CBIZ, Inc.
Form 10-Q
May 02, 2018

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 March 31, 2018

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 1-32961

CBIZ, Inc.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	22-2769024 (I.R.S. Employer Identification No.)
6050 Oak Tree Boulevard, South, Suite 500, Cleveland, Ohio (Address of principal executive offices)	44131 (Zip Code)

216-447-9000

(Registrant’s telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer		Accelerated filer
Non-accelerated filer	(Do not check if a smaller reporting company)	Smaller reporting company
Emerging growth company		

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

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

Indicate the number of shares outstanding of each of the issuer’s classes of common stock, as of the latest practicable date:

Class of Common Stock	Outstanding at April 30, 2018
Common Stock, par value $0.01 per share	55,075,132

CBIZ, INC. AND SUBSIDIARIES

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements
CBIZ, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS (Unaudited)

(In thousands)

	March 31, 2018	December 31, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	$295	$ 424
Restricted cash	29,773	32,985
Accounts receivable, net	261,336	188,300
Income taxes refundable/receivable	—	813
Other current assets	24,503	22,539
Current assets before funds held for clients	315,907	245,061
Funds held for clients	147,655	203,112
Total current assets	463,562	448,173
Non-current assets:		
Property and equipment, net	27,318	26,081
Goodwill and other intangible assets, net	631,956	613,206
Assets of deferred compensation plan	86,581	85,589
Notes receivable	909	620
Other non-current assets	4,027	2,562
Total non-current assets	750,791	728,058
Total assets	$1,214,353	$ 1,176,231
LIABILITIES		
Current liabilities:		
Accounts payable	$63,157	$ 51,375
Income taxes payable	13,586	—
Accrued personnel costs	30,790	45,264
Notes payable	1,743	1,861
Contingent purchase price liability	16,293	15,151
Other current liabilities	14,118	17,013
Current liabilities before client fund obligations	139,687	130,664
Client fund obligations	148,654	203,582
Total current liabilities	288,341	334,246
Non-current liabilities:		
Bank debt	214,700	178,500
Debt issuance costs	(698)	(828)
Total long-term debt	214,002	177,672
Notes payable	1,824	2,164
Income taxes payable	4,555	4,454
Deferred income taxes, net	2,791	3,339

Deferred compensation plan obligations	86,581	85,589
Contingent purchase price liability	28,331	22,423
Other non-current liabilities	16,312	15,465
Total non-current liabilities	354,396	311,106
Total liabilities	642,737	645,352
STOCKHOLDERS' EQUITY		
Common stock	1,305	1,301
Additional paid in capital	679,208	675,504
Retained earnings	382,775	345,302
Treasury stock	(491,604)	(491,046)
Accumulated other comprehensive loss	(68)	(182)
Total stockholders’ equity	571,616	530,879
Total liabilities and stockholders’ equity	$1,214,353	$1,176,231

See the accompanying notes to the consolidated financial statements

CBIZ, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (Unaudited)

(In thousands, except per share data)

	Three Months Ended March 31,	
	2018	2017
Revenue	$266,090	$241,459
Operating expenses	204,750	192,766
Gross margin	61,340	48,693
Corporate general and administrative expenses	10,028	8,768
Operating income	51,312	39,925
Other (expense) income:		
Interest expense	(1,780)	(1,517)
Gain on sale of operations, net	663	22
Other (expense) income, net	(1,229)	2,737
Total other (expense) income, net	(2,346)	1,242
Income from continuing operations before income tax expense	48,966	41,167
Income tax expense	13,156	16,141
Income from continuing operations	35,810	25,026
Gain (loss) from discontinued operations, net of tax	41	(152)
Net income	$35,851	$24,874
Earnings per share:		
Basic:		
Continuing operations	$0.66	$0.47
Discontinued operations	—	—
Net income	$0.66	$0.47
Diluted:		
Continuing operations	$0.64	$0.45
Discontinued operations	—	—
Net income	$0.64	$0.45
Basic weighted average shares outstanding	54,071	53,293
Diluted weighted average shares outstanding	55,924	55,214
Comprehensive income:		
Net income	$35,851	$24,874
Other comprehensive income, net of tax	114	180
Comprehensive income	$35,965	$25,054

See the accompanying notes to the consolidated financial statements

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CBIZ, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (Unaudited)

(In thousands)

	Issued Common Shares	Treasury Shares	Common Stock	Additional Paid-In Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Totals
December 31, 2017	130,075	75,484	$ 1,301	$ 675,504	$ 345,302	$ (491,046)	$ (182)	$ 530,879
Cumulative-effect adjustment (Note 2)	—	—	—	—	1,622	—	—	1,622
Adjusted balance at January 1, 2018	130,075	75,484	$ 1,301	$ 675,504	$ 346,924	$ (491,046)	$ (182)	$ 532,501
Net income	—	—	—	—	35,851	—	—	35,851
Other comprehensive income	—	—	—	—	—	—	114	114
Share repurchases	—	31	—	—	—	(558)	—	(558)
Stock options exercised	339	—	4	2,267	—	—	—	2,271
Share-based compensation	56	—	—	1,437	—	—	—	1,437
March 31, 2018	130,470	75,515	$ 1,305	$ 679,208	$ 382,775	$ (491,604)	$ (68)	$ 571,616

See the accompanying notes to the consolidated financial statements

CBIZ, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)

(In thousands)

	Three Months Ended March 31,	
	2018	2017
Cash flows from operating activities:		
Net income	$35,851	$24,874
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization expense	5,775	5,641
Bad debt expense, net of recoveries	1,766	734
Adjustment to contingent earnout liability	1,609	616
Other	(1,244)	195
Changes in assets and liabilities, net of acquisitions and divestitures:		
Accounts receivable, net	(64,111)	(46,077)
Other assets	(2,571)	1,088
Accounts payable	5,501	1,285
Income taxes payable	15,413	17,837
Accrued personnel costs	(15,262)	(18,800)
Other liabilities	(3,366)	(1,767)
Operating cash flows used in continuing operations	(20,639)	(14,374)
Operating cash flows provided by (used in) discontinued operations	139	(118)
Net cash used in operating activities	(20,500)	(14,492)
Cash flows from investing activities:		
Business acquisitions and purchases of client lists, net of cash acquired	(15,568)	(4,344)
Purchases of client fund investments	(6,170)	(10,418)
Proceeds from the sales and maturities of client fund investments	3,345	3,425
Increase in funds held for clients	57,827	61,922
Additions to property and equipment	(2,641)	(1,760)
Other	662	22
Net provided by investing activities	37,455	48,847
Cash flows from financing activities:		
Proceeds from bank debt	274,900	139,700
Payment of bank debt	(238,700)	(118,400)
Payment for acquisition of treasury stock	(558)	(2,271)
Decrease in client funds obligations	(54,928)	(54,802)
Proceeds from exercise of stock options	2,271	2,453
Payment of contingent consideration of acquisitions	(3,223)	(3,231)
Other	(58)	(103)
Net cash used in financing activities	(20,296)	(36,654)

Net decrease in cash, cash equivalents and restricted cash	(3,341)	(2,299)
Cash, cash equivalents and restricted cash at beginning of year	33,409	31,374
Cash, cash equivalents and restricted cash at end of period	$30,068	$29,075

See the accompanying notes to the consolidated financial statements

CBIZ, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Unaudited) (Continued)

Note 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business: CBIZ, Inc. is a diversified services company which, acting through its subsidiaries, has been providing professional business services since 1996, primarily to small and medium-sized businesses, as well as individuals, governmental entities, and not-for-profit enterprises throughout the United States and parts of Canada. CBIZ, Inc. manages and reports its operations along three practice groups; Financial Services, Benefits and Insurance Services and National Practices. A further description of products and services offered by each of the practice groups is provided in Note 16, Segment Disclosures, to the accompanying consolidated financial statements.

Basis of Consolidation: The accompanying unaudited condensed consolidated financial statements include the operations of CBIZ, Inc. and all of its wholly-owned subsidiaries (“CBIZ”, the “Company”, “we”, “us”, or “our”), after elimination of all intercompany balances and transactions. These condensed consolidated financial statements do not reflect the operations or accounts of variable interest entities as the impact is not material to the financial condition, results of operations or cash flows of CBIZ.

Unaudited Interim Financial Statements: The condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (the “SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, the information included in this quarterly report on Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

In our opinion, the accompanying condensed consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial condition, results of operations, and cash flows for the interim periods presented, but are not necessarily indicative of the results of operations to be anticipated for the full year ending December 31, 2018.

Use of Estimates: The preparation of condensed consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. Changes in circumstances could cause actual results to differ materially from these estimates.

Changes in Accounting Policies: We have consistently applied the accounting policies for the periods presented as described in Note 1, Basis of Presentation and Significant Accounting Policies, to the consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017. Effective January 1, 2018, we adopted Accounting Standards Update (“ASU”) No. 2015-14, “Revenue from Contracts with Customers” (“Topic 606”). As a result, we have changed our accounting policy for revenue recognition as described below in Note 2, New Accounting Pronouncements.

NOTE 2. New Accounting Pronouncements

The Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) is the sole source of authoritative GAAP other than the SEC issued rules and regulations that apply only to SEC registrants. The FASB

issues an accounting standard to communicate changes to the FASB codification. We assess and review the impact of all accounting standards. Any accounting standards not listed below were reviewed and determined to be either not applicable or are not expected to have a material impact on the consolidated financial statements.

Accounting Standards Adopted in 2018

Modification Accounting for Share-Based Payment Awards: Effective January 1, 2018, we adopted ASU No. 2017-09, “Compensation – Stock Compensation (Topic 718) – Scope of Modification Accounting.” The new standard clarifies when a change to the terms or conditions of a share-based payment award must be accounted for as a modification. Modification accounting is required if the fair value, vesting condition or the classification of the award is not the same immediately before and after a change to the terms and conditions of the award. We typically do not change either the terms or conditions of share-based payment awards once they are granted; therefore, this new guidance had no impact on our consolidated financial statements.

CBIZ, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Unaudited) (Continued)

Restricted Cash - Statement of Cash Flows: Effective January 1, 2018, we adopted ASU No. 2016-18, “Statement of Cash Flows (Topic 230).” The new standard requires that the reconciliation of the beginning and end of period cash amounts shown in the statement of cash flows include restricted cash. When restricted cash is presented separately from cash and cash equivalents on the balance sheet, a reconciliation is required between the amounts presented on the statement of cash flows and the balance sheet, as well as a disclosure of information about the nature of the restrictions. The adoption of this new standard resulted in a $3.2 million decrease and $1.2 million increase in cash used in operating activities for the first quarter of 2018 and 2017.

Restricted cash consists of funds held by us in relation to our capital and investment advisory services as those funds are restricted in accordance with applicable Financial Industry Regulatory Authority regulations. Restricted cash also consists of funds on deposit from clients in connection with the pass-through of insurance premiums to the carrier with the related liability for these funds is recorded in “Accounts payable” in the accompanying Consolidated Balance Sheets.

The following table provides a reconciliation of cash, cash equivalents and restricted cash as reported in the accompanying Consolidated Balance Sheets that sum to the total of the same such amount shown in the accompanying Consolidated Statements of Cash Flows (in thousands):

	March 31, 2018	March 31, 2017
Cash and cash equivalents	$ 295	$ 2,424
Restricted cash	29,773	26,651
Total cash, cash equivalents and restricted cash	$ 30,068	$ 29,075

Statement of Cash Flows: Effective January 1, 2018, we adopted ASU No. 2016-15, “Statement of Cash Flows (Topic 230) – Classification of Certain Cash Receipts and Cash Payments.” The new standard provides guidance on eight specific cash flow issues. The eight specific cash flow issues were not applicable to us under our current practice.

