tenant from the further performance by Tenant of Tenant's obligations under this Lease. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease.

30. Termination or Expiration.

(a) No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof. Notwithstanding anything to the contrary contained herein, if this Lease is rejected in any bankruptcy action or proceeding filed by or against Tenant, and the effective date of rejection is on or after the date upon which that month's Rent is due and owing, then the Rent owing under this Lease for the month during which the effective date of such rejection occurs shall be due and payable in full and shall not be prorated.

(b) At the expiration or earlier termination of the Term of this Lease, Tenant shall surrender the Demised Premises and all improvements, alterations and additions thereto, and keys therefor to Landlord, clean and neat, and in the same condition as at the Lease Commencement Date, excepting normal wear and tear, condemnation and casualty other than that required to be insured against by Tenant hereunder.

(c) If Tenant remains in possession of the Demised Premises after expiration of the Term, with or without Landlord's acquiescence and without any express agreement of the parties, Tenant shall be a tenant-at-sufferance at the greater of (i) one hundred fifty percent (150%) of the then current fair market base rental value of the Demised Premises or (ii) one hundred fifty percent (150%) of the Base Rent in effect at the end of the Term. Tenant shall also continue to pay all other Additional Rent due hereunder. Notwithstanding the foregoing, there shall be no renewal of this Lease by operation of law or otherwise, and, in addition to and without limiting such rights and remedies as may be available to Landlord at law or in equity as a result of Tenant's holding over beyond the Term, Landlord shall be entitled to exercise any and all rights and remedies available to Landlord in respect of an Event of Default hereunder (it being agreed that any such holdover shall be deemed an immediate Event of Default hereunder). In addition to the foregoing, Tenant shall be liable for all damages, direct and consequential, incurred by Landlord as a result of such holdover. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Demised Premises shall reinstate, continue Or extend the Term or Tenant's right of possession. The provisions of this subsection 30(c) shall survive the expiration of the Term.

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31. Renewal Option.

(a) Provided that (i) no material adverse change has occurred in Tenant's financial condition, (ii) this Lease is in full force and effect, and (iii) no Event of Default shall exist under this Lease, either on the date Tenant exercises its Renewal Option (as hereinafter defined) or as of the effective date of the Renewal Term (as hereinafter defined), or would exist but for the pendency of any cure periods provided under Section 22(a) herein; Tenant shall have the option to extend the Term of this Lease with respect to the entire Demised Premises for one (1) additional period (the "**Renewal Option**") of five (5) years (the "**Renewal Term**"). The Renewal Option shall be subject to all of the terms and conditions contained in this Lease except that (i) the Renewal Rent (as hereinafter defined) shall be at the then prevailing Market Rate (as defined below) on the commencement date of the Renewal Term; (ii) Landlord shall have no obligation to improve the Demised Premises or provide any improvement allowance; and (iii) there shall be no further option to extend the Term beyond the Renewal Term.

(b) Tenant shall send Landlord a preliminary expression of Tenant's willingness to renew this Lease no earlier than two hundred seventy (270) days or later than one hundred eighty (180) days prior to the expiration of the Primary Term of this Lease (the "**Renewal Notice**"). In the event Tenant timely provides Landlord with Tenant's Renewal Notice, Landlord shall notify Tenant ("**Landlord's Response**"), on or before one hundred fifty (150) days prior to the expiration of the Primary Term of this Lease of the Renewal Rent to be payable by Tenant during the Renewal Term. Upon receipt of Landlord's Response, Tenant shall thereafter have the right, exercisable by written notice to Landlord on or before thirty (30) days after Landlord's delivery of Landlord's Response to reject Landlord's Response, in which event this Section 31 shall be null and void in all respects and Tenant shall vacate and surrender the Demised Premises to Landlord in accordance with this Lease upon expiration of the Primary Term. In the event Tenant fails to reject Landlord's Response on or before the expiration of such 30-day period, then it shall be conclusively deemed that Tenant shall have irrevocably exercised its Renewal Option under this Section 31 for the Renewal Rent stated in Landlord's Response. In the event any date referenced in this Section 31(b) falls on a day other than a business day, such date shall be deemed to be the next following business day.

(c) The Renewal Rent for the Renewal Term shall be an amount equal to the prevailing Market Rate. As used herein "**Market Rate**" shall mean the then prevailing market rate for triple net base rent (and with charges for parking, which parking charges shall be in addition to Base Rent) for tenants of comparable quality for renewal leases in buildings of comparable size, age, use, location and quality in the Memphis, Tennessee market area, taking into consideration the extent of the availability of space as large as the Demised Premises in the marketplace and all other economic terms then customarily prevailing in such renewal leases in said marketplace.

(d) This Renewal Option is personal with respect to Priority Fulfillment Services, Inc. Any assignment or subletting shall automatically terminate Priority Fulfillment Services, Inc.'s rights hereunder. Time is of the essence with respect to the provisions of this Section 31.

32. Late Payments. In the event any installment of rent, inclusive of Base Rent, or Additional Rent or other sums due hereunder, if any, is not paid within five (5) days after the due date therefor, Tenant shall pay an administrative fee (the "**Administrative Fee**") equal to five percent (5%) of such past due amount, plus interest on the amount past due at the lesser of (i) the maximum interest rate allowed by

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law or (ii) a rate of fifteen percent (15%) per annum (the "**Interest Rate**"), in order to defray the additional expenses incurred by Landlord as a result of such late payment. The Administrative Fee is in addition to, and not in lieu of, any of the Landlord's remedies hereunder.

33. Rules and Regulations. Tenant agrees to abide by the rules and regulations set forth on **Exhibit D** attached hereto, as well as other reasonable rules and regulations reasonably promulgated by Landlord in a nondiscriminatory manner from time to time, so long as such rules and regulations are not intended to modify or amend the basic Lease terms and do not materially and adversely impact Tenant's cost or ability to operate and apply to all tenants of the Building in a nondiscriminatory manner.

34. Quiet Enjoyment. So long as Tenant pays its rent and performs its obligations hereunder, Landlord agrees that Tenant shall have the right to quietly use and enjoy the Demised Premises for the Term free from the disturbance by Landlord or any party by, through or under Landlord.

35. Miscellaneous.

(a) The parties hereto hereby covenant and agree that Landlord shall receive the Base Rent, Additional Rent and all other sums payable by Tenant hereinabove provided as net income from the Demised Premises, without any abatement (except as set forth in Section 20 and Section 21), reduction, set-off, counterclaim, defense or deduction whatsoever.

(b) If any clause or provision of this Lease is determined to be illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and that in lieu of such illegal, invalid or unenforceable clause or provision there shall be substituted a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(c) All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(d) TIME IS OF THE ESSENCE OF THIS LEASE.

(e) No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder or to insist upon strict compliance by Landlord or Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's or Tenant's rights to demand exact compliance with the terms hereof.

(f) This Lease contains the entire agreement of the parties hereto as to the subject matter of this Lease and no prior representations, inducements, letters of intent, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force and effect. Any future amendment to this Lease must be in writing and signed by the parties hereto. The masculine (or neuter) pronoun, singular number shall include the masculine, feminine and neuter gender and the singular and plural number.

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(g) This contract shall create the relationship of landlord and tenant between Landlord and Tenant; no estate shall pass out of Landlord; Tenant has a usufruct, not subject to levy and sale, and not assignable by Tenant except as expressly set forth herein.

(h) Under no circumstances shall Tenant have the right to record this Lease or a memorandum thereof.

(i) The captions of this Lease are for convenience only and are not a part of this Lease, and do not in any way define, limit, describe or amplify the terms or provisions of this Lease or the scope or intent hereof.

(j) This Lease may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. This Lease shall be interpreted under the laws of the State where the Demised Premises are located.

(k) This Lease shall be interpreted under the laws of the State where the Demised Premises are located.

(l) The parties acknowledge that this Lease is the result of negotiations between the parties, and in construing any ambiguity hereunder no presumption shall be made in favor of either party. No inference shall be made from any item which has been stricken from this Lease other than the deletion of such item.

(m) Landlord and Tenant each waive trial by jury in connection with proceedings or counterclaims brought by either of the parties against the other with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Demised Premises.

(n) If either Landlord or Tenant commences or engages in any legal action or proceeding against the other party (including, without limitation, litigation or arbitration) arising out of or in connection with the Lease, the Demised Premises or the Project (including, without limitation (a) the enforcement or interpretation of either party's rights or obligations under this Lease (whether in contract, tort, or both) or (b) the declaration of any rights or obligations under this Lease), the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, together with any costs and expenses, incurred in any such action or proceeding, including any attorneys' fees, costs, and expenses incurred on collection and on appeal.