Revenue from Contracts with Customers: Effective January 1, 2018, we adopted Topic 606 using the modified retrospective transition method. We recognized the cumulative effect of initially applying the new standard as an adjustment directly to the opening balance of “Retained earnings” at January 1, 2018. The comparative information has not been restated and continues to be reported under the legacy standard.

We evaluate our revenue contracts with customers based on the five-step model under Topic 606; (i) identify the contract with the customer; (ii) identify the performance obligation in the contract; (iii) determine the contract price; (iv) allocate the transaction price; and (v) recognize revenue (or as) each performance obligation is satisfied. If we determine that a contract with enforceable rights and obligations does not exist, revenues are deferred until all criteria for an enforceable contract are met.

Revenue recognition is consistent under both the legacy standard and Topic 606 for the majority of our revenue streams, with the exception of two business units within our Benefits and Insurance Services practice group. The revenue recognition policies in our Benefits and Insurance Services practice group have been modified under the new

standard.

- In our Property and Casualty business unit, commission revenue under agency billing arrangements (we bill the insured, collect the funds and remit the premium to the insurance carrier less our commissions) was previously recognized as of the later of the effective date of the insurance policy or the date billed to the customer. We now recognize the commission revenue on the effective date of the insurance policy.

Also in our Property and Casualty business unit, commission revenue under direct billing arrangements (the insurance carrier bills the insured directly and remits the commissions to us) was previously recognized when the data necessary from the carriers was available, whereas now we recognize the commission revenue on the effective date of the insurance policy.

- In our Retirement Plan Services business unit, certain defined benefit administration arrangements charge new clients an initial, non-refundable, set-up fee as part of a multi-year service agreement. Previously, these fees were recognized over the initial set up period, whereas now we defer the set-up fees and associated costs and recognize them over the life of the contract or the expected customer relationship, whichever is longer.

CBIZ, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Unaudited) (Continued)

The cumulative effect of the changes made to our consolidated January 1, 2018 balance sheet was as follows (in thousands):

Balance Sheet	Balance at December 31, 2017	Adjustments due to Topic 606	Balance at January 1, 2018
ASSETS			
Accounts receivable, net	$188,300	$ 9,446	$197,746
Other current assets	259,873	80	259,953
Other non-current assets	728,058	728	728,786
Total assets	$1,176,231	$ 10,254	$1,186,485
LIABILITIES			
Accounts payable	51,375	6,281	57,656
Accrued personnel costs	45,264	595	45,859
Other current liabilities	237,607	113	237,720
Deferred income taxes, net	3,339	631	3,970
Other non-current liabilities	307,767	1,012	308,779
Total liabilities	645,352	8,632	653,984
STOCKHOLDERS' EQUITY			
Retained earnings	345,302	1,622	346,924
Other stockholders' equity	185,577	—	185,577
Total stockholders' equity	530,879	1,622	532,501
Total liabilities and stockholders' equity	$1,176,231	$ 10,254	$1,186,485

The following tables summarize the impact of adopting Topic 606 on our consolidated financial statements for the first quarter of 2018 (in thousands):

First Quarter 2018 Balance Sheet	As reported	Adjustments	Balances without adoption of Topic 606
ASSETS			
Accounts receivable, net	$261,336	$ (12,623)	$248,713
Other current assets	202,226	(80)	202,146
Other non-current assets	750,791	(707)	750,084
Total assets	$1,214,353	$ (13,410)	$1,200,943
LIABILITIES			

Accounts payable	$63,157	$ (8,990)	$54,167
Accrued personnel costs	30,790	(646)	30,144
Other current liabilities	194,394	(115)	194,279
Deferred income taxes, net	2,791	(745)	2,046
Other non-current liabilities	351,605	(981)	350,624
Total liabilities	642,737	(11,477)	631,260
STOCKHOLDERS' EQUITY			
Retained earnings	382,775	(1,933)	380,842
Other stockholders' equity	188,841	—	188,841
Total shareholders' equity	571,616	(1,933)	569,683
Total liabilities and stockholders' equity	$1,214,353	$ (13,410)	$1,200,943

CBIZ, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Unaudited) (Continued)

First Quarter 2018 Income Statement	As reported	Adjustments	Balances without adoption of Topic 606
Revenue	$266,090	$(498)	$ 265,592
Operating expenses	204,750	(73)	204,677
Gross margin	61,340	(425)	

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fiduciary duties; and

additional purchases.

Termination

The Voting Agreements and the obligations of the members of the Voting Group thereunder will terminate upon the earliest to occur of (a) the termination of the Merger Agreement in accordance with its terms, (b) the effective time of the Merger, (c) the end date specified in the Merger Agreement and (d) such time as the Merger Agreement is amended to change the form or reduce the amount of the consideration to be paid pursuant thereto.

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APPRAISAL RIGHTS

If the Merger is consummated, stockholders who do not vote in favor of the adoption and approval of the Merger Agreement and who properly demand appraisal of their shares of InvenSense s common stock will be entitled to appraisal rights in connection with the Merger under Section 262 of the Delaware General Corporation Law (Section 262).

The following discussion is not a complete statement of the law pertaining to appraisal rights under the Delaware General Corporation Law and is qualified in its entirety by the full text of Section 262, which is attached to this proxy statement as Appendix C and incorporated herein by reference. The following summary does not constitute any legal or other advice and does not constitute a recommendation that InvenSense stockholders exercise their appraisal rights under Section 262. Only a holder of record of shares of common stock is entitled to demand appraisal rights for the shares registered in that holder s name. A person having a beneficial interest in shares of common stock held of record in the name of another person, such as a bank, broker or other nominee, must act promptly to cause the record holder to follow the steps summarized below properly and in a timely manner to perfect appraisal rights. **If you hold your shares of our common stock through a bank, broker or other nominee and you wish to exercise appraisal rights, you should consult with your bank, broker or the other nominee.**

Under Section 262, holders of shares of common stock who (1) do not vote in favor of the adoption and approval of the Merger Agreement; (2) continuously are the record holders of such shares through the effective time; and (3) otherwise comply with the procedures set forth in Section 262 will be entitled to have their shares appraised by the Delaware Court of Chancery and to receive payment in cash of the fair value of the shares of common stock as determined by such appraisal, exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with interest to be paid on the amount determined to be fair value, if any, as determined by the Delaware Court of Chancery.

Under Section 262, where a merger agreement is to be submitted for adoption and approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, must notify each of its stockholders of record as of the record date for notice of such meeting with respect to shares for which appraisal rights are available that appraisal rights are available and include in the notice a copy of Section 262. This proxy statement constitutes InvenSense s notice to its stockholders that appraisal rights are available in connection with the Merger, and the full text of Section 262 is attached to this proxy statement as Appendix C. In connection with the Merger, any holder of shares of common stock who wishes to exercise appraisal rights, or who wishes to preserve such holder s right to do so, should review the following discussion and Appendix C carefully. Failure to strictly comply with the requirements of Section 262 in a timely and proper manner will result in the loss of appraisal rights under Section 262. A stockholder who loses his, her or its appraisal rights will be entitled to receive the merger consideration described in the Merger Agreement. Moreover, because of the complexity of the procedures for exercising the right to seek

appraisal of shares of common stock, InvenSense believes that if a stockholder considers exercising such rights, that stockholder should seek the advice of legal counsel.

Stockholders wishing to exercise the right to seek an appraisal of their shares of common stock must do **ALL** of the following:

- the stockholder must not vote in favor of the Merger Proposal;
- the stockholder must deliver to InvenSense a written demand for appraisal before the vote on the Merger Proposal at the special meeting;
- the stockholder must continuously hold the shares from the date of making the demand through the effective time of the Merger (a stockholder will lose appraisal rights if the stockholder transfers the shares before the effective time of the Merger); and
- a stockholder or the surviving company (or any other stockholder that has properly demanded appraisal rights and is otherwise entitled to appraisal rights) must file a petition in the Delaware Court of

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Chancery requesting a determination of the fair value of the shares within 120 days after the effective time. The surviving company is under no obligation to file any petition and has no intention of doing so. Accordingly, it is the obligation of InvenSense stockholders to initiate all necessary action to perfect their appraisal rights in respect of shares of InvenSense common stock within the time prescribed by Section 262.

Because a proxy that is signed and submitted but does not otherwise contain voting instructions will, unless revoked, be voted in favor of the Merger Proposal, a stockholder who votes by proxy and who wishes to exercise appraisal rights must instruct the proxy to vote his, hers or its shares against the approval of the Merger Proposal, or abstain or not vote his, hers or its shares on the approval of the Merger Proposal.

Filing Written Demand

Any holder of shares of common stock wishing to exercise appraisal rights must deliver to InvenSense, before the vote on the adoption and approval of the Merger Agreement at the special meeting at which the Merger Agreement proposal will be submitted to the stockholders, a written demand for the appraisal of such stockholder s shares, and that stockholder must not vote or submit a proxy in favor of the adoption and approval of the Merger Agreement. A holder of shares of common stock exercising appraisal rights must be the stockholder of record on the date the written demand for appraisal is made and must continue to hold the shares of record through the effective time. A proxy that is signed and submitted but does not otherwise contain voting instructions will, unless revoked, be voted in favor of the Merger Proposal, and it will constitute a waiver of the stockholder s right of appraisal and will nullify any previously delivered written demand for appraisal. Therefore, a stockholder who submits a proxy and who wishes to exercise appraisal rights must submit a proxy containing instructions to vote against the Merger Proposal or abstain from voting on the Merger Proposal. Neither voting in person, or by proxy, against the approval of the Merger Proposal nor abstaining from voting or failing to vote on the approval of the Merger Proposal will, in and of itself, constitute a written demand for appraisal satisfying the requirements of Section 262. The written demand for appraisal must be in addition to and separate from any proxy or vote on approval of the Merger Proposal. A proxy or vote against the approval of the Merger Proposal will not constitute a demand. A stockholder s failure to make the written demand prior to the taking of the vote on the approval of the Merger Proposal at the special meeting will constitute a waiver of appraisal rights.

Only a stockholder of record is entitled to demand appraisal rights for the shares registered in that holder s name. A demand for appraisal in respect of shares of common stock must be executed by or on behalf of the holder of record, and must reasonably inform InvenSense of the identity of the stockholder and state that the stockholder intends thereby to demand appraisal of the holder s common stock in connection with the Merger. If the shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, such demand must be executed by or on behalf of the record owner, and if the shares are owned of record by more than one person, such as in a joint tenancy or a tenancy in common, the demand should be

executed by or on behalf of all joint owners. An authorized agent, including an authorized agent for two or more joint owners, may execute a demand for appraisal on behalf of a holder of record; however, the agent must identify the record owner or owners and expressly disclose that, in executing the demand, the agent is acting as agent for the record owner or owners.

STOCKHOLDERS WHO HOLD THEIR SHARES IN BROKER OR BANK ACCOUNTS OR OTHER NOMINEE FORMS AND WHO WISH TO EXERCISE APPRAISAL RIGHTS SHOULD CONSULT WITH THEIR BANK, BROKER OR OTHER NOMINEES, AS APPLICABLE, TO DETERMINE THE APPROPRIATE PROCEDURES FOR THE BANK, BROKER OR OTHER NOMINEE TO MAKE A DEMAND FOR APPRAISAL OF THOSE SHARES. A PERSON HAVING A BENEFICIAL INTEREST IN SHARES HELD OF RECORD IN THE NAME OF ANOTHER PERSON, SUCH AS A BANK, BROKER OR OTHER NOMINEE, MUST ACT PROMPTLY TO CAUSE THE RECORD HOLDER TO FOLLOW PROPERLY AND IN A TIMELY MANNER THE STEPS NECESSARY TO PERFECT APPRAISAL RIGHTS.

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All written demands for appraisal pursuant to Section 262 should be executed as set forth above and mailed or delivered to:

InvenSense, Inc.

1745 Technology Drive, Suite 200

San Jose, California

Attention: Corporate Secretary

Any holder of shares of common stock may withdraw his, her or its demand for appraisal and accept the consideration offered pursuant to the Merger Agreement by delivering to InvenSense a written withdrawal of the demand for appraisal. However, any such attempt to withdraw the demand made more than 60 days after the effective time will require written approval of the surviving corporation. Notwithstanding the foregoing, no appraisal proceeding in the Delaware Court of Chancery will be dismissed without the approval of the Delaware Court of Chancery, and such approval may be conditioned upon such terms as the Delaware Court of Chancery deems just; provided, however, that this will not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the merger consideration within 60 days after the effective time of the Merger.

Notice by the Surviving Corporation

If the Merger is completed, within ten days after the effective time of the Merger, the surviving corporation will give written notice to each holder of shares of common stock who has made a written demand for appraisal pursuant to Section 262, and who has not voted in favor of the adoption and approval of the Merger Agreement, that the Merger has become effective and the effective date thereof.

Filing a Petition for Appraisal

Within 120 days after the effective time of the Merger, but not thereafter, the surviving corporation or any holder of shares of common stock who has complied with the requirements of Section 262 and is entitled to appraisal rights under Section 262 may commence an appraisal proceeding by filing a petition in the Delaware Court of Chancery, with a copy served on the surviving corporation in the case of a petition filed by a stockholder, demanding a determination of the fair value of the shares held by all stockholders entitled to appraisal. If a stockholder does not file a petition for appraisal in a timely manner, then such stockholder s right to an appraisal will cease. The surviving corporation is under no obligation, and has no present intention, to file a petition, and holders should not assume that the surviving corporation will file a petition or initiate any negotiations with respect to the fair value of the shares of common stock. Accordingly, any holders of shares of common stock who desire to have their shares appraised should initiate all necessary petitions to perfect their appraisal rights in respect of their shares of common stock within the time

periods and in the manner prescribed in Section 262. The failure of a holder of common stock to file such a petition within the period specified in Section 262 could nullify the stockholder s previous written demand for appraisal.

Within 120 days after the effective time of the Merger, any holder of shares of common stock who has complied with the requirements of Section 262 for exercise of appraisal rights will be entitled, upon written request, to receive from the surviving corporation a statement setting forth the aggregate number of shares not voted in favor of the adoption and approval of the Merger Agreement and with respect to which InvenSense has received demands for appraisal, and the aggregate number of holders of such shares. The surviving corporation must mail this statement to the requesting stockholder within the later of ten days after receipt by the surviving corporation of the written request therefor and ten days after the expiration of the period for delivery of demands for appraisal. A beneficial owner of shares held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition seeking appraisal or request to receive the foregoing statements from the surviving corporation. As noted above, however, the demand for appraisal can only be made by a stockholder of record.

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If a petition for an appraisal is duly filed by a holder of record of shares of InvenSense s common stock and a copy thereof is served upon the surviving corporation, the surviving corporation will then be obligated within 20 days after such service to file with the Delaware Register in Chancery a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached. After notice to the stockholders as required by the court, the Delaware Court of Chancery is empowered to conduct a hearing on the petition to determine those stockholders who have complied with Section 262 and who have become entitled to appraisal rights thereunder. The Delaware Court of Chancery may require the stockholders who demanded payment for their shares to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings, and if any stockholder fails to comply with the direction, the Delaware Court of Chancery may dismiss that stockholder from the proceedings.

Given that immediately before the Merger the shares of InvenSense s common stock as to which appraisal rights are available were listed on a national securities exchange and the Merger is not approved under Sections 253 or 267 of the Delaware General Corporation Law, the Delaware Court of Chancery will dismiss the appraisal proceedings as to all holders of shares of common stock who are otherwise entitled to appraisal rights unless (a) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of common stock eligible for appraisal, or (b) the value of the consideration provided in the Merger for such total number of shares exceeds $1 million.

After the Delaware Court of Chancery determines the holders of common stock entitled to appraisal, the appraisal proceeding will be conducted in accordance with the rules of the Delaware Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding, the Delaware Court of Chancery will appraise the fair value of the shares of common stock, exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining fair value, the Delaware Court of Chancery will take into account all relevant factors. Unless the court in its discretion determines otherwise for good cause shown, interest from the effective date of the Merger through the date of payment of the judgment will be compounded quarterly and will accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the Merger and the date of payment of the judgment. In *Weinberger v. UOP, Inc.*, the Supreme Court of Delaware discussed the factors that could be considered in determining fair value in an appraisal proceeding, stating that proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court should be considered, and that [f]air price obviously requires consideration of all relevant factors involving the value of a company. The Delaware Supreme Court stated that, in making this determination of fair value, the court must consider market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts that could be ascertained as of the date of the Merger that throw any light on future prospects of the merged corporation. Section 262

provides that fair value is to be exclusive of any element of value arising from the accomplishment or expectation of the Merger. In *Cede & Co. v. Technicolor, Inc.*, the Delaware Supreme Court stated that such exclusion is a narrow exclusion [that] does not encompass known elements of value, but which rather applies only to the speculative elements of value arising from such accomplishment or expectation. In *Weinberger*, the Supreme Court of Delaware also stated that elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the Merger and not the product of speculation, may be considered.

Stockholders considering seeking appraisal should be aware that the fair value of their shares as so determined by the Delaware Court of Chancery under Section 262 could be more than, the same as or less than the consideration they would receive pursuant to the Merger if they did not seek appraisal of their shares and that an opinion of an investment banking firm as to the fairness from a financial point of view of the consideration payable in a Merger is not an opinion as to, and does not in any manner address, fair value under Section 262. **Although InvenSense believes that the per share merger consideration is fair, no representation is made as to the outcome of the appraisal of fair value as determined by the Delaware Court of Chancery, and**

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stockholders should recognize that such an appraisal could result in a determination of a value higher or lower than, or the same as, the per share merger consideration. Neither InvenSense nor TDK Corporation anticipates offering more than the per share merger consideration to any stockholder exercising appraisal rights, and each of InvenSense and TDK Corporation reserves the right to assert, in any appraisal proceeding, that for purposes of Section 262, the fair value of a share of common stock is less than the per share merger consideration.

If a petition for appraisal is not timely filed, then the right to an appraisal will cease. The costs of the appraisal proceedings (which do not include attorneys fees or the fees and expenses of experts) may be determined by the Delaware Court of Chancery and taxed upon the parties as the Delaware Court of Chancery deems equitable under the circumstances. Upon application of a stockholder, the Delaware Court of Chancery may also order that all or a portion of the expenses incurred by a stockholder in connection with an appraisal, including, without limitation, reasonable attorneys fees and the fees and expenses of experts, be charged pro rata against the value of all the shares entitled to be appraised.

If any stockholder who demands appraisal of his, her or its shares of common stock under Section 262 fails to perfect, or loses or validly withdraws, such holder s right to appraisal, the stockholder s shares of common stock will be deemed to have been converted at the effective time into the right to receive the per share merger consideration as provided in the Merger Agreement. A stockholder will fail to perfect, or effectively lose or withdraw, such holder s right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the effective time or if the stockholder delivers to the surviving corporation a written withdrawal of the holder s demand for appraisal and an acceptance of the per share merger consideration as provided in the Merger Agreement in accordance with Section 262.

From and after the effective time of the Merger, no stockholder who has demanded appraisal rights will be entitled to vote such shares of common stock for any purpose or to receive payment of dividends or other distributions on such shares of common stock, except dividends or other distributions on the holder s shares of common stock, if any, payable to stockholders as of a time prior to the effective time of the Merger. If no petition for an appraisal is filed within the time provided in Section 262, or if a stockholder delivers to the surviving corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the Merger, either within 60 days after the effective time or thereafter with the written approval of the surviving corporation, then the right of such stockholder to an appraisal will cease. Once a petition for appraisal is filed with the Delaware Court of Chancery, however, the appraisal proceeding may not be dismissed as to any stockholder who commenced the proceeding or joined that proceeding as a named party without the approval of the Delaware Court of Chancery and such approval may be conditioned on the terms the Delaware deems just; provided, however, that this will not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the merger consideration within 60 days after the effective time of the Merger.

Failure to comply strictly with all of the procedures set forth in Section 262 for perfecting appraisal rights may result in the loss of a stockholder s statutory appraisal rights. In that event, a stockholder will be entitled to receive the merger consideration for his, hers or its shares in accordance with the Merger Agreement. Consequently and in view of the complexity of the provisions of Section 262, any stockholder considering exercising his, her or its appraisal rights is encouraged to consult legal counsel before attempting to exercise those rights.

THE PROCESS OF DEMANDING AND EXERCISING APPRAISAL RIGHTS REQUIRES STRICT COMPLIANCE WITH TECHNICAL PREREQUISITES. IF YOU WISH TO EXERCISE YOUR APPRAISAL RIGHTS, YOU SHOULD CONSULT WITH YOUR OWN LEGAL COUNSEL IN CONNECTION WITH COMPLIANCE UNDER SECTION 262. TO THE EXTENT, THERE ARE ANY INCONSISTENCIES BETWEEN THE FOREGOING SUMMARY AND SECTION 262, SECTION 262 WILL GOVERN.

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MARKET PRICE AND DIVIDEND DATA

Our common stock is traded on the New York Stock Exchange under the symbol INVN. The following table sets forth for the periods indicated the high and low sales prices per share of our common stock as reported on the NYSE:

	Market Price ($)	
	High	Low
Fiscal Year Ending April 2, 2017:		
Quarter ending April 2, 2017 (through [ ], 2017)	[ ]	[ ]
Quarter ended January 1, 2017	12.92	6.75
Quarter ended October 2, 2016	8.42	5.61
Quarter ended July 3, 2016	8.66	5.42
Fiscal Year Ended April 3, 2016:		
Quarter ended April 3, 2016	16.47	13.79
Quarter ended December 27, 2015	15.79	8.46
Quarter ended September 27, 2015	12.77	8.88
Quarter ended June 28, 2015	11.05	6.60
Fiscal Year Ended March 29, 2015:		
Quarter ended March 29, 2015	23.82	17.10
Quarter ended December 28, 2014	26.78	19.25
Quarter ended September 28, 2014	21.94	13.50
Quarter ended June 29, 2014	17.56	13.19

Under our dividend policy, we have never declared or paid any cash dividends on our capital stock and have retained any future earnings for use in the expansion and operation of our business. Under the terms of the Merger Agreement, from the date of the Merger Agreement until the earlier of the effective time of the Merger or the termination of the Merger Agreement, we may not declare or pay cash dividends to our common stockholders without TDK Corporation s written consent.