(o) Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for all of Landlord's actual documented out of pocket costs incurred in reviewing the proposed action or consent, including, without limitation, attorneys', engineers' or architects fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

(p) Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability

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of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its agents shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building, the Demised Premises or the Project, without the prior written consent of Landlord; provided, however, that Tenant may disclose the terms to Tenants Representatives (as hereinafter defined). Tenant agrees to reveal such Lease information only to such Tenant Representatives who need to know the Lease information and only to the extent to which such parties likewise agree to keep such information confidential. "Tenant Representatives" are defined as Tenant's partners, affiliates, lenders, investors, agents, employees, legal counsel, accounting advisors, property management company and any prospective subtenant or assignee of Tenant's interest in the Building. The parties agree that the confidential Lease information shall not include any information that (i) was already known to Tenant or the Tenant Representatives prior to Lease execution without obligation of confidentiality; (ii) is or becomes publicly known through no wrongful act by Tenant or the Tenant Representatives; (iii) is approved for release by Tenant by written authorization from Tenant; or (iv) is required to be disclosed by law or by regulatory or judicial process.

(q) If more than one entity executes this Lease as Tenant, their execution of this Lease will constitute their covenant and agreement that: (i) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (ii) the term "Tenant" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to the exercise of any options hereunder, will be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted.

(r) Tenant represents and warrants to and covenants with Landlord that (i) neither Tenant nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the "Anti-Terrorism Laws"), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") related to Specially Designated Nationals and Blocked Persons ("SDN's OFAC Regulations"), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act"); and (ii) neither Tenant nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a "Prohibited Person" which is defined as follows: (1) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of, any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, <http://www.treas.gov/offices/eofac/ofac/sdn/tlisdn.pdf>, or at any replacement website or other replacement official publication of such list, and (2) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA Patriot Act.

36. Special Stipulations. The Special Stipulations, if any, attached hereto as **Exhibit C**, are incorporated herein and made a part hereof, and to the extent of any conflict between the foregoing provisions and the Special Stipulations, the Special Stipulations shall govern and control.

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37. Effective Lease Date. For purposes of this Lease, the term "**Effective Lease Date**" shall mean the later date upon which this Lease is signed by Landlord and Tenant.

38. Authority. If Tenant is not a natural person, Tenant shall cause its corporate secretary or general partner, as applicable, to execute the certificate attached hereto as **Exhibit E**. Tenant is authorized by all required corporate or partnership action to enter into this Lease and the individual(s) signing this Lease on behalf of Tenant are each authorized to bind Tenant to its terms.

39. No Offer Until Executed. The submission of this Lease by Landlord to Tenant for examination or consideration does not constitute an offer by Landlord to lease the Demised Premises and this Lease shall become effective, if at all, only upon the execution and delivery thereof by Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Demised Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. Eastern time for fifteen (15) days after the date of execution of this Lease by Tenant and delivery to Landlord. This Lease may be executed and delivered by facsimile or electronic media and in multiple counterparts, followed by delivery of originals to the other party.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands under seals, the day and year first above written.

LANDLORD:

Date: _____

US INDUSTRIAL REIT III - MIDWEST,
a Texas real estate investment trust

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

TENANT:

Date: _____

PRIORITY FULFILLMENT SERVICES, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

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ATTESTATION

STATE OF _____

COUNTY OF _____

BEFORE ME, a Notary Public in and for said County, personally appeared _____ and _____, known to me to be the person(s) who, as _____, respectively, of _____, the corporation, signed the same, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said real estate investment trust as officers of said real estate investment trust, that the same is their free act and deed as such officers, respectively, and they were duly authorized thereunto by its board of directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, a Notary Public in and for said County, personally appeared _____ and _____, known to me to be the person(s) who, as _____, respectively, of _____, the corporation, signed the same, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said corporation as officers of said corporation, that the same is their free act and deed as such officers, respectively, and they were duly authorized thereunto by its board of directors; and that the seal affixed to said instrument is the corporate seal of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

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**EXHIBIT A
DEMISED PREMISES**



EXHIBIT A

Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
Bldg. H

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EXHIBIT B-1
PRELIMINARY PLANS AND SPECIFICATIONS / WORK

- 1) Install demising wall of sheetrock on metal studs, painted on both sides.
- 2) If required, split HVAC infrastructure from adjacent space not leased by Tenant.
- 3) Split existing utility services along new demising wall
- 4) Otherwise, space is being offered "as-is" with all existing systems in good working order.

EXHIBIT B-1
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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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SCHEDULE I
TENANT WORK

Itemized Bid

**PROJECT: PFSWEB – SOUTHAVEN
1560 STATE LINE ROAD**



BID TO:	MARK JENKINS	PROJECT MANAGER:	Fred Shackelford
CONTRACTOR:	Dan Walker Associates, Inc. - General Contractors	BID DATE:	Thursday, May 26, 2016
PLAN DATE:	Tuesday, February 02, 2016		

SQ FOOTAGE

198162

ITEM #	ITEMIZED BREAKDOWN	Cost	Cost PSF	COMMENTS
1	DUST PROTECTION		\$0.00	
2	DEMO FLOORS, BASE		\$0.00	
3	CONCRETE		\$0.00	
4	FRAME, HANG AND FINISH NEW TENANT DIVIDER WALL	see below		

EXHIBIT B-1
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Priority Fulfillment Services, Inc.
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5	DOORS, FRAMES, AND HARDWARE		\$0.00	
6	ROUGH CARPENTRY		\$0.00	
7	MILLWORK ALLOWANCE		\$0.00	
8	GLASS AND GLAZING		\$0.00	
9	CEILINGS		\$0.00	
10	REPLACE ALL CARPET THROUGHOUT MAIN AND WAREHOUSE OFFICES	\$18,725.00	\$0.09	
11	REPLACE ALL VCT IN MAIN AND WAREHOUSE OFFICES	\$24,875.00	\$0.13	
12	PAINT ALL OFFICE WALLS - INCLUDES MAIN OFFICE AND WAREHOUSE OFFICE	\$10,127.00	\$0.05	
13	PAINT BOTH SIDES OF NEW TENANT DIVIDER WALL	see below		
14	DOCK EQUIPMENT - PROVIDE AND INSTALL 17 NEW DOCK SEALS, 35,000# PIT LEVELERS, LEVELER PITS, AND DOCK LIGHTS. INSTALL 9 QUAD OUTLETS FOR NEW DOCK LIGHTS	\$171,238.00	\$0.86	
15	WINDOW TREATMENTS		\$0.00	
16	FIRE PROTECTION		\$0.00	
17	REMOVE AND RESET WATER CLOSETS FOR INSTALLATION OF NEW VCT FLOORS IN REST ROOMS	\$2,681.00	\$0.01	
18	SEPARATE GAS SERVICE AND RESTART ALL GAS UNITS ONCE GAS IS SPLIT.	see below		

EXHIBIT B-1

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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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19	SEPARATE ELECTRICAL SERVICE, RE-FEEDING ALL PANELS, HVAC UNITS AND LIGHT CIRCUITS AS NEEDED	see below		
20	GENERAL CONDITIONS	INCL		
21	CLEANUP	INCL		
22	TEMPORARY FACILITIES	INCL		
23	SUPERVISION	INCL		
24	CONTRACTORS FEE	INCL		
	Construction Costs		\$227,646.00	\$1.15

EXHIBIT B-1

**EXHIBIT C
SPECIAL STIPULATIONS**

The Special Stipulations set forth herein are hereby incorporated into the body of the lease to which these Special Stipulations are attached (the "**Lease**"), and to the extent of any conflict between these Special Stipulations and the preceding language, these Special Stipulations shall govern and control.

1. Right of First Refusal to Lease.

(a) Granting of Right. Provided that (i) this Lease is in full force and effect; and (ii) no Event of Default exists under this Lease or would exist but for the pendency of any cure periods provided for in Section 22, either on the date Tenant exercises its Right of First Refusal (as hereinafter defined) or as of the time possession of such Right of First Refusal Space (as hereinafter defined) is delivered to Tenant, Tenant shall have a one-time right of first refusal (the "**Right of First Refusal**") during the Primary Term to lease the right of first refusal space consisting of 175,482 square feet as reflected on **Exhibit A** of the Lease and incorporated by reference herein (the "**Right of First Refusal Space**").