On December 20, 2016, the last trading day before the day we announced the execution of the Merger Agreement, the closing price of our common stock was $10.84 per share. On [ ], 2017, the latest practicable trading day before this proxy statement was printed, the closing price of our common stock was $[ ] per share. Stockholders are encouraged to obtain current market quotations for our common stock and to carefully review the other information contained in this proxy statement in considering whether to adopt the Merger Agreement. As of [ ], 2017, [ ] shares of our common stock were outstanding, held by [ ] holders of record.

Following the Merger, there will be no further market for the our common stock and it will be delisted from NYSE and deregistered under the Exchange Act. As a result, following the Merger we will no longer file periodic reports with the SEC.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

AND DIRECTORS AND OFFICERS

The following table sets forth certain information regarding the ownership of our common stock as of January 13, 2017 by: (i) each director; (ii) each of our named executive officers; (iii) all of our current executive officers and directors as a group; and (iv) all those known by InvenSense to be beneficial owners of more than five percent of our common stock.

We have determined beneficial ownership in accordance with SEC rules. Under these rules, the number of shares of common stock deemed outstanding includes shares issuable within 60 days after January 13, 2017. For purposes of calculating each person s or group s percentage ownership, shares issuable within 60 days after January 13, 2017 are included for that person or group but not for any other person or group. Applicable percentage ownership is based on 94,473,523 shares of common stock outstanding at January 13, 2017. Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over the shares listed. Unless otherwise noted below, the address of each person listed is c/o InvenSense, Inc., 1745 Technology Drive, Suite 200, San Jose, California 95110.

	Shares Beneficially Owned	
Name and Address of Beneficial Owner	**Shares**	**Percentage (%)**
5% Stockholders:		
Artiman, L.L.C.(1)	6,444,901	6.8
BlackRock, Inc.(2)	5,535,913	5.9
The Vanguard Group, Inc.(3)	5,407,149	5.7
Directors and Named Executive Officers:		
Behrooz Abdi(4)	1,735,625	1.8
Amir Faintuch(5)	57,705	*
Usama Fayyad(6)	52,670	*
Emiko Higashi(7)	57,705	*
Jon Olson(8)	160,696	*
Amit Shah(9)	6,557,036	6.9
Eric Stang(10)	103,002	*
Yunbei Ben Yu, Ph.D.(11)	4,147,633	4.4
Mark Dentinger(12)	328,218	*
Daniel Goehl(13)	222,501	*
Mozafar Maghsoudnia(14)	415,500	*
All current directors and executive officers as a group (11 persons)(15)	13,838,291	14.2%

* Represents beneficial ownership of less than 1%.

(1) Includes 6,306,901 shares held by Artiman Ventures, L.P., 40,044 shares held by Artiman Ventures Side Fund, L.P. and 82,459 shares held by Artiman Ventures Side Fund II, L.P. Artiman, LLC s business address is 2000 University Avenue, Suite 602, East Palo Alto, CA 94303. Amit Shah and Yatin Mundkur, as managing members of Artiman, LLC, the general partner of the Artiman entities that hold the shares, may be deemed to beneficially own such shares, but disclaim beneficial ownership of such shares except to the extent of any pecuniary interest therein. See also note 8.

(2) As of December 31, 2016, based on information set forth in a Schedule 13G filed with the SEC on January 30, 2017 by BlackRock, Inc. (BlackRock), BlackRock has sole voting power with respect to 5,366,808 share of common stock and sole dispositive power with respect to 5,535,913 shares of common stock as the parent holding company for BlackRock (Netherlands) B.V., BlackRock Advisors, LLC, BlackRock Asset Management Canada Limited, BlackRock Asset Management Ireland Limited, BlackRock Asset Management Schweiz Ag, BlackRock Financial Management, Inc., BlackRock Fund Advisors,

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BlackRock Institutional Trust Company, N.A., BlackRock Investment Management (Australia) Limited, BlackRock Investment Management (UK) Ltd, BlackRock Investment Management, LLC and FutureAdvisor, Inc. The address for BlackRock is 55 East 52nd Street, New York, NY 10055.

(3) As of December 31, 2015, based on information set forth in a Schedule 13G filed with the SEC on February 10, 2016 by the Vanguard Group, Inc. (Vanguard). Vanguard s business address is 100 Vanguard Boulevard, Malvern, PA 19355. Vanguard Fiduciary Trust Company, a wholly-owned subsidiary of Vanguard, is the beneficial owner of 167,176 shares as a result of its serving as investment manager of collective trust accounts, and Vanguard Investments Australia, Ltd., a wholly-owned subsidiary of Vanguard, is the beneficial owner of 8,700 shares as a result of its serving as investment manager of Australian investment offerings.

(4) Includes 1,480,609 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 37,500 shares which are subject to our right of repurchase, which right will lapse over time.

(5) Includes 35,000 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017.

(6) Includes 32,500 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 20,170 RSUs that have vested and will be delivered within 60 days of January 13, 2017.

(7) Includes 35,000 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017.

(8) Includes 116,666 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017.

(9) Includes 46,667 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017, 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017 and 6,444,901 shares beneficially owned by Artiman, LLC, 16,667 shares held by Artiman Management, LLC and 19,943 shares held by Baca, L.P. Amit Shah is a Managing Member of Artiman Management and Artiman, LLC, which is the General Partner of the Artiman Ventures LPs, and shares voting control and investment power of the securities held by Artiman Management and the Artiman Ventures LPs with the other Managing Member of Artiman Management and Artiman, LLC. Mr. Shah disclaims beneficial ownership of the securities held by Artiman Management or the Artiman Ventures LPs except to the extent of his pecuniary interest therein. See also note.

(10) Includes 78,750 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017.

(11) Includes 80,000 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017, 20,450 RSUs that have vested and will be delivered within 60 days of January 13, 2017

and 4,035,404 shares held by Sierra Ventures IX, L.P. Yunbei Ben Yu, Ph.D. is a Managing Director of Sierra Ventures Associates IX, LLC, which serves as the sole General Partner of Sierra Ventures IX, LP. As such, Dr. Yu shares voting and investment control over the shares owned by Sierra Ventures IX with its other Managing Directors, and may be deemed to own beneficially the shares held by Sierra Ventures IX. Dr. Yu disclaims beneficial ownership of the shares held by Sierra Ventures IX except to the extent of his pecuniary interest therein.

(12) Includes 305,624 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017.

(13) Includes 203,751 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017, 3,750 RSUs that vest within 60 days of January 13, 2017 and 15,000 shares which are subject to our right of repurchase, which right will lapse over time.

(14) Includes 351,561 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017 and 4,750 RSUs that vest within 60 days of January 13, 2017.

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(15) Includes 2,766,128 shares of common stock issuable upon the exercise of outstanding stock options exercisable within 60 days of January 13, 2017, 8,500 RSUs that vest within 60 days of January 13, 2017, 142,870 RSUs that have vested and will be delivered within 60 days of January 13, 2017 and 52,500 shares which are subject to our right of repurchase, which right will lapse over time.

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PROPOSAL 1: THE MERGER PROPOSAL

As discussed throughout this proxy statement, our Board of Directors is asking stockholders to adopt the Merger Agreement. Pursuant to the Merger Agreement, TDK Corporation will acquire InvenSense in the Merger. Merger Subsidiary will merge with and into InvenSense, with InvenSense as the surviving corporation. InvenSense will be a direct or indirect wholly-owned subsidiary of TDK Corporation and our common stock will be delisted from the NYSE, deregistered under the Exchange Act and cease to be publicly traded.

As described in further detail in the sections of this proxy statement captioned *Questions and Answers* beginning on page 14 of this proxy statement, *Summary* beginning on page 1 of this proxy statement, *The Merger* beginning on page 30 of this proxy statement and *The Merger Agreement* beginning on page [ ] of this proxy statement, our Board of Directors has approved the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement. The Merger is subject to the satisfaction of the conditions set forth in the Merger Agreement, including the adoption of the Merger Agreement by our stockholders at the special meeting. Accordingly, the approval of the Merger Proposal by stockholders is a condition to the obligations of TDK Corporation and InvenSense to complete the Merger.

Required Vote

The affirmative vote, in person or by proxy, of a majority of the outstanding shares of common stock as of the Record Date is required to approve the Merger Proposal.

Recommendation of the InvenSense Board

The Board of Directors unanimously recommends that stockholders vote FOR the Merger Proposal.

PROPOSAL 2: THE MERGER-RELATED COMPENSATION PROPOSAL

As required by Section 14A of the Exchange Act and the applicable SEC rules issued thereunder, we are required to submit a proposal to stockholders for a non-binding advisory vote to approve the payment of certain compensation to our named executive officers that is based on or otherwise relates to the Merger. This proposal, which we refer to as the Merger-related Compensation Proposal, gives our stockholders the opportunity to vote, on a non-binding, advisory basis, on the compensation that the named executive officers will or may be entitled to receive from InvenSense (or, following the Merger, TDK Corporation) that is based on or otherwise relates to the Merger. This compensation is summarized in the section of this proxy statement captioned *The Merger Interests of Directors and Executive Officers in the Merger May Differ From Your Interests* as well as in the footnotes and narrative disclosures in the section of this proxy statement captioned *Golden Parachute Compensation*.

The Board of Directors encourages you to review carefully the named executive officer merger-related compensation information disclosed in this proxy statement.

The Board of Directors unanimously recommends that the stockholders approve the following resolution:

RESOLVED, that the stockholders of InvenSense, Inc. hereby approve on a non-binding, advisory basis, the compensation that may be paid or become payable to InvenSense s named executive officers in connection with the merger as disclosed pursuant to Item 402(t) of Regulation S-K in the table in the section of the proxy statement captioned *The Merger Golden Parachute Compensation,* including the related footnotes and narrative disclosures therein.

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Required Vote

The vote on the Merger-related Compensation Proposal is a vote separate and apart from the vote on the Merger Proposal. Accordingly, you may vote to approve the Merger Proposal and vote not to approve the Merger-related Compensation Proposal and vice versa. Because the vote on the Merger-related Compensation Proposal is advisory only, it will not be binding on either InvenSense or TDK Corporation. Accordingly, if the Merger Proposal is approved and the Merger is completed, the compensation may be paid, subject only to the conditions applicable thereto, regardless of the outcome of the non-binding, advisory vote of our stockholders.

The affirmative vote, in person or by proxy, of a majority of the shares of common stock represented at the special meeting is required to approve, on a non-binding, advisory basis, the Merger-related Compensation Proposal.

Recommendation of the InvenSense Board

The Board of Directors unanimously recommends that stockholders vote FOR the Merger-related Compensation Proposal.

PROPOSAL 3: THE ADJOURNMENT PROPOSAL

Stockholders are being asked to approve a proposal to adjourn the special meeting to a later date or dates if necessary or appropriate, including to solicit additional proxies if there are insufficient votes to approve the Merger Proposal at the time of the special meeting. If stockholders approve the Adjournment Proposal, we could adjourn the special meeting and any adjourned session of the special meeting and use the additional time to solicit additional proxies, including proxies from stockholders that have previously returned properly executed proxies voting against the Merger Proposal. Among other things, approval of the Adjournment Proposal could mean that, even if we had received proxies representing a sufficient number of votes against adoption of the Merger Agreement such that the Merger Proposal would be defeated, we could adjourn the special meeting without a vote on the Merger Proposal and seek to convince the holders of those shares to change their votes to votes in favor of the Merger Proposal.

If this proposal is approved, the special meeting could be adjourned to any date. If the special meeting is adjourned, stockholders who have already submitted their proxies will be able to revoke them at any time prior to their use.

Required Vote

The affirmative vote, in person or by proxy, of a majority of the outstanding shares of common stock represented at the special meeting is required to approve the Adjournment Proposal.

Recommendation of the InvenSense Board

The Board of Directors unanimously recommends that stockholders vote FOR the Adjournment Proposal.

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STOCKHOLDER PROPOSALS

If the Merger is completed, we will not hold an annual meeting of stockholders in 2017 or thereafter. However, if the Merger is not completed, we will hold a 2017 annual meeting of stockholders in the normal course. In that event, the deadline for stockholders to submit proposals to be considered for inclusion in our proxy statement for the 2017 annual meeting of stockholders is June 15, 2017 if our 2017 meeting is called for a date that is within 30 days before or after the one-year anniversary of the 2016 annual meeting. If, however, our 2017 annual meeting is called for a date that is not within 30 days before or after the one-year anniversary of the 2016 annual meeting, proposals for the 2017 annual meeting must be received by a reasonable time before we print and mail our proxy statement for the 2017 annual meeting. Such proposals may be included in the next year s proxy statement if they comply with certain rules and regulations promulgated by the SEC.

A stockholder who wishes to have a proposal considered at the 2017 annual meeting of stockholders but does not seek to have the proposal included in our proxy materials for that meeting must notify us by August 2, 2017. If the stockholder fails to give notice by this date, then the persons named as proxies in the proxies solicited by the Board of Directors for the 2017 annual meeting may exercise discretionary voting power regarding any such proposal. If, however, our 2017 annual meeting is called for a date that is not within 30 days before or after the one-year anniversary of the 2016 annual meeting, then the deadline to notify us of such proposal is a reasonable time before the 2017 annual meeting. Stockholder proposals or notices of proposals should be directed to InvenSense, Inc., attention Corporate Secretary, 1745 Technology Drive, Suite 200, San Jose, California 95110.

HOUSEHOLDING OF PROXY MATERIALS

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements and annual reports, including proxy statements, with respect to two or more stockholders sharing the same address by delivering a single proxy statement or other proxy materials addressed to those stockholders. This process, which is commonly referred to as householding, potentially means extra convenience for stockholders and cost savings for companies.

A number of brokers with account holders who are stockholders will be householding our proxy materials. A single proxy statement or other proxy materials may be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker that they will be householding communications to your address, householding will continue until you are notified otherwise or you submit contrary instructions. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement or other proxy materials, you may: (1) notify your broker; (2) direct your written request to our Director of Investor Relations, 1745 Technology Drive, Suite 200, San Jose, California 95110, telephone (408) 501-2200 or (3) contact our Investor Relations department at www.invensense.com. Stockholders who currently receive multiple copies of the

proxy statement or other proxy materials at their addresses and would like to request householding of their communications should contact their brokers. In addition, we will promptly deliver, upon written or oral request to the address or telephone number above, a separate copy of the proxy statement to a stockholder at a shared address to which a single copy of the documents was delivered.

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WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended. We file reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC s Public Reference Section at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an internet website, located at ***www.sec.gov***, that contains reports, proxy statements and other information regarding companies and individuals that file electronically with the SEC.

The information contained in this proxy statement speaks only as of the date indicated on the cover of this proxy statement unless the information specifically indicates that another date applies.

The SEC allows us to incorporate by reference information into this proxy statement. This means that we can disclose important information by referring to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this proxy statement. This proxy statement and the information that we later file with the SEC may update and supersede the information incorporated by reference. Similarly, the information that we later file with the SEC may update and supersede the information in this proxy statement. We also incorporate by reference into this proxy statement the following documents filed by us with the SEC under the Exchange Act:

our Annual Report on Form 10-K for the fiscal year ended April 3, 2016;

our Quarterly Reports on Form 10-Q for the fiscal quarters ended July 3, 2016, October 2, 2016 and January 1, 2017; and

our Current Reports on Form 8-K filed with the SEC on May 4, 2016, May 9, 2016, September 19, 2016, October 31, 2016, and December 21, 2016.

We undertake to provide without charge to each person to whom a copy of this proxy statement has been delivered, upon request, by first class mail or other equally prompt means, within one business day of receipt of the request, a copy of any or all of the documents incorporated by reference into this proxy statement, other than the exhibits to these documents, unless the exhibits are specifically incorporated by reference into the information that this proxy statement incorporates.

Requests for copies of our filings should be directed to InvenSense, Inc., attention Corporate Secretary at 1745 Technology Drive, Suite 200, San Jose, California 95110, and should be made by [ ], 2017 in order to receive them before the special meeting.

Stockholders should not rely on information other than that contained or incorporated by reference in this proxy statement. We have not authorized anyone to provide information that is different from that contained in this proxy statement. This proxy statement is dated [ ], 2017. No assumption should be made that the information contained in this proxy statement is accurate as of any date other than that date, and the mailing of this proxy statement will not create any implication to the contrary.

If you need additional copies of this proxy statement or the enclosed proxy card, or if you have questions about the proposals or how to vote your shares, you may contact our proxy solicitor, MacKenzie Partners, Inc., by telephone (toll free) at (980) 322-2885 or by email at proxy@mackenziepartners.com.

By Order of the Board of Directors,

Mark Dentinger
Chief Financial Officer

Dated: [ ], 2017

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Appendix A Merger Agreement

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

dated as of

December 21, 2016

among

INVENSENSE, INC.,

TDK CORPORATION

and

TDK SENSOR SOLUTIONS CORPORATION

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ARTICLE 10
Termination

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this **Agreement**) dated as of December 21, 2016 among InvenSense, Inc., a Delaware corporation (the **Company**), TDK Corporation, a company organized under the laws of Japan (**Parent**), and TDK Sensor Solutions Corporation, a Delaware corporation and a wholly owned subsidiary of Parent (**Merger Subsidiary**).

W I T N E S S E T H :

WHEREAS, on the terms and subject to the conditions set forth herein, Parent will acquire the Company by means of a merger of Merger Subsidiary with and into the Company in accordance with Delaware Law, with the Company surviving the Merger as a wholly owned indirect subsidiary of Parent (the **Merger**);

WHEREAS, the Board of Directors of the Company has, upon the terms and subject to the conditions set forth herein, (i) determined that the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement, the Merger and the other transactions contemplated hereby in accordance with Delaware Law and (iii) subject to the terms and conditions of this Agreement, resolved to recommend that the Company s stockholders approve and adopt this Agreement;

WHEREAS, the respective Boards of Directors of Parent and Merger Subsidiary have, upon the terms and subject to the conditions set forth herein, (i) determined that the Merger and the other transactions contemplated by this Agreement are fair to and in the best interests of Parent and Merger Subsidiary and their respective stockholders and (ii) approved and declared advisable this Agreement, the Merger and the other transactions contemplated hereby;

WHEREAS, as a condition and inducement to Parent s and Merger Subsidiary s willingness to enter into this Agreement, simultaneously with the execution of this Agreement, certain stockholders of the Company are entering into voting agreements with Parent and Merger Subsidiary (the **Voting Agreements**); and

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 Definitions.

(a) As used herein, the following terms have the following meanings:

Acquisition Proposal means, other than the transactions contemplated by this Agreement, any offer, proposal or inquiry relating to, or any Third Party indication of interest in, (i) any acquisition or purchase, direct or indirect, of (A) 20% or more of the consolidated assets of the Company and its Subsidiaries or (B) 20% or more of any class of equity or voting securities of the Company, (ii) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such Third Party beneficially owning 20% or more of any class of equity or voting securities of the Company, or (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution, joint venture (other than as set forth on Section 1.01(a) of the Company Disclosure Schedule) or other similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 20% or more of the consolidated assets of the Company.

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Affiliate means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.

Antitrust Laws means the Sherman Act of 1890, as amended; the Clayton Act of 1914, as amended; the Federal Trade Commission Act of 1914, as amended; the HSR Act, and all other federal, state, foreign or supranational laws or orders in effect from time to time that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

Applicable Law means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

Bid means any outstanding quotation, bid or proposal by the Company or any Company Subsidiary which, if accepted or awarded, would lead to a Government Contract for the supply of goods, licensing of property, or provision of services by the Company or any Company Subsidiary.

Business Day means a day, other than Saturday, Sunday or other day on which commercial banks in San Francisco, California or Tokyo, Japan are authorized or required by Applicable Law to be closed.

Call Spread Warrants means, collectively, (i) the base warrant confirmation, dated November 6, 2013, between the Company and Goldman, Sachs & Co. in reference to the Company Notes and (ii) the additional warrant confirmation, dated November 7, 2013, between the Company and Goldman, Sachs & Co. in reference to the Company Notes, which collectively provide for the issuance of shares by the Company at an exercise price of $28.656 per share (subject to adjustment as set forth therein).

CFIUS means the Committee on Foreign Investment in the United States, or any member agency thereof acting in its capacity as a CFIUS member agency.

CFIUS Approval means (i) a written notice issued by CFIUS that the transactions contemplated by this Agreement are not covered transactions and not subject to review under Applicable Law, (ii) a written notice issued by CFIUS indicating that there are no unresolved national security concerns with respect to the transactions contemplated by this Agreement and that CFIUS has concluded its review or investigation of the notification voluntarily provided pursuant to the DPA with respect to the transactions contemplated by this Agreement or (iii) if CFIUS has sent a report to the President of the United States requesting the President s decision, then (A) the President has announced a decision not to take any action to suspend or prohibit the transactions contemplated by this Agreement or (B) having received a report from CFIUS requesting the President s decision, the President has not taken any action after 15 days from the date the President received such report from CFIUS.

CFIUS Turndown means (A) (1) prior to the conclusion of all action under Section 721 of Title VII of the Defense Production Act of 1950, Parent withdraws the notification to CFIUS and does not re-file a CFIUS notification within 20 Business Days, or such different period of time agreed upon by the Parent and the Company, or (2) CFIUS has completed its review or investigation and determined it has unresolved national security concerns and Parent unilaterally withdraws, or the Parties by mutual written agreement withdraw, the CFIUS filing and Parent does not re-file a CFIUS notification within 20 Business Days, or such different period of time agreed upon by the parties, or (B) the President takes action to prohibit the transactions contemplated by this Agreement.

Code means the Internal Revenue Code of 1986.

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Collective Bargaining Agreement means any agreement, memorandum of understanding or other contractual obligation between the Company or any of its Subsidiaries and any labor union, labor organization, works council or other authorized employee representative representing Service Providers.

Company 10-K means the Company s annual report on Form 10-K for the fiscal year ended April 3, 2016 filed with the SEC.

Company Balance Sheet means the consolidated balance sheet of the Company as of October 2, 2016, and the footnotes thereto set forth in the Company s Quarterly Report on Form 10-Q filed with the SEC.

Company Balance Sheet Date means October 2, 2016.

Company Bylaws means the bylaws of the Company, as amended and restated as of the date of the Agreement.

Company Certificate means the Certificate of Incorporation of the Company as amended, amended and restated and supplemented and in effect on the date hereof.

Company Disclosure Schedule means the disclosure schedule dated the date hereof regarding this Agreement that has been provided by the Company to Parent and Merger Subsidiary.

Company Hedge Options means, collectively, (i) the base call option confirmation, dated November 6, 2013, between the Company and Goldman, Sachs & Co. in reference to the Company Notes and (ii) the additional call option confirmation, dated November 7, 2013, between the Company and Goldman, Sachs & Co. in reference to the Company Notes.