(b) Landlord's Notice. Landlord shall exercise good faith efforts to advise Tenant in writing if it enters into negotiations to lease all or any portion of the Right of First Refusal Space with any third party. If Landlord reasonably believes it has fully negotiated the terms of a lease proposal with a bona fide third party prospective tenant (the "**Proposal**"), Landlord shall send a copy of such Proposal to Tenant ("**Landlord's Notice**"), which Landlord's Notice shall set forth the applicable portion of the Right of First Refusal Space covered by the Proposal and the basic economic terms and conditions of such Proposal. A Proposal shall be deemed "bona fide" in the event that Landlord reasonably believes the terms and conditions in the Proposal are fully negotiated between the third party tenant and the Landlord. Tenant shall have a period of four (4) business days from the date of Landlord's Notice to notify Landlord whether Tenant elects to exercise its Right of First Refusal with respect to all of that portion of Right of First Refusal Space offered upon such terms and conditions set forth in Landlord's Notice, including, without limitation, term, basic rent, allowances and rentable square footage. Notwithstanding the foregoing, Landlord shall only be obligated to notify Tenant of the availability of such Right of First Refusal Space and Tenant shall only have rights pursuant to the terms of this paragraph in the event that such proposal includes that portion of the Right of First Refusal Space, which is immediately contiguous to the Demised Premises.

(c) Exercise of Right of First Refusal. If Tenant fails to give any notice to Landlord within the required four (4) business day period, Tenant shall be deemed to have refused to exercise its Right of First Refusal with respect to the Right of First Refusal Space. If Tenant refuses to exercise its Right of First Refusal, either by giving written notice of refusal or failing to timely give notice of exercise, Landlord shall thereafter have the right to lease such portion of the Right of First Refusal Space to the third party and Tenant's Right of First Refusal with respect to all of the Right of First Refusal Space shall automatically cease and forever terminate, unless (i) Landlord does not enter into a lease with the third party who obtained the Proposal or (ii) the Material Economic Provisions (as defined below) of the Proposal finally agreed to between Landlord and the third party are substantially different from the

EXHIBIT C

Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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Material Economic Provisions set forth in Landlord's original Landlord's Notice and original Proposal and the third party is not then an existing tenant of the Building, in which case Tenant will again be provided with a subsequent Landlord's Notice and Right of First Refusal under the terms of this paragraph with respect to the new terms and conditions being offered in the final Proposal. For purposes of this Lease, (a) "**Material Economic Provisions**" shall be the square footage of the Right of First Refusal Space, Base Rent, Additional Rent, improvement allowances and free rent or other material financial incentives that collectively comprise the financial portion of the Lease and (b) "**substantially different**" shall mean that the Material Economic Provisions of the final Proposal, when considered collectively, shall be more than ten percent (10%) more beneficial to the third party than the Material Economic Provisions, when considered collectively, as set forth in the original Landlord's Notice and original Proposal.

(d) Lease Amendment. If Tenant exercises its right to lease any portion of the Right of First Refusal Space pursuant to this Exhibit C, Special Stipulations, paragraph 1, Landlord and Tenant shall, within thirty (30) days after Tenant exercises its Right of First Refusal, enter into a lease amendment (the "**ROFR Amendment**") with respect to such portion of the Right of First Refusal Space leased on the terms, covenants and conditions set forth in Landlord's Notice, including, but not limited to, Base Rent, tenant improvement allowance and term; provided, however, all other terms and conditions contained in this Lease shall apply to the Right of First Refusal Space as a result of Tenant's election hereunder, except to the extent specified otherwise in the Landlord's Notice. Effective upon the date set forth in the ROFR Amendment, the Right of First Refusal Space shall be added to the definition of Demised Premises under the Lease and the annual Base Rent shall be increased by an amount equal to the product obtained by multiplying (1) the number of square feet in the Right of First Refusal Space times (2) the annual Base Rent rate (as reflected in the Landlord's Notice) per square foot. Additionally, Tenant's Operating Expense Percentage shall be increased by the amount of square feet in the Right of First Refusal Space divided by the number of square feet in the Building (i.e., in the same manner as Tenant shall be responsible for Operating Expenses allocable to the original Demised Premises under this Lease).

(e) Duration of Right. This Right of First Refusal shall automatically terminate on the expiration of the 48th month of the Primary Term of this Lease. The Right of First Refusal is personal with respect to Priority Fulfillment Services, Inc. Any assignment or subletting by Priority Fulfillment Services, Inc. shall automatically terminate this right.

2. Landlord Insurance. Landlord shall maintain at all times during the Term of this Lease, with such deductible as Landlord in its sole judgment determines advisable, insurance on the "**Special Form**" or equivalent form on a replacement cost basis against loss or damage to the Building (excluding all fixtures and property required to be insured by Tenant under this Lease). Landlord may also elect to carry other insurance coverages that Landlord reasonably determines appropriate, including, without limitation, commercial general liability insurance and insurance on the "**Special Form**" or equivalent form against abatement or loss of rental by reason of the occurrences covered by the insurance described in the preceding sentence and by reason of any service interruptions in an amount equal to all base rent and additional rent to be derived from the Building for at least twelve (12) months following the occurrence of such casualty.

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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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3. Construction of Demised Premises.

(a) Notwithstanding the provisions of Section 17 of this Lease, Landlord shall be responsible for the cost of the construction of the Improvements only up to an amount equal to \$237,794.40 (based on \$1.20 per square foot of the Demised Premises) (the "**Tenant Allowance**"). If the entire Tenant Allowance is not utilized as of the Lease Commencement Date, any un-used portion shall be forfeited. Upon Substantial Completion of the Improvements, Landlord shall deliver to Tenant a bill ("**Landlord's Notice**") for all amounts in excess of the Tenant Allowance (collectively, the "**Excess Cost**"). Tenant agrees to pay any Excess Cost in full to Landlord within ten (10) calendar days following receipt of Landlord's Notice (the "**Payment Period**").

(b) For purposes of this Special Stipulation, the cost of the construction of the Improvements shall be deemed to include, but not be limited to, the cost of the Plans and Specifications, permits and buildout (including, without limitation, the demising walls, utilities, and heating, ventilating and air conditioning system serving or comprising a portion thereof) associated therewith.

4. Tenant's Early Occupancy.

(a) Subject to the provisions below, from and after the Lease Date, Tenant shall have the right to enter the Demised Premises in order to install racking, install Tenant Alterations (to the extent permitted by the Lease) and generally prepare the Demised Premises for occupancy ("**Early Access**").

(b) Tenant's right to Early Access is subject to, and conditioned upon, the following:

(i) Early Access is only permitted if, and to the extent, (A) permitted by applicable Governmental Requirements and (B) Landlord has obtained possession of the Demised Premises from the prior tenant and such tenant's lease has terminated.

(ii) Tenant shall comply with all the terms and conditions of this Lease during any Early Access, other than the obligation to pay Base Rent and its share of Operating Expenses.

(iii) Tenant shall not interfere with Landlord's completion of the Improvements;

(iv) Tenant shall at all times strictly adhere to safety protocols in place related to its construction activities.

(iv) Tenant will provide written notice to Landlord prior to any Early Access and Landlord shall have the right to have a representative present during such access.

(vi) Tenant shall not begin operation of its business from the Demised Premises until the Lease Commencement Date.

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(vii) Notwithstanding anything to the contrary contained herein, Tenant does hereby expressly acknowledge and agree that the storage and installation of fixtures and Personal Property (including equipment) in the Demised Premises shall be at Tenant's sole risk, cost and expense, and that Landlord shall not be liable for and Tenant hereby releases Landlord from any and all liability for theft thereof or any damage thereto occasioned by any act of God or by any acts, omissions or negligence of any persons. Tenant does hereby further agree to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless Landlord and its employees, officers, directors, agents and contractors from and against any and all claims, liabilities, losses, actions, causes of action, demands, costs and expenses (including, without limitation, attorneys' fees at the trial and appellate levels) of any and every nature arising out of or in any way relating to Tenant's Early Access.

5. Inspection Rights — Operating Expense Books and Records.

(a) Landlord's books and records pertaining to the calculation of Operating Expenses for any calendar year within the Term may be inspected by Tenant at Tenant's expense, at any reasonable time within six (6) months after Tenant's receipt of Landlord's statement for Operating Expenses; provided that Tenant shall give Landlord not less than fifteen (15) days' prior written notice of any such inspection. If Landlord and Tenant agree that Landlord's calculation of Tenant's share of Operating Expenses for the inspected calendar year was incorrect, the parties shall enter into a written agreement confirming such error and then, and only then, Tenant shall be entitled to a credit against future Base Rent for said overpayment (or a refund of any overpayment if the Term has expired) or Tenant shall pay to Landlord the amount of any underpayment, as the case may be. If Tenant's inspection proves that Landlord's calculation of Tenant's share of Operating Expenses for the inspected calendar year resulted in an overpayment by more than fifteen percent (15%) of Tenant's share, Landlord shall also pay the reasonable fees and expenses of Tenant's independent professionals, if any, conducting said inspection.

(b) All of the information obtained through Tenant's inspection with respect to financial matters (including, without limitation, costs, expenses, income) and any other matters pertaining to Landlord, the Demised Premises, the Building and/or the Project as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of the inspection shall be held in strict confidence by Tenant and its officers, agents, and employees; and Tenant shall cause its independent professionals and any of its officers, agents or employees to be similarly bound. The obligations within this subsection (b) shall survive the expiration or earlier termination of the Lease.