Company Notes means the 1.75% Convertible Senior Notes due 2018 issued by the Company pursuant to the Company Notes Indenture.

Company Notes Indenture means the Indenture, dated as of November 13, 2013, between the Company, as Issuer, and Wells Fargo Bank, National Association, as Trustee.

Company Restricted Stock means Company Stock subject to forfeiture restrictions granted under any Company Stock Plan.

Company RSU means a restricted stock unit in respect of one or more shares of Company Stock granted under any Company Stock Plan.

Company Software means any software owned by or purported to be owned by the Company or any Company Subsidiary and distributed or otherwise provided by the Company or any Company Subsidiary to any other Person.

Company Stock means the common stock, par value $0.001 per share, of the Company.

Company Stock Option means an option to purchase one or more shares of Company Stock granted under any Company Stock Plan.

Company Stock Plans means, collectively, (i) the 2011 Stock Incentive Plan and (ii) the 2004 Stock Incentive Plan, as amended September 18, 2009.

Contract means any legally binding contract, agreement, arrangement or understanding.

Delaware Law means the General Corporation Law of the State of Delaware.

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Department of Labor means the United States Department of Labor.

DPA means Section 721 of the Defense Production Act of 1950, including the implementing regulations thereof codified at 31 C.F.R. Part 800.

Employee Plan means any (i) employee benefit plan as defined in Section 3(3) of ERISA, (ii) compensation, employment, consulting, severance, salary continuation, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case whether or not written (x) that is sponsored, maintained, administered, contributed to or entered into by the Company or any of its ERISA Affiliates for the current or future benefit of any current or former Service Provider or (y) for which the Company or any Company Subsidiary has any direct or indirect liability.

Environmental Laws means any Applicable Laws or any agreement with any Governmental Authority or other Third Party, relating to human health and safety, the environment or to Hazardous Substances.

Environmental Permits means all permits, licenses, franchises, certificates, approvals and other similar authorizations of Governmental Authorities relating to or required by Environmental Laws and affecting, or relating to, the business of the Company or any Company Subsidiary as currently or formerly conducted.

ERISA means the Employee Retirement Income Security Act of 1974.

ERISA Affiliate with respect to any entity means any other entity that, together with such first entity, would be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

ESPP means the Company s 2013 Employee Stock Purchase Plan, as amended on September 16, 2016.

Exchange Act means the Securities Exchange Act of 1934.

GAAP means generally accepted accounting principles in the United States.

Government Contract means any prime contract, subcontract, basic ordering agreement, letter contract, purchase order, delivery order, change order, arrangement or other commitment of any kind between the Company or any Company Subsidiary, on the one hand, and any Governmental Authority or prime contractor or subcontractor to a Governmental Authority, on the other hand.

Governmental Authority means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

Hazardous Substance means any pollutant, contaminant, waste or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material, or any substance, waste or material having any constituent elements displaying any of the foregoing characteristics, including any substance, waste or material regulated under any Environmental Law.

HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

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Intellectual Property Rights means any and all intellectual property or similar proprietary rights throughout the world, including any and all (i) trademarks, service marks, brand names, certification marks, trade dress, logos, social media accounts, Internet domain names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application, (ii) inventions and discoveries, whether patentable or not, in any jurisdiction, industrial and utility models, industrial designs, petty patents, design patents, certificates of invention, patents, applications for patents (including divisions, continuations, provisionals, non-provisionals, continuations in part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction, (iii) writings and other works, whether copyrightable or not, in any jurisdiction, and any and all copyright rights, whether registered or not, and registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof, (iv) computer software (including source code, object code, firmware, operating systems and specifications), (v) trade secrets and other confidential information (including ideas, formulas, compositions, know-how, algorithms, processes, methods and techniques, research and development information, customer and supplier information and accounts, drawings, specifications, designs, proposals, technical data, financial and marketing plans), (vi) moral rights, database rights, design rights, and industrial property rights, and (vii) all rights to sue or recover and retain damages and costs and attorneys fees for past, present and future infringement or misappropriation of any of the foregoing.

International Plan means any Employee Plan that is not a US Plan.

IRS means the Internal Revenue Service.

knowledge means, with respect to the Company, the actual knowledge after due inquiry of the individuals set forth on Section 1.01(b) of the Company Disclosure Schedule.

Legal Proceeding means any audit, action, lawsuit, litigation, arbitration, hearing, or proceeding (including civil, criminal, administrative or appellate proceeding) commenced, brought or conducted or heard by or before or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

Lien means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or other adverse claim of any kind in respect of such property or asset. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

Material Adverse Effect means, (i) with respect to the Company and any Company Subsidiary, any event, occurrence, condition, state of facts, circumstances, change or effect that (A) has had or would reasonably be expect to have, individually or in the aggregate, a material adverse effect on the business, results of operations or condition

(financial or otherwise) of the Company and the Company Subsidiaries, taken as a whole or (B) would prevent the ability of the Company to consummate the transactions contemplated hereby; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been or will be, a Material Adverse Effect : (1) general changes or developments in the economy or the financial, debt, capital, credit or securities markets in the United States or elsewhere in the world in which the Company or any Company Subsidiary has material operations, including as a result of changes in geopolitical conditions, (2) general changes or developments in the industries in which the Company or any Company Subsidiary operates, (3) changes resulting from the public announcement of this Agreement or pendency of the Merger arising from the identity of Parent or its Affiliates; provided that this clause (3) shall not apply with respect to any representation or warranty, or any condition to the consummation of the Merger to the extent related thereto, that by its terms addresses the consequences of the announcement or pendency of the transactions contemplated by this Agreement, including

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Section 4.04, (4) changes in any applicable Laws or regulations or applicable accounting regulations or principles or interpretation or enforcement thereof, (5) any hurricane, tornado, earthquake, flood, tsunami, natural disaster, act of God or other comparable events or outbreak or escalation of hostilities or war (whether or not declared), military actions or any act of sabotage or terrorism, or national or international political or social conditions, (6) any decline in the market price or trading volume of the Company Stock or the credit rating of the Company (provided, that the facts, circumstances, developments, events, changes, effects or occurrences giving rise to or contributing to such decline may be deemed to constitute, or be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect), (7) any claim or Legal Proceedings made or brought by any of the current or former shareholders of the Company (on their own behalf or on behalf of the Company) against the Company or its directors for breaches of fiduciary duties or as class action claims arising out of the Merger or in connection with any other transactions contemplated by this Agreement or (8) any failure by the Company to meet any published analyst estimates or expectations of the Company s revenue, earnings or other financial performance or results of operations for any period, in and of itself, or any failure by the Company to meet its internal or published projections, budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations (provided, that the facts, circumstances, developments, events, changes, effects or occurrences giving rise to or contributing to such failure or decline may be deemed to constitute, or be taken into account in determining whether there has been or would reasonably be expected to, a Material Adverse Effect); except in the cases of clauses (1), (2),or (4) to the extent that the Company and the Company Subsidiaries, taken as a whole, are disproportionately affected thereby as compared with other participants in the industries in which the Company and the Company Subsidiaries operate (in which case solely the incremental disproportionate impact or impacts may be taken into account in determining whether there has been or would reasonably be expected to be a Material Adverse Effect); and (ii) with respect to Parent or Merger Subsidiary, any event, occurrence, condition, state of facts, circumstances, change or effect that would prevent the ability of Parent or Merger Subsidiary to consummate the transactions contemplated hereby.

Open Source Materials means software or other subject matter that is distributed under any of the following open source, free or substantially similar licenses: any license that requires source code or other underlying source to be made available in connection with any license, sublicense or distribution of such software, including, the GNU General Public License and the GNU Lesser General Public License, and any derivative of any of the foregoing licenses, or any other license approved as or meeting the definition of an open source license by the Open Source Initiative or free software by the Free Software Foundation.

Owned Intellectual Property Rights means any and all Intellectual Property Rights owned or purported to be owned by the Company or any Company Subsidiary.

Parent Termination Fee means US$46,700,000.

Permitted Lien means (i) Liens for Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings and, if required by GAAP, for which adequate reserves have been established in the Company Balance Sheet in accordance with GAAP, (ii) Liens in favor of vendors, carriers, warehousemen, repairmen, mechanics, workmen, materialmen, construction or similar statutory liens or other encumbrances arising in the ordinary course of business by operation of Applicable Law, (iii) statutory liens securing payments not yet due and payable, including liens of lessors pursuant to the terms of any lease, (iv) Liens on the interests of the landlords under the Company Leases, (v) such imperfections or irregularities of title, Liens, charges, easements, covenants and other restrictions or encumbrances as do not materially affect the value or use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties as currently conducted; easements, rights of way or other similar matters or restrictions or exclusions relating to real property which would be shown by a current title report or other similar report, (vi) pledges or deposits made in the ordinary course of business consistent with past practices to secure obligations under workers compensation, unemployment insurance, social security, retirement and similar Laws or similar legislation or to secure public or statutory obligations, (vii) requirements and restrictions of zoning, building and other Applicable Laws and municipal bylaws, and development, site plan, subdivision or other agreements with

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municipalities that do not materially interfere with the business of the Company and the Company Subsidiaries, (viii) non-exclusive licenses of rights in Intellectual Property Rights made in the ordinary course of business consistent with past practice, (ix) Liens created by any of the Contracts and listed in Section 1.01(c) of the Company Disclosure Schedule, and (x) Liens incurred in the ordinary course of business consistent with past practice in connection with any purchase money security interests, equipment leases or similar financing arrangements.

Person means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Representatives means, with respect to any Person, such Person s directors, officers, employees, Affiliates, investment bankers, attorneys, accountants and other advisors or representatives.

Sarbanes-Oxley Act means the Sarbanes-Oxley Act of 2002.

SEC means the Securities and Exchange Commission.

Securities Act means the Securities Act of 1933.

Service Provider means any director, officer, employee of the Company or any Company Subsidiary or any individual independent contractor retained by the Company or any Company Subsidiary.

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

Takeover Statutes means any antitakeover or similar statute or regulation that applies or purports to apply to any transaction contemplated by this Agreement, including any control share acquisition, fair price, moratorium or other antitakeover laws enacted under U.S. state or federal laws.

Third Party means any Person, including as defined in Section 13(d) of the Exchange Act, other than Parent or any of its Affiliates.

US Plan means any Employee Plan that covers Service Providers located primarily within the United States.

WARN means the Worker Adjustment and Retraining Notification Act and any equivalent foreign, state or local Law.