(c) The audit shall take place at Landlord's regional offices or, at Landlord's option, the Building, at a time mutually convenient to Landlord and Tenant (but not later than sixty (60) days after receipt of Tenant's notice to audit). Except as Landlord may consent in writing, the audit shall be completed within ten (10) business days after commencement. No copying of Landlord's books or records will be allowed. The audit may be accomplished by either Tenant's own employees with accounting experience reasonably sufficient to conduct such review, or a nationally or regionally recognized public accounting firm approved by Landlord, which approval shall not be unreasonably withheld or delayed, and that is engaged on either a fixed price or hourly basis. Under no circumstances shall Landlord be required to consent to an accounting firm that is also a tenant of Landlord (or any Landlord affiliate) in the Building or any building in the city or metropolitan area in which the Building is located. A copy of

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the results of the audit shall be delivered to Landlord within 30 days after the completion of the audit. Failure by Tenant to timely request an audit, or to timely deliver to Landlord the results of the audit when such failure continues for more than 10 business days after Landlord requests the results of a completed audit, or to follow in any material respect any of the procedures set forth in this Section is deemed a waiver of the applicable audit right and any right to contest the Operating Expenses or the applicable calendar year and is deemed acceptance of the Operating Expenses for the applicable calendar year. Any audit review by Tenant shall not postpone or alter the liability and obligation of Tenant to pay any Rent due under the term of the Lease. Tenant shall not be entitled to conduct such an audit during any period in which an Event of Default exists under this Lease. No subtenant shall have any right to conduct an audit and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Demised Premises or for any period in which Tenant has conducted an audit.

6. Environmental Matters. Landlord shall indemnify Tenant and hold Tenant harmless from and against any and all expenses, losses and liabilities actually suffered by Tenant (with the exception of any and all consequential damages, including but not limited to the loss of use of the Demised Premises, lost profits and loss of business, and those expenses, losses, and liabilities arising from the negligence or willful act of Tenant or Tenant's Affiliates) as a result of a governmental authority having jurisdiction ordering a cleanup, removal or other remediation by Tenant of any Hazardous Substances placed on, under or about the Demised Premises by Landlord. Notwithstanding the foregoing, Landlord shall have the right to undertake and perform any studying, remedying, removing or disposing of, or otherwise addressing, any Contamination which is the responsibility of Landlord hereunder and to control all communications with regulatory or governmental agencies with respect thereto, and Tenant shall not perform such acts and communications nor be entitled to any indemnification hereunder unless (w) Tenant is specifically required by Environmental Laws to perform such acts, (x) Tenant notifies Landlord of such Contamination promptly after Tenant has actual knowledge or reasonable belief of its existence, (y) Tenant promptly provides copies to Landlord of any notices given or received by Tenant related to such Contamination and (z) Landlord has failed or refused to perform such acts and communications after having been afforded reasonable written notice by Tenant and having had reasonable opportunity to perform such acts and communications.

7. Guaranty. Simultaneously with the execution of this Lease, Tenant shall cause Guarantor to execute and deliver a guaranty of Tenant's obligations hereunder in the form attached hereto as **Exhibit G**.

8. Taxes. Landlord agrees to cooperate with Tenant reasonably and in good faith, at Tenant's sole cost and expense, to minimize ad valorem real property taxes applicable to the Building by, among other things, co-signing applications for ad valorem tax exemptions for the Demised Premises at Tenant's request.

9. Landlord's Default.

(a) Notice. If Landlord fails to perform or observe or otherwise breaches any term of this Lease and such failure shall continue for more than 30 days after Tenant gives Landlord written notice of such failure, or, if such failure does not arise out of a failure by Landlord to pay a sum of money and cannot reasonably be corrected within such 30-day period, if Landlord does not commence to correct

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such default within such 30-day period and thereafter diligently prosecute the correction of same to completion within a reasonable time, a "Landlord Event of Default" shall exist under this Lease.

(b) Tenant's Right to Cure. Upon the occurrence of a Landlord Event of Default, Tenant may at Tenant's option, cure the Landlord Event of Default and the actual cost of such cure shall be payable by Landlord to Tenant within 30 calendar days after written demand; provided, however, that if a failure by Landlord to perform or observe any term of this Lease gives rise to circumstances or conditions which constitute an emergency threatening human health or safety or substantial damage to the Demised Premises, Tenant's personal property, or materially impedes the conduct of the business of Tenant at the Demised Premises, Tenant shall be entitled to take immediate curative action (prior to the expiration of any notice and cure period set forth above, other than such notice to Landlord's representative as may be reasonable under the circumstances) to the extent necessary to eliminate the emergency.

(c) Requirements for Self-Help. All costs incurred by Tenant hereunder must be reasonable in amount and reasonably incurred and must not exceed the scope of the Landlord Event of Default in question; and if such costs are chargeable as a result of labor or materials provided directly by Tenant, rather than by unrelated third parties, the costs shall not exceed the amount which would have been charged by a qualified third party unrelated to Tenant. All work performed by Tenant must be of first-class quality. Such costs must be reasonably documented and copies of such documentation must be delivered to Landlord with the written demand for reimbursement. Nothing contained in this Special Stipulation shall create or imply the existence of any obligation by Tenant to cure any Landlord Event of Default.

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EXHIBIT D
INDUSTRIAL PARK – RULES AND REGULATIONS

1. The sidewalks, entrances, passages, elevators, elevators, vestibules, stairways, corridors or shall not be obstructed by Tenant or used for any purpose other than ingress and egress to and from the Demised Premises.
2. No awning or other projections shall be attached to the outside walls of the Demised Premises or the exterior of the building of which they form without, in each instance, the prior written consent of Landlord. No tenant and no employees of any tenant shall go upon the roof of the Building without the consent of Landlord.
3. Tenant shall not place, affix or maintain any showcases, merchandise, security devises, signs or other articles to the exterior of Tenant's Premises or in the common areas of the Building without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.
4. Except as otherwise permitted under the Lease, no sign, advertisement, display, notice, or other lettering shall be exhibited, inscribed, painted, or affixed on any part of the outside of the Demised Premises or inside, if visible from the outside, or outside the building of which they form a part, and no symbol, design, mark, or insignia adopted by Landlord for the Building or the tenants therein shall be used in connection with the conduct of Tenant's business in the Demised Premises or elsewhere without, in each instance, the prior written consent of Landlord, which consent shall not be unreasonably withheld. All such signs, displays, advertisements, and notices of Tenant so approved by Landlord shall be maintained by Tenant in good and attractive condition at Tenant's expense and risk. Tenant shall not use handbills for advertising at the Building.
5. The Demised Premises shall not be used for (i) an auction, "fire sale", "liquidation sale", "going out of business sale" or any similar such sale or activity, (ii) lodging or sleeping, or (iii) any immoral or illegal purposes, unless pursuant to court order.
6. No aerial shall be erected on the roof or exterior walls of the Demised Premises, or on the grounds without, in each instance, the prior written consent of Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time.
7. No loud speakers, television sets, phonographs, radios, musical instruments or other devices shall be used in a manner so as to be heard or seen outside of the Demised Premises without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.
8. Tenant shall not make or permit any noise, odor or gases which Landlord deems objectionable to emanate from the Demised Premises. Tenant shall not suffer, allow, or permit any vibration, light, or

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other effect to emanate from the Demised Premises, or from any machine or other installation therein, or otherwise suffer, allow, or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort, or convenience of Landlord or any of the other tenants or occupants of the Building or their Agents/Invitees, or any others lawfully in or upon the Building. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees to forthwith remove or control the same.

9. Canvassing, soliciting and peddling in the Building are prohibited and each Tenant shall cooperate to prevent the same.

10. No material shall be placed in the trash boxes, containers or receptacles in the Building unless such material may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. If Landlord shall provide or designate a service for picking up refuse and garbage, then all empty boxes, containers, garbage and other refuse shall be kept in the kind of container specified by Landlord, and shall be placed in the area specified by Landlord and prepared for collection in the manner and at the times and places reasonably specified by Landlord and Tenant shall use same at Tenant's cost, provided such cost shall be competitive to any similar service available to Tenant. Tenant will not install or cause to be installed any automatic garbage disposal equipment without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed with respect to a garbage disposal in the kitchen area.

11. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purposes other than those for which they were constructed. No foreign substance of any kind (including sweepings, rubbish, rags, etc.) shall be thrown therein and the expense for any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees shall have caused it.