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

Term	Section
Anti-Corruption Laws	Section 4.12(c)
Adverse Recommendation Change	Section 6.03(a)
Agreement	Preamble
Book Entry Shares	Section 2.02(a)
Bribery Act	Section 4.12(c)
Certificate	Section 2.02(a)
Clearance Date	Section 6.02(b)
Closing	Section 2.01(b)
Closing Date	Section 2.01(b)

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Term	Section
Company	Preamble
Company Board Recommendation	Section 4.02(b)
Company Financial Statements	Section 4.08(a)
Company Permits	Section 4.12(b)
Company SEC Documents	Section 4.07(a)
Company Securities	Section 4.05(c)
Company Stockholder Approval	Section 4.02(a)
Company Stockholder Meeting	Section 6.02(c)
Company Subsidiary	Section 4.05(f)
Confidentiality Agreement	Section 6.03(b)(i)
Covered Employee	Section 7.03(a)
Dissenting Shares	Section 2.05(a)
D&O Insurance	Section 7.02(c)
Effective Time	Section 2.01(c)
e-mail	Section 11.01
End Date	Section 10.01(b)(i)
Export Approvals	Section 4.12(e)
FCPA	Section 4.12(c)
Indemnification Contracts	Section 7.02(a)
Indemnified Person	Section 7.02(a)
Insurance Policies	Section 4.22
Intervening Event	Section 6.03(f)
Leased Real Property	Section 4.14(b)
Major Customer	Section 4.21(a)
Major Distributor	Section 4.21(c)
Major Supplier	Section 4.21(b)
Material Contract	Section 4.19(a)
Merger	Recitals
Merger Consideration	Section 2.02(a)
Merger Subsidiary	Preamble
NYSE	Section 4.07(f)
Negotiation Period	Section 6.03(d)
Parent	Preamble
Parent Plan	Section 7.03(b)
Paying Agent	Section 2.03(a)
Payment Fund	Section 2.03(a)
Preferred Stock	Section 4.05(a)
Premium Cap	Section 7.02(c)
Proxy Statement	Section 4.09
Superior Proposal	Section 6.03(e)
Surviving Corporation	Section 2.01(a)
Tax	Section 4.16(k)
Tax Asset	Section 4.16(k)
Taxing Authority	Section 4.16(k)
Tax Return	Section 4.16(k)
Tax Sharing Agreement	Section 4.16(k)
Termination Fee	Section 11.04(b)(i)

Vested Option	Section 2.04(a)
Vested RSU	Section 2.04(c)
Voting Agreements	Recitals
Unvested Option	Section 2.04(b)
Unvested RSU	Section 2.04(d)

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Section 1.02 Other Definitional and Interpretative Provisions. The words hereof , herein and hereunder and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections, and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or other document made or delivered pursuant to this Agreement but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words include , includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation , whether or not they are in fact followed by those words or words of like import. Writing , written and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from, since or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to law , laws or to a particular statute or law shall be deemed also to include any Applicable Law. References to $ are to United States dollars. References to anything having been made available to Parent shall mean information filed or furnished on the SEC s Edgar system on or after May 5, 2016 or the posting of any information or material, at least two Business Days prior to the date hereof, in an electronic data room to which Parent (or its Representatives) has been provided access.

ARTICLE 2

THE MERGER

Section 2.01 The Merger.

(a) At the Effective Time, Merger Subsidiary shall be merged with and into the Company in accordance with Delaware Law, whereupon the separate existence of Merger Subsidiary shall cease, and the Company shall be the surviving corporation (the **Surviving Corporation**).

(b) Subject to the provisions of Article 9, the closing of the Merger (the **Closing**) shall take place at 10:00 a.m. at the offices of Pillsbury Winthrop Shaw Pittman LLP, 2550 Hanover Street, Palo Alto CA 94304 as soon as possible, but in any event no later than five Business Days after the date the conditions set forth in Article 9 (other than

conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing) have been satisfied or, to the extent permissible, waived by the party or parties entitled to the benefit of such conditions, or at such other place, at such other time or on such other date as Parent and the Company may mutually agree. The date on which the Closing occurs is referred to herein as the **Closing Date** .

(c) At the Closing, the Company and Merger Subsidiary shall file a certificate of merger with the Delaware Secretary of State and make all other filings or recordings required by Delaware Law in connection with the Merger. The Merger shall become effective at such time (the **Effective Time**) as the certificate of merger is duly filed with the Delaware Secretary of State (or at such later time as may be agreed to by the Company and Parent and specified in the certificate of merger).

(d) The effects of the Merger shall be as provided in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time,

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the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Subsidiary, all as provided under Delaware Law.

Section 2.02 Conversion of Shares.

(a) At the Effective Time, except as otherwise provided in Section 2.02(b), Section 2.02(d), Section 2.03(b), Section 2.04 or Section 2.05, each share of Company Stock outstanding immediately prior to the Effective Time shall be converted into the right to receive $13.00 in cash, without interest (the **Merger Consideration**). As of the Effective Time, all such shares of Company Stock (including all uncertificated shares of Company Stock represented by book-entry form (**Book-Entry Shares**) and each certificate that, immediately prior to the Effective Time, represented any such shares of Company Stock (each, a **Certificate**)) shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and shall thereafter represent only the right to receive the Merger Consideration without interest in accordance with Section 2.03;

(b) each share of Company Stock held by the Company as treasury stock or owned by Parent, a Company Subsidiary or a Subsidiary of Parent immediately prior to the Effective Time shall be canceled, and no payment shall be made with respect thereto;

(c) each share of common stock of Merger Subsidiary outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of common stock of the Surviving Corporation; and

(d) The Merger Consideration shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Stock), reorganization, recapitalization, reclassification, combination, merger, issuer tender offer, exchange of shares or other like change with respect to Company Stock occurring on or after the date hereof and prior to the Effective Time, and such adjustment to the Merger Consideration shall provide to the holders of Company Stock the same economic effect as contemplated by this Agreement prior to such action and shall as so adjusted from and after the date of such event, be the Merger Consideration; *provided, however*, that nothing in this Section 2.02(d) shall be construed to permit the Company to take any action with respect to the Company Stock that is prohibited by the terms of this Agreement.

Section 2.03 Surrender and Payment.

(a) On or prior to the Closing, Parent shall select a reputable bank or trust company to act as Paying Agent in the Merger, which shall be reasonably acceptable to the Company (the **Paying Agent**). At or prior to the Effective Time, Parent shall deposit with the Paying Agent cash sufficient to pay the aggregate Merger Consideration

payable pursuant to Section 2.02. The cash amount so deposited with the Paying Agent is referred to as the **Payment Fund**. The Paying Agent will invest the funds included in the Payment Fund in the manner directed by Parent; *provided, however*, that such investments shall be in obligations of or guaranteed by the United States of America or any agency or instrumentality thereof and backed by the full faith and credit of the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody s Investors Service, Inc. or Standard & Poor s Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker s acceptances of commercial banks with capital exceeding $2 billion (based on the most recent financial statements of such bank that are then publicly available). In the event the Payment Fund shall be insufficient to pay the aggregate Merger Consideration payable pursuant to Section 2.02, Parent shall promptly deposit, or cause to be deposited, additional funds with the Paying Agent in an amount which is equal to the deficiency in the amount required to make such payment. The Payment Fund shall not be used for any purpose other than to fund payments pursuant to Section 2.02, except as expressly provided for in this Agreement. Any interest or other income resulting from the investment of such funds shall be the property of Parent.

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(b) Promptly and in any event no later than three (3) Business Days after the Effective Time, Parent shall cause the Paying Agent to mail to the Persons who were record holders of Book-Entry Shares or Certificates that were converted pursuant to Section 2.02(a) into the right to receive the Merger Consideration) (i) a letter of transmittal, which shall be in such form and have such other provisions as Parent shall reasonably designate after input from the Company, and (ii) instructions for use in effecting the surrender of Book-Entry Shares and Certificates in exchange for the Merger Consideration. Upon receipt of an agent s message by the Paying Agent (or such other evidence, if any, of transfer to the Paying Agent as the Paying Agent may reasonably request), together with (x) a duly completed and validly executed letter of transmittal, (y) a properly completed and duly executed IRS Form W-9 or W-8 (as applicable), and (z) such other documents as may be reasonably required by the Paying Agent or Parent, the holder of such Book-Entry Share or Certificate shall be entitled to receive in exchange therefor the Merger Consideration (less any applicable Tax withholding). Until transferred as contemplated by this Section 2.03, each Book-Entry Share and Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive Merger Consideration as contemplated by this Section 2.03. No interest shall be paid or accrued on the cash payable upon the transfer of any Book-Entry Share or Certificate. Payment of the applicable Merger Consideration with respect to Book-Entry Shares and Certificates shall only be made to the Person in whose name such Book-Entry Shares or Certificates are registered.

(c) Any portion of the Payment Fund (including any interest or other amounts received with respect thereto) that remains unclaimed or undistributed to holders of Book-Entry Shares or Certificates as of the date that is one year after the Effective Time shall be delivered to Parent upon demand, and any holders who have not theretofore transferred their Book-Entry Shares or Certificates in accordance with this Section 2.03 prior to that time shall thereafter look only to the Surviving Corporation (subject to abandoned property, escheat and other similar legal requirements) for satisfaction of their claims for the Merger Consideration pursuant to this Section 2.03. Notwithstanding anything herein to the contrary, neither Parent nor the Surviving Corporation shall be liable to any holder or to any other Person with respect to any Merger Consideration delivered to any public official pursuant to any applicable abandoned property law, escheat law or similar law. Any other provision of this Agreement notwithstanding, any portion of the Merger Consideration that remains undistributed to the holders of Book-Entry Shares or Certificates as of the second anniversary of the Effective Time (or immediately prior to such earlier date on which the Merger Consideration would otherwise escheat to or become the property of any Governmental Authority), shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(d) At the Effective Time, the stock transfer books of the Company with respect to the shares of Company Stock shall be closed and thereafter there shall be no further registration of transfers of shares of Company Stock outstanding immediately prior to the Effective Time on the records of the Company. From and after the Effective Time, the holders of the shares of Company Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares other than the

right to receive the Merger Consideration into which such shares have been converted pursuant to this Agreement or as provided by Applicable Law. If, after the Effective Time, any Book-Entry Shares or Certificates formerly representing shares of Company Stock are presented to the Surviving Corporation, Parent or the Paying Agent for any reason, such Book-Entry Shares shall be cancelled and exchanged as provided in this Article 2, subject to Applicable Law in the case of Dissenting Shares.

Section 2.04 Treatment of Equity Awards.

(a) At the Effective Time, each vested Company Stock Option that is outstanding and unexercised immediately prior to the Effective Time (including any Company Stock Option held by a director that, in accordance with its terms, becomes vested at or immediately prior to the Effective Time by reason of the Merger) and that has an exercise price per share that is less than the Merger Consideration (a **Vested Option**) shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and shall become a right to receive an amount in cash, without interest, equal to the product obtained by multiplying (i) the number of shares of Company Stock subject to the Vested Option by (ii) the excess of the amount of the

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Merger Consideration over the exercise price per share of the Vested Option (with the aggregate payment rounded down to the nearest cent), less applicable Tax withholding. For the avoidance of doubt, each Vested Option with an exercise price per share that is equal to or greater than the Merger Consideration shall be canceled without any consideration to the holder thereof. All such amounts payable with respect to the Vested Options shall be paid by Parent or the Surviving Corporation as soon as practicable following the Effective Time (and in any event in connection with the next payroll payment that is made at least five Business Days following the Effective Time).

(b) At the Effective Time, each unvested Company Stock Option that is outstanding and unexercised immediately prior to the Effective Time and that has an exercise price per share that is less than the Merger Consideration (an **Unvested Option**) shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and shall become a right to receive an amount in cash, without, interest, equal to the product obtained by multiplying (i) the number of shares of Company Stock subject to the Unvested Option by (ii) the excess of the amount of the Merger Consideration over the exercise price per share of the Unvested Option (with the aggregate payment rounded down to the nearest cent), which amount shall be payable, less applicable Tax withholding, in accordance with the applicable vesting schedule that would have applied to such Unvested Option, but only if the holder of such terminated Unvested Option satisfies all of the vesting terms and conditions that would have related to the terminated Unvested Option (including any continued employment requirements through the applicable dates of vesting). For avoidance of doubt, each Unvested Option (x) with an exercise price per share that is equal to or greater than the Merger Consideration or (y) that is subject to vesting based on performance criteria that has not been achieved as of the Effective Time shall be canceled without any consideration to the holder thereof.