12. Tenant shall not overburden the parking facilities, and agrees to cooperate with Landlord and others in the use of the Nonexclusive Areas. Landlord reserves the right, in its sole discretion, to allocate parking spaces in the Nonexclusive Areas among Building occupants. Only vehicles which reasonably fit within the lined spaces may use the parking facilities, which may not be used for the continuous parking of any vehicle or trailer, regardless of size. No parking is allowed in roadways, driveways, fire lanes, service areas, walkways, building entrances, or any other area not designated for parking. Any trucks or trailers serving the Demised Premises shall be parked in areas designated by Landlord and shall not interfere with other occupants' access to other premises, parking, or other common areas. Landlord shall not be responsible for any illegally parked vehicle that Landlord shall have towed.

13. Tenant at its expense shall participate in any reasonable window cleaning program that may be established by Landlord for all or substantially all other stores or premises in the Building.

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14. Except for vending machine, postage machines, or similar devices located within the Demised Premises (and not visible from the exterior of the Demised Premises) solely for the use of Tenant and Tenant's Agents/Invitees, Tenant shall not install, maintain, or operate any coin or token vending machine or video games, pinball machine or other entertainment devices or any coin operated device for the sale of any goods, wares, merchandise, food, beverages, or services without the prior written consent of Landlord.

15. Tenant will assure that the doors of premises are closed and locked and that all water faucets, water apparatus, and utilities are shut off (except heat to the extent necessary to prevent the freezing or bursting of pipes and heat and air conditioning to the extent necessary to prevent the drawing of heated or cooled air) before Tenant or Tenant's employees leave the Demised Premises, so as to prevent waste or damage. For any default or carelessness in this regard, Tenant will pay for all injuries sustained by other tenants or occupants of the Building or by Landlord.

16. Tenant shall not attach or permit to be attached additional locks or similar devices to any door, transom or window of the Demised Premises; change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide upon payment therefore by Tenant. Tenant, upon termination of its tenancy, shall deliver to the Landlord all keys of offices, rooms and toilet rooms which have been furnished to Tenant or which Tenant shall have had made, in the event of loss of any keys so furnished shall pay Landlord therefore.

17. Landlord shall have the right to prohibit any advertising by any tenant which in Landlord's reasonable opinion, tends to impair the reputation of the Building.

18. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no waiver by Landlord will be construed as a waiver of those rules and regulations in favor of any other tenant or tenants, nor prevent Landlord from enforcing any rules and regulations against any or all of the tenants of the Building.

19. Landlord will direct electricians as to where and how telephone or telegraph wires are to be introduced. No boring or cutting for wires or stringing of wires will be allowed without written consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Demised Premises shall be subject to the approval of Landlord.

20. Parking spaces associated with the Building are intended for the exclusive use of passenger automobiles. Except for intermittent deliveries, no vehicles other than passenger automobiles may be parked in a parking space (other than spaces expressly designated on the Plans for truck parking) without the express written permission of Landlord. Trucks may be parked only in truck dock positions and in other paved areas expressly designated for such purpose in the Plans. Trailers may be parked only in paved areas expressly designated for such purpose in the Plans. Neither trucks nor trailers may be parked

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or staged in (i) areas adjacent to truck docks, serving any portion of the Building, which are intended by Landlord for truck maneuvering or (ii) any driveway, drive aisle or other paved area which provides ingress or egress for cars or trucks to or from any portion of the Building or any street adjoining the Building.

21. No tenant shall use any area within the Project for storage purposes other than the interior of the Demised Premises.

22. Tenant will have the right to stripe or mark the floor of the Building only in compliance with this rule. Landlord strongly encourages Tenant to stripe or otherwise mark the floor of the Building only with 3M floor striping tape. If Tenant elects to paint stripes or other markings on the floor of the Building, all such paint must, prior to expiration or termination of this Lease, be removed by Tenant at its expense in accordance with this rule. Paint on the floor of the Building must be removed only by use of a chemical paint remover; provided that the chemical used for removal must be permissible for such use under Environmental Laws and other Governmental Requirements and the chemical must be used (and all chemicals and removed paint must be disposed of) in accordance with Environmental Laws and other Governmental Requirements. Under no circumstances may paint be removed from the floor of the Building by grinding, scraping or shot-blasting. After paint has been chemically removed in accordance with this rule, the floor must be thoroughly cleaned to remove completely any chemical residue which might be present as a result of the removal process.

23. If Tenant installs any racking, equipment or machinery in the Building which requires installation of bolts in the floor of the Building, Tenant must, prior to expiration or termination of this Lease, at the expense of Tenant, remove all such bolts in accordance with this rule. All bolts will be cut or ground so that the top of the remaining portion of the bolt is at least one-quarter inch below the surface of the floor. All holes created by such removal of bolts must be filled with 100% epoxy, which meets the standards set by the American Concrete Institute and which is color-matched to the floor being filled.

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**EXHIBIT E
CERTIFICATE OF AUTHORITY
CORPORATION**

The undersigned, Secretary of Priority Fulfillment Services, Inc., a Delaware corporation ("**Tenant**"), hereby certifies as follows to US Industrial REIT III - Midwest, a Texas real estate investment trust ("**Landlord**"), in connection with Tenant's proposed lease of 198,162 square feet of space known as Suite 101 in Building H of Stateline Business Park located at 1560 East Stateline Road, Southaven, Mississippi 38671 (the "**Premises**");

1. Tenant is duly organized, validly existing and in good standing under the laws of the State of Delaware, and duly qualified to do business in the State of Mississippi.
2. That the following named persons, acting individually, are each authorized and empowered to negotiate and execute, on behalf of Tenant, a lease of the Demised Premises and that the signature opposite the name of each individual is an authentic signature.

_____	_____	_____
(name)	(title)	(signature)
_____	_____	_____
(name)	(title)	(signature)
_____	_____	_____
(name)	(title)	(signature)

3. That the foregoing authority was conferred upon the person(s) named above by the Board of Directors of Tenant, at a duly convened meeting held _____, 20____.

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**EXHIBIT F
NOTICE OF LEASE TERM DATES**

Date: _____

To: _____

In accordance with the subject Lease, we wish to advise and/or confirm as follows:

1. That the Demised Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease and that to the actual knowledge of the undersigned officer of Tenant, Tenant is not aware of any deficiency in construction.
2. That the Tenant has possession of the subject Demised Premises and acknowledges that under the provisions of the subject Lease the Term of said Lease shall commence on the Lease Commencement Date, which is _____ for a term of 62 months ending on the Expiration Date, which is _____.
3. That in accordance with the subject Lease, Rent commences to accrue on the Base Rent Commencement Date, which is _____.
4. As set forth in Section 1(e) of the Lease, the first and last days of the of the First Period, Second Period, Third Period, Fourth Period, Fifth Period, Sixth Period, and any Fractional Month are set forth below in the updated Base Rent schedule:

The 60-day period commencing on the Lease Commencement Date (the " First Period "): _____	\$0.00 (subject to <u>Section 1(g)</u> , which governs the abatement of the monthly Base Rent of \$53,668.88 for the First Period)
The approximately 10-month period commencing on the Base Rent Commencement Date and ending on the last day of the 10 th full calendar month thereafter and includes any Fractional Month (as defined below in this section)* (the " Second Period "): _____	\$53,668.88
The 12-month period commencing on the day following the last day of the Second Period (the " Third Period "): _____	\$54,876.42

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The 12-month period commencing on the day following the last day of the Third Period (the "Fourth Period"):	\$56,111.14
The 12-month period commencing on the day following the last day of the Fourth Period (the "Fifth Period"):	\$57,373.64
The 14-month period commencing on the day following the last day of the Fifth Period (the "Sixth Period"):	\$58,664.55

*As used in this Lease, a "Fractional Month" means the period commencing _____ and ending _____. The Base Rent applicable to the Second Period shall include the prorated amount applicable to any such Fractional Month, which prorated amount shall be due on the first day of the Fractional Month. The first billing of the Second Period will contain a pro rata adjustment for any Fractional Month in the Second Period. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.

5. Subject to the terms of the Lease, Rent is due and payable in advance on the first day of each and every month during the term of said Lease beginning on _____. Rent should be payable via wire transfer to:

ACH Remittance (wire)
Wells Fargo Bank
San Francisco, CA
ABA #: 121000248
To Credit: US Industrial REIT III - Midwest
Account #: 4121537260

Or to the following address:

US Industrial REIT III - Midwest
P. O. Box 202235
Dept. 23508
Dallas, TX 75320-2235

6. The number of square feet within the Demised Premises is 198,162 square feet.

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7. Tenant's Proportionate Share is calculated as follows:

During the First Period:	53.04%
During the Second Period:	53.04%
During the Third Period:	53.04%
During the Fourth Period:	53.04%
During the Fifth Period:	53.04%
During the Sixth Period:	53.04%

LANDLORD:

US INDUSTRIAL REIT III - MIDWEST,
a Texas real estate investment trust

By: _____
Name: _____
Title: _____

TENANT:

PRIORITY FULFILLMENT SERVICES, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

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**EXHIBIT G
GUARANTY**

THIS GUARANTY (this "**Guaranty**"), made and entered into this ____day of _____, 20____, by PFSweb, Inc., a Delaware corporation (hereinafter referred to as "**Guarantor**") in favor of US Industrial REIT III - Midwest, a Texas real estate investment trust (hereinafter called "**Landlord**") and any subsequent owner or holder of the Lease (as hereinafter defined).

RECITALS:

Landlord has entered into an Industrial Lease Agreement ("**Lease**") with Priority Fulfillment Services, Inc., a Delaware corporation ("**Tenant**"), in which Guarantor has a direct or indirect financial interest or affiliation, which Lease was executed by Tenant on _____, 2016, and provides for the leasing to Tenant of approximately 198,162 square feet of space known as Suite 101 in Building H of Stateline Business Park located at 1560 East Stateline Road, Southaven, Mississippi 38671; and

Landlord will not enter into the Lease unless Guarantor guarantees the obligations of Tenant under the Lease as set forth herein; and

Guarantor derives benefits from the Lease to Tenant.

NOW THEREFORE, as a material inducement to Landlord to enter into the Lease with Tenant, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged and confessed, Guarantor does hereby, irrevocably and unconditionally, warrant and represent unto and covenant and agree with Landlord as follows:

1. **Guaranty** - Guarantor hereby unconditionally guarantees the full, faithful and punctual payment of all rent, additional rent and other amounts due to Landlord under the Lease by Tenant and the full, faithful and punctual performance by Tenant of all the terms, provisions and conditions of the Lease, together with interest or late charges on all of the foregoing as provided in the Lease and all other costs and expenses of collection (all of the foregoing sometimes hereinafter referred to as the "**Obligations**").

2. **No Discharge** - This Guaranty by Guarantor shall continue for the benefit of Landlord notwithstanding (a) any extension, modification, amendment or alteration of the Lease entered into by Tenant, (b) any assignment of the Lease, with or without the consent of Landlord, (c) any bankruptcy, reorganization, or insolvency of Tenant or any successor or assignee thereof, or (d) any release, extension or modification of the liability of Tenant or any other party liable under the Lease or any other guaranty of the Lease. This Guaranty shall in all respects be a continuing, absolute and unconditional guaranty of payment and performance and shall remain in full force and effect notwithstanding, without limitation, the death or incompetency of Guarantor or Tenant, or any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Guarantor or

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Tenant or by any defense which Tenant may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

3. **Primarily Liable** - This Guaranty is a guaranty of payment and not of collection. The liability of Guarantor under this Guaranty shall be joint and several and primary and direct and in addition to any right of action which shall accrue to Landlord under the Lease. Landlord shall have the right, at its option, to proceed against Guarantor (or any one or more parties constituting Guarantor) without having commenced any action, or having obtained any judgment, against Tenant or any other party liable under the Lease or any other guaranty of the Lease.

4. **Default** - In the event of a default by Tenant under the Lease, Landlord shall have the right to enforce its rights, powers and remedies under the Lease, any other guaranty of the Lease, and under this Guaranty and all rights, powers and remedies available to Landlord shall be non-exclusive and cumulative of all other rights, powers and remedies under the Lease, any other guaranty of the Lease or under this Guaranty or by law or in equity. The obligations of Guarantor hereunder are independent of the obligations of Tenant or any other guarantor, and Landlord may proceed directly to enforce all rights under this Guaranty without proceeding against or joining Tenant, any other guarantor or any other person or entity. Until all of the Obligations have been performed and paid in full, Guarantor shall have no right of subrogation to Landlord, and Guarantor hereby waives any rights to enforce any remedy which Landlord may have against Tenant.

5. **Waivers** - Guarantor expressly waives and agrees not to assert or take advantage of: (a) the defense of the statute of limitations in any action hereunder or in any action for collection of the Obligations, (b) any defense that may arise by reason of the failure of the Landlord to file or enforce a claim against Guarantor or Tenant in bankruptcy or in any other proceeding, (c) any defense based on the failure of Landlord to give notice to Guarantor of the creation, existence or incurring of any new obligations or on the action or non-action of any person or entity in connection with the Obligations, (d) any duty on the part of Landlord to disclose to Guarantor any facts it may know or may hereafter acquire regarding Tenant, (e) any defense based on lack of diligence on the part of Landlord in the collection of any and all of the Obligations, or (f) any demand for payment, presentment, notice of protest or dishonor, notice of acceptance of this Guaranty and any and all other notices or demands to which Guarantor might otherwise be entitled by law.

6. **Subordination; Waiver of Subrogation; Preference and Fraudulent Transfer Indemnity** - After a default under the Lease, any indebtedness (including, without limitation, interest obligations but excluding trade receivables and trade payables accruing in the ordinary course of business for fair value) of Tenant to Guarantor now or hereafter existing shall be deferred, postponed and subordinated to the Obligations. Subject to the limitation on survival hereinafter set forth, Guarantor hereby unconditionally and irrevocably agrees that (a) Guarantor will not at any time assert against Tenant (or Tenant's estate in the event Tenant becomes bankrupt or becomes the subject of any case or proceeding under the bankruptcy laws of the United States of America) any right or claim to indemnification, reimbursement, contribution or payment for or with respect to any and all amounts

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Guarantor may pay or be obligated to pay Landlord, including, without limitation, any and all Obligations which Guarantor may perform, satisfy or discharge, under or with respect to this Guaranty; (b) Guarantor waives and releases all such rights and claims and any other rights and claims to indemnification, reimbursement, contribution or payment which Guarantor, or any of them, may have now or at any time against Tenant (or Tenant's estate in the event Tenant becomes bankrupt or becomes the subject of any case or proceeding under any bankruptcy laws); (c) Guarantor shall have no right of subrogation, and Guarantor waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant; (d) Guarantor waives any benefit of, and any right to participate in, any security now or hereafter held by Landlord; and (e) Guarantor waives any defense based upon an election of remedies by Landlord which destroys or otherwise impairs any subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement. The waivers hereunder shall continue and survive only until the ninety first (91st) day after the Obligations are satisfied in full, provided Tenant has not filed a petition or had a petition filed against it under any present or future section or chapter of the United States Bankruptcy Code during the ninety (90) day period following the date on which the Obligations are so satisfied in full (in which event the same shall survive without limitation). Guarantor further hereby unconditionally and irrevocably agrees and guarantees (on a joint and several basis) to make full and prompt payment to Landlord of any of the Obligations or other sums paid to Landlord pursuant to the Lease which Landlord is subsequently ordered or required to pay or disgorge on the grounds that such payments constituted an avoidable preference or a fraudulent transfer under applicable bankruptcy, insolvency or fraudulent transfer laws; and Guarantor shall fully and promptly indemnify Landlord for all costs (including, without limitation, attorney's fees) incurred by Landlord in defense of such claims of avoidable preference or fraudulent transfer.

7. **Choice of Law** - This Guaranty is to be performed in the State of Mississippi and shall be governed by and construed in accordance with the laws of the State of Mississippi, without regard to its conflicts laws or choice of law rules.

8. **Time of Essence** - Time is of the essence of this Guaranty.

9. **Notices** - Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by hand, or by nationally-recognized overnight express delivery service, by U. S. registered or certified mail, return receipt requested, postage prepaid to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

Landlord:
US Industrial REIT III - Midwest
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attention: VP Real Estate Counsel
Attention: VP Portfolio Management

EXHIBIT G
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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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Guarantor:
PFSweb, Inc.
505 Millennium Drive
Allen, Texas 75013
Attn: Chief Financial Officer

With a copy to:
PFSweb, Inc.
505 Millennium Drive
Allen, Texas 75013
Attn: General Manager

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered by hand; or (b) on the date mailed if sent by overnight express delivery or if sent by U.S. mail. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; or (b) on the date indicated on the return receipt if mailed. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing.

10. **Authority** - If Guarantor is not a natural person, Guarantor shall cause its corporate secretary or general partner, as applicable, to execute the certificate attached hereto as **Exhibit A**. Guarantor is authorized by all required corporate or partnership action to enter into this Guaranty and the individual(s) signing this Guaranty on behalf of Guarantor are each authorized to bind Guarantor to its terms.

11. **Successors and Assigns** - This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, Guarantor has executed under seal and delivered this Guaranty to Landlord on the date and year above first written.

GUARANTOR:

PFSWEB, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT G
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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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EXHIBIT A TO GUARANTY
CERTIFICATE OF AUTHORITY
CORPORATION

The undersigned, Secretary of PFSweb, Inc., a Delaware corporation ("**Guarantor**"), hereby certifies as follows to US Industrial REIT III - Midwest, a Texas real estate investment trust ("**Landlord**"), in connection with the execution of a Guaranty by Guarantor (the "**Guaranty**") of that certain Industrial Lease Agreement dated _____ 2016 between Landlord and Priority Fulfillment Services, Inc. ("**Tenant**") (the "**Lease**") relating to the lease of approximately 198,162 square feet of space known as Suite 101 in Building H of Stateline Business Park located at 1560 East Stateline Road, Southaven, Mississippi 38671 (the "**Premises**"):

1. Guarantor is duly organized, validly existing and in good standing under the laws of the State of Delaware, and duly qualified to do business in the State of Mississippi.

2. That the following named persons, acting individually, are each authorized and empowered to negotiate and execute, on behalf of Guarantor, a Guaranty of the Lease and that the signature opposite the name of each individual is an authentic signature:

_____	_____	_____
(name)	(title)	(signature)
_____	_____	_____
(name)	(title)	(signature)
_____	_____	_____
(name)	(title)	(signature)

3. That the foregoing authority was conferred upon the person(s) named above by the Board of Directors of Guarantor, at a duly convened meeting held _____, 20__.

Secretary

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Priority Fulfillment Services, Inc.
Lease Agreement — Stateline Business Park
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EXHIBIT H
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Prepared By:
Prudential Asset Resources, Inc.
2100 Ross Avenue, Suite 2500
Dallas, Texas 75201
Kelley Butler, Esq.

After Recording Return To:

Recording information above this line

Loan No. _____

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**") is effective as of the date of execution by the last of the parties hereto to execute as set forth beneath their respective signatures hereinbelow (the "**Effective Date**") between _____, a _____ (together with its successors or assigns in interest, collectively "**Lender**") and _____, a _____ ("**Tenant**," which includes any permitted assigns and successors in interest of Tenant under the Lease).

RECITALS:

A. Lender is the current owner and the holder of a loan evidenced by a Promissory Note (the "**Note**") dated _____, 20____, in the original amount of \$_____. The Note is secured by a [name of the security instrument] (the "**Mortgage**") dated the same date as said Note, and recorded under Document No. [**recording information**] of the Real Property Records of _____ County, [**State**] covering the real property described therein (the "**Mortgaged Premises**") and more fully described in the attached **Exhibit A**.

B. Tenant is the tenant under that certain Lease Agreement dated _____, 20____ (the "**Lease**"), between Tenant and [**Landlord name confirm from Promissory Note**], a _____ as landlord (said landlord and its successors and assigns under the Lease, except Lender and those claiming under Lender, hereinafter called "**Landlord**"), covering all or part of the Mortgaged Premises as set forth under the Lease (hereinafter called the "**Demised Premises**").

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Priority Fulfillment Services, Inc.
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C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Lender and Tenant agree as follows:

1. Subordination. The Lease is now, and will at all times and for all purposes be, subject and subordinate, in every respect, to the Mortgage and the lien imposed by the Mortgage, with the provisions of the Mortgage and this Agreement controlling over the provisions of the Lease. The Lease is subordinate and subject, in each and every respect, to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, (collectively, a "**Modification**"), and all other loan documents securing the Note, provided that any and all Modifications shall nevertheless be subject to the terms of this Agreement.

2. Non-Disturbance. So long as Tenant is not in default, beyond the applicable cure periods, under any of the terms, provisions, agreements, covenants, or obligations set forth in the Lease (a) Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon default under the Mortgage, unless applicable law requires Tenant to be made a party, and (b) Tenant's possession of the Demised Premises under said Lease shall not be disturbed or interfered with by Lender.

3. Attornment. If Lender or any other party succeeds to the interest of Landlord under the Lease in any manner ("**Successor Landlord**"), including but not limited to foreclosure, exercise of any power of sale, succession by deed in lieu or other conveyance (a "**Succession**"), Tenant will attorn to and be bound to Successor Landlord upon Succession and will recognize any Successor Landlord as the landlord under the Lease. The Lease shall continue in full force and effect as a direct lease, in accordance with its terms, except as provided in this Agreement. Such attornment is effective and self-operative without the execution of any further instrument. Tenant, upon request, will sign and deliver any instruments reasonably requested to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or trustee's sale.

4. Limitation on Successor Landlord's Liability. Upon any Succession, Successor Landlord shall not be (a) liable for any act or omission of the Landlord under said Lease, (b) subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the Succession, (c) bound by any rent or additional rent which Tenant may have paid to Landlord for more than the current month, (d) bound by any amendment or modification of the Lease that would reduce or shorten any economic obligations of Tenant under the Lease or materially impair Landlord's rights under the Lease made without Lender's prior written consent; provided, however, Lender shall not be bound by any amendment or modification unless Lender receives a fully executed copy of such amendment or modification within ten (10) business days after execution, (e) liable for any security deposit paid by Tenant to Landlord unless such deposit is delivered to Successor Landlord, (f) liable for or obligated to

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Priority Fulfillment Services, Inc.
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pay for repairs, replacements, damages or allowances not made, performed or paid by the Landlord if such performance or payment was due prior to the Succession, or (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the Succession. Any reference to Landlord includes all prior landlords under the Lease. Successor Landlord shall not be liable for the performance of the obligations of the Landlord under the Lease, except for those obligations which first arise during the period of Successor Landlord's ownership of the Mortgaged Premises and for "**Continuing Defaults**" (as defined below). In the case of a casualty or condemnation repair obligation, Lender must receive the insurance or condemnation proceeds as a condition precedent to Lender's repair obligation under the Lease.

A "**Continuing Default**" is defined as a non-monetary default by Landlord under the Lease that began prior to Succession, is ongoing and continuing following Succession, is susceptible to being cured, and for which Tenant provided Lender with notice as required hereunder prior to Succession. Successor Landlord shall only have liability for actual damages (not consequential or special damages) that arise after Succession as a result of its failure to cure a Continuing Default.

5. **Tenant's Warranty.** Tenant warrants to Lender, as of the date hereof, that (a) attached hereto as **Exhibit B** is a true, correct and complete copy of the Lease, (b) there are no known defaults on the part of Landlord, (c) the Lease is a complete statement of the agreement of the parties with respect to the leasing of the Demised Premises, (d) the Lease is validly executed by Tenant and in full force and effect, and (e) all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied. Tenant acknowledges and warrants to Lender that it has not subordinated the Lease or any of its rights under the Lease to any lien or mortgage other than the Mortgage.

6. **Lender Cure Rights.** Tenant will notify Lender in writing of any default by Landlord under the Lease that would entitle Tenant to cancel or terminate the Lease. Such notice shall be sent to Lender at 2100 Ross Avenue, Suite 2500, Dallas, Texas 75201, Reference Loan Number _____, certified mail, return receipt requested. If within fifteen (15) business days after receipt of such default notice Lender notifies Tenant in writing of its intent to cure such default, Lender shall have fifteen (15) business days beyond the curative period available to Landlord under the Lease to cure the default by Landlord. Lender has no obligation to cure any default by Landlord and shall have no liability for not curing any default. In addition, as to any default by Landlord the cure of which requires possession and control of the Mortgaged Premises, Lender's cure period shall continue for such additional time as Lender may reasonably require to obtain possession and control of the Mortgaged Premises.

7. **Exculpation of Successor Landlord.** Notwithstanding anything to the contrary in this Agreement or the Lease, Tenant shall look exclusively to Successor Landlord's interest in the Mortgaged Premises or any proceeds from the disposition thereof, any rents or profits derived from the Mortgaged Premises, or any insurance or condemnation proceeds related thereto, for the satisfaction of Tenant's remedies in the event of (a) default by Successor Landlord as landlord under the Lease, (b) any indemnity obligation that arises pursuant to the Lease, or (c) any payment or discharge of any money judgment in favor of Tenant against Successor Landlord with respect to the Lease.

EXHIBIT H

Priority Fulfillment Services, Inc.
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8. Rent Payment. Immediately upon written notice to Tenant (a) that Lender is exercising its rights under the Mortgage or any other loan documents acting to secure the Note following a default under the Loan, or (b) of Lender's succeeding to the Landlord's interest under the Lease, Tenant agrees to pay all rents due under the Lease directly to Lender in accordance with the Lease at Lender's address set forth in Section 6 above. In such event, Landlord hereby expressly authorizes Tenant to make such payments to Lender and further agrees that any sums paid to Lender shall be in satisfaction of Tenant's obligations under the Lease.

9. Complete Agreement. This Agreement supersedes, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

10. No Oral Modification/Binding Effect. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

11. Laws. This Agreement shall be construed in accordance with the laws of the State where the Mortgaged Premises are located.

12. Automatic Amendment of Lease. Upon a Succession, the Lease is automatically amended as follows:

(a) Hazardous Materials. All representations, warranties, indemnities or hold harmless provisions in favor of Tenant from Landlord dealing with the presence, use, transportation, disposal, contamination, exposure to or in any way arising out of hazardous or toxic materials, chemicals or wastes ("**Hazardous Materials**") are deleted as to Successor Landlord. Lender, however, as Successor Landlord covenants and agrees to (i) comply with all laws governing Hazardous Materials ("**Hazardous Materials Laws**"), (ii) store, use and dispose of all Hazardous Materials at the Mortgaged Premises in accordance with all applicable Hazardous Materials Laws, and (iii) remove, remediate and/or clean up, as applicable, in accordance with all applicable Hazardous Materials Laws, all Hazardous Materials at the Mortgaged Premises (to the extent not caused by Tenant or its employees, contractors or agents) impairing Tenant's use or access to the Demised Premises.

(b) Insurance. Tenant will at all times carry commercial general liability coverage for its activities and operations at the Demised Premises, listing Lender and Landlord as additional insureds, in such coverage amounts as are required by the Lease but in no event less than One Million Dollars. Lender will have no liability to Tenant for any indemnity or hold harmless provision under the Lease where Lender is otherwise covered by Tenant's commercial general liability coverage(s) as carried by Tenant or which Tenant is required to carry under the Lease. All insurance required to be carried by Landlord under the Lease may be effected by Lender or an affiliate of Lender by self-insurance or by a policy or policies of blanket insurance covering additional items or locations or insureds and with such

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Priority Fulfillment Services, Inc.
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deductibles as Lender may from time to time determine. Tenant has no rights in any policy or policies maintained by Lender.

(c) Option or Right of First Refusal. Lender will not be bound to honor any option or right of first refusal in favor of Tenant to purchase all or any part of the Mortgaged Premises.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

ATTEST:

Assistant Secretary

LENDER:

[Lender's Name],
a _____

By: _____

Name: _____

Title: _____

Dated: _____

ATTEST:

Assistant Secretary

TENANT:

[Tenant's Name],
a _____

By: _____

Name: _____

Title: _____

Dated: _____

ATTEST:

Assistant Secretary

LANDLORD:

[Landlord's Name],
a _____

By: _____

Name: _____

Title: _____

Dated: _____

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STATE OF TEXAS §
COUNTY OF _____ §

Before me, on _____, 20__ in and for said State, personally appeared _____, as _____ of _____, a _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the instrument on behalf of said _____.

Notary Public

STATE OF TEXAS §
COUNTY OF _____ §

Before me, on _____, 20__ in and for said State, personally appeared _____, as _____ of _____, a _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the instrument on behalf of said _____.

Notary Public

STATE OF TEXAS §
COUNTY OF _____ §

Before me, on _____, 20__ in and for said State, personally appeared _____, as _____ of _____, a _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the instrument on behalf of said _____.

Notary Public

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Priority Fulfillment Services, Inc.
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EXHIBIT A TO SNDA
LEGAL DESCRIPTION

[to be attached]

EXHIBIT H
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EXHIBIT B TO SNDA
LEASE

[to be attached]

EXHIBIT H
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Priority Fulfillment Services, Inc.
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**EXHIBIT I
HVAC REPAIRS**

The following is a list of service and /or repairs/attention

- All condensers coils need cleaning
- All fan motor belts need replacing
- Some fan motor pulley(s) need replacing (won't adjust)
- All cooling coils (evaporator) need cleaning
- All condensate drains need cleaning
- All filters need replacing

Information:

Equipment (All Equipment is 8 years old)

25-Trane TCD300B400HB

Filter Info (per unit)

Belt Size

25 Ton (Cooling Only) RTU

4-20x25x2

4-20x20x2

1-Bx81

3-Trane YSC048A4RLA2XA

Filter Info (per unit)

Belt Size

4-Ton (Heat/ Cool) RTU

4-20x25x1

1-12x25x1 Mist Eliminator

Direct Drive – No Belt

2-Trane YSC036A4RLA2TA

Filter Info (per unit)

Belt Size

3-Ton (Heat/ Cool) RTU

4-20x25x1

Direct Drive – Not Belt

2-Trane YSC102A4RL2XA

Filter Info (per unit)

Belt Size

8.5 Ton (Heat/ Cool) RTU

8-20x25x2

1-AX35

6-Cambridge Warehouse Heaters

EXHIBIT I

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Priority Fulfillment Services, Inc.
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SCHEDULE 8

TENANT'S INSURANCE REQUIREMENTS

Industrial Building Lease Insurance Standards

INSURANCE

A. Commercial General Liability

- Required for all services.
- Limits of Liability Per Project: \$1,000,000 each occurrence, \$2,000,000 aggregate.
- Insurance Services Office (ISO) general liability form CG 0001 0413 or equivalent.
- Landlord to be named as additional insured as required by contract
- Personal injury and contractual liability coverage must be included for the performance of Tenant's indemnity obligations under this Lease.
- Waiver of Subrogation included in favor of Landlord and Landlord's management company.
- 30 Day advance written notice to the Landlord in the event of cancellation.

B. Commercial Auto Policy

- Required for all leases, where tenant owns, operates, hires, or leases vehicles in their operations.
- Limits of Liability: Combined single limit of \$1,000,000 per occurrence, bodily injury and property damage.
- Coverage for any Owned, Hired, Non-Owned and Leased Vehicles.
- Landlord to be named as additional insured.
- Waiver of Subrogation included.
- Coverage must be primary and non contributory to Landlords and/or property managers.
- 30 Day advance written notice to the Landlord in the event of cancellation.

C. Umbrella Liability

Such insurance shall provide coverage with limits of not less than the amount outlined below based on service, in excess of the underlying coverages listed in Paragraphs A and B above and D(2) below.

- Required for all tenants.
- Tenants' Limits - \$4,000,000 per occurrence, \$4,000,000 aggregate.
- Landlord to be named as additional insured.
- Waiver of Subrogation included.
- Coverage must be primary and non contributory to Landlord's and/or property manager's respective policies of insurance.
- 30 Day advance written notice to the Landlord in the event of cancellation.

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D. Workers' Compensation and Employer's Liability.

- Coverages "A" and "B" below required for all tenants.
 1. Coverage "A" - Statutory requirements in the State in which the Property is located, to include all areas involved in operations covered under this Lease.
 2. Coverage "B" - Employer's Liability, not less than \$1,000,000 limit.
- Waiver of Subrogation included in favor of Landlord and Landlord's management company.
- 30 Day advance written notice to the Landlord in the event of cancellation.

F. [Deleted]

G. Property Insurance

- A policy of cause of loss-specialty property insurance coverage at least equal to ISO Special Form Causes of Loss and covering all of Tenant's furniture and fixtures, machinery, equipment, stock and any other personal property owned and used in Tenant's business and found in, on or about the Property, and any leasehold improvements to the Premises in excess of any initial buildout of the Premises by Landlord, in an amount not less than the full replacement cost.
- Required on all leased locations.
- Loss of Revenue/Business Income coverage must be included at a minimum of 12 months.
- Coverage to be provided on an open perils basis insuring against "all risks of direct physical loss."
- All policy proceeds will be used for the repair or replacement of the property damaged or destroyed, however, if this Lease ceases under the provisions of Article XIX, Tenant will be entitled to any proceeds resulting from damage to Tenant's furniture and fixtures, machinery and equipment, stock and any other personal property

Please send all policies, certificates and contracts requiring review to Patrick Kennedy, PatrickK@cpgstrategy.com and Cathy Moran, Cathym@cpgstrategy.com with The Corporate Protection Group. For assistance call our office (734) 667-3910.

SCHEDULE 8

Priority Fulfillment Services, Inc.
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**CERTIFICATIONS OF PRINCIPAL EXECUTIVE
OFFICER PURSUANT TO 18 U.S.C. SECTION 1350**

I, Michael Willoughby, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PFSweb, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2016

By: /s/ Michael Willoughby
Chief Executive Officer

**CERTIFICATIONS OF PRINCIPAL FINANCIAL
OFFICER PURSUANT TO 18 U.S.C. SECTION 1350**

I, Tom Madden, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PFSweb, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2016

By: /s/ Thomas J. Madden
Chief Financial Officer

CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), each of the undersigned officers of PFSweb, Inc. (the "Company"), does hereby certify that:

The Quarterly Report on Form 10-Q for the period ended June 30, 2016 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Form 10-Q.

August 9, 2016

/s/ Michael WilloughbyMichael Willoughby
Chief Executive Officer

August 9, 2016

/s/ Thomas J. MaddenThomas J. Madden
Chief Financial Officer

The foregoing certification is being furnished as an exhibit to the Form 10-Q pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and, accordingly, is not being filed as part of the Form 10-Q for purposes of Section 18 of the Securities Exchange Act of 1934, as whether made before or after the date hereof, regardless of any general incorporation language in such filing.

A signed original of this written statement required by Section 906 has been provided to PFSweb, Inc. and will be retained by PFSweb, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.