(c) At the Effective Time, each vested Company RSU (including any Company RSU that, in accordance with its terms, becomes vested at or immediately prior to the Effective Time by reason of the Merger) (a **Vested RSU**) that is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and shall become a right to receive an amount in cash, without interest, equal to the product obtained by multiplying (x) the number of shares of Company Stock subject to the Vested RSU, by (y) the Merger Consideration (with the aggregate payment rounded down to the nearest cent), less applicable Tax withholding, which amount shall be paid by Parent or the Surviving Corporation as soon as practicable following the Effective Time (and in any event in connection with the next payroll payment that is made at least five Business Days following the Effective Time).

(d) At the Effective Time, each unvested Company RSU (an **Unvested RSU**) that is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and shall become a right to receive an amount in cash, without interest, equal to the product obtained by multiplying (x) the number of shares of Company Stock subject to the Unvested RSU, by (y) the Merger Consideration (with the aggregate payment

rounded down to the nearest cent), which amount shall be payable in accordance with the applicable vesting schedule, less applicable Tax withholding, that would have applied to such Unvested RSU, but only if the holder of such terminated Unvested RSU satisfies all of the vesting terms and conditions that would have related to the terminated Unvested RSU (including any continued employment requirements through the applicable date of vesting).

(e) At the Effective Time, each unvested share of Company Restricted Stock that is outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and shall become a right to receive an amount in cash, without interest, equal to the Merger Consideration (with the aggregate payment rounded down to the nearest cent), which amount shall be payable in accordance with the applicable vesting schedule less applicable Tax withholding, that would have applied to such unvested share of Company Restricted Stock, but only if the holder of such terminated Company Restricted Stock satisfies all of the vesting terms and conditions that would have related to the terminated unvested share of Company Restricted Stock (including any continued employment requirements through the applicable date of vesting).

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(f) Prior to the Effective Time, the Board of Directors of the Company and/or the appropriate committee thereof shall adopt resolutions and shall take all such other actions as are necessary to effectuate the treatment of the Company Stock Options, Company RSUs and shares of Company Restricted Stock as contemplated by this Section 2.04(f).

Section 2.05 Dissenting Shares.

(a) Notwithstanding anything to the contrary contained in this Agreement, shares of Company Stock held by a holder who is entitled to demand and properly demands appraisal of such shares of Company Stock pursuant to, and in compliance in all respects with, Section 262 of Delaware Law (any such shares being referred to as **Dissenting Shares** until such time as such holder effectively withdraws or fails to perfect or otherwise loses such holder s appraisal rights under Section 262 of Delaware Law respect to such shares as contemplated by Section 2.05(b)) shall not be converted into or represent the right to receive Merger Consideration in accordance with Section 2.02(a), but instead, at the Effective Time, shall be converted into the right to receive payment of such amounts as are payable in accordance with Section 262 of Delaware Law. At the Effective Time, the Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of Dissenting Shares shall cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of Delaware Law.

(b) If any Dissenting Shares shall lose their status as such (through failure to perfect or otherwise), then, as of the later of the Effective Time or the date of loss of such status, such shares shall automatically be converted into and shall represent only the right to receive the Merger Consideration in accordance with Section 2.02(a), without duplication or any interest thereon, and shall not thereafter be deemed to be Dissenting Shares.

(c) The Company shall give Parent: (i) reasonably prompt written notice of (A) any demand for appraisal received by the Company prior to the Effective Time pursuant to Delaware Law; (B) any withdrawal or attempted withdrawal of any such demand; and (C) any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to Delaware Law; and (ii) the opportunity to participate in and direct all negotiations and proceedings with respect to any such demand, notice or instrument. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle or compromise or offer to settle or compromise, any such demand, notice or instrument, or agree to do any of the foregoing.

Section 2.06 Withholding Rights. Notwithstanding any provision contained herein to the contrary, each of the Paying Agent, the Surviving Corporation and Parent shall be entitled to deduct and withhold from any amounts otherwise payable to any Person pursuant to this Article 2 such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Tax law. If the Paying Agent, the Surviving Corporation or Parent, as the case may be, so

withholds amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Paying Agent, the Surviving Corporation or Parent, as the case may be, made such deduction and withholding.

Section 2.07 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Paying Agent, the posting by such Person of a bond in such amount as Parent or the Paying Agent may determine is reasonably necessary as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent (or, if subsequent to the termination of the Payment fund and subject to Section 2.03(c), Parent) will deliver, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to be paid in respect of the shares of Company Stock represented by such Certificate, as contemplated by this Article 2.

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ARTICLE 3

THE SURVIVING CORPORATION

Section 3.01 Certificate of Incorporation. The certificate of incorporation of Merger Subsidiary in effect at the Effective Time shall be the certificate of incorporation of the Surviving Corporation until amended in accordance with Applicable Law.

Section 3.02 Bylaws. The bylaws of Merger Subsidiary in effect at the Effective Time shall be the bylaws of the Surviving Corporation until amended in accordance with Applicable Law.

Section 3.03 Directors and Officers. The Parties shall take all actions necessary so that (a) the directors of Merger Subsidiary at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation, and (b) the officers of the Company at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Subsidiary that, except (i) as disclosed in the SEC filings made by the Company on Forms 10-K, 10-Q or 8-K on or after May 5, 2016, and prior to the date of this Agreement (where the relevance of the information to a particular representation is reasonably apparent and excluding any disclosures set forth under the headings Risk Factors, or forward-looking statements , or disclosures in any other statements that are similarly cautionary or predictive in nature; it being understood that any factual historical information contained within such headings, disclosure or statements shall not be excluded) provided that the provisions of this clause (i) shall not modify or be deemed to modify the representations and warranties set forth in Section 4.05 or Section 4.10(c) or (ii) as set forth on the corresponding sections or subsections of the Company Disclosure Schedule, it being acknowledged and agreed that disclosure of any item in any section or subsection of the Company Disclosure Schedule shall only be deemed disclosure with respect to any other section or subsection of this Agreement to which the relevance of such item is reasonably apparent on the face of such disclosure:

Section 4.01 Corporate Existence and Power.

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) The Company has all corporate powers and all governmental licenses, franchises, authorizations, permits, certificates, consents and approvals required to carry on its business as now conducted, except for those licenses, franchises, authorizations, permits, certificates, consents and approvals the absence of which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. The Company is duly qualified to do business as a foreign corporation and is in good standing (with respect to jurisdictions that have the concept of good standing) in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. The Company has heretofore made available to Parent correct and complete copies of the Company Certificate and Company Bylaws as amended and in effect on the date hereof. The Company has heretofore made available to Parent correct and complete copies of the minute books of the Company; provided that minutes related to deliberations concerning a transaction between the Company and potential acquirors, including the Company, may be redacted.

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Section 4.02 Corporate Authorization.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company s corporate powers and, except for the required approval of the Company s stockholders in connection with the consummation of the Merger, have been duly authorized by all necessary corporate action on the part of the Company. The affirmative vote of the holders of a majority of the outstanding shares of Company Stock is the only vote of the holders of any of the Company s capital stock necessary in connection with the adoption, approval and authorization of this Agreement and for the Company to consummate the Merger and the other transactions contemplated by this Agreement (the **Company Stockholder Approval**). This Agreement has been duly executed and delivered by the Company and constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Applicable Laws affecting creditors rights generally and general principles of equity).

(b) At a meeting duly called and held, the Company s Board of Directors has (i) determined that this Agreement and the transactions contemplated hereby are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, (iii) duly and validly approved the execution and delivery by the Company of this Agreement, the performance by the Company of its covenants and agreements contained herein and the consummation of the Merger upon the terms and subject to the conditions contained herein, (iv) directed that the adoption of this Agreement be submitted to a vote at a meeting of the Company s stockholders and (v) resolved, subject to the pendency of any Adverse Recommendation Change made in accordance with Section 6.03(a), to recommend approval and adoption of this Agreement by its stockholders (such recommendation, the **Company Board Recommendation**).

Section 4.03 Governmental Authorization. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby require no action by or in respect of, filing with, or consent of any Governmental Authority other than (a) the filing of the certificate of merger with the Secretary of State of the State of Delaware pursuant to the Delaware Law and related documentation and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (b) compliance with any applicable requirements of the HSR Act and Antitrust Laws set forth on Section 4.03 of the Company Disclosure Schedule, (c) compliance with any applicable requirements of the NYSE, the Securities Act, the Exchange Act, and any other applicable state or federal securities laws, (d) filings with, submissions as may be advisable to, and clearances, permits, authorizations, consents and approvals as may be required from, CFIUS in order to obtain the CFIUS Approval, (e) filings with, submissions as may be advisable to and clearances, permits, authorizations, consents and approvals as may be required from the *French Ministère de l Economie, de l Industrie et du Numérique* under Articles L.151-3 and R.153-1 et seq. of the French Monetary and Financial Code and (f) any actions, filings or consents, the

absence of which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 4.04 Non-contravention. The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby do not and will not (a) contravene, conflict with, or result in any violation or breach of any provision of the Company Certificate or Company Bylaws, (b) assuming compliance with the matters referred to in Section 4.03, contravene, conflict with or result in a violation or breach of any provision of any Applicable Law with respect to the Company or any Company Subsidiary, (c) assuming compliance with the matters referred to in Section 4.03, require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any Company Subsidiary is entitled under any provision of any agreement or other instrument binding upon the Company or any Company Subsidiary or any license, franchise, authorization, permit, certificate, consent, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company and the Company

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Subsidiaries or (d) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Company or any Company Subsidiary, with only such exceptions, in the case of each of clauses (b) through (d), as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 4.05 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 750,000,000 shares of Company Stock and (ii) 20,000,000 shares of preferred stock (the **Preferred Stock**). As of December 15, 2016, there were outstanding (1) 94,415,309 shares of Company Stock, (2) no shares of Preferred Stock and (3)(A) Company Stock Options to purchase an aggregate of 11,881,453 shares of Company Stock (of which Company Stock Options to purchase an aggregate of 5,835,149 shares of Company Stock were exercisable), (B) Company RSUs relating to an aggregate of 5,085,861 shares of Company Stock and (C) an aggregate of 67,500 shares of Company Restricted Stock. As of December 15, 2016, there were (x) 10,112,622 shares of Company Stock reserved for issuance under the Company Stock Plans and (y) 2,389,903 shares of Company Stock available for issuance under the ESPP. As of December 15, 2016, there was outstanding $175,000,000 principal amount of Company Notes and the conversion rate applicable to the Company Notes pursuant to the Company Notes Indenture (without giving effect to any make-whole amount) was 45.683 shares of Company Stock per $1,000 principal amount of Company Notes. As of December 15, 2016, 7,994,425 shares of Company Stock were subject to issuance upon exercise of the Call Spread Warrants. Section 4.05 of the Company Disclosure Schedule contains a complete and correct list of all outstanding Company Stock Options, Company RSUs and Company Restricted Stock, including with respect to each such award, as applicable, the holder, type of award, date of grant, exercise price (if applicable), vesting schedule, expiration date, total initial number of shares of Company Stock underlying such award and total outstanding number of shares of Company Stock underlying such award.

(b) All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights and issued in compliance with Applicable Law. Each Company Stock Option was granted with an exercise price per share greater than or equal to the fair market value of a share of Company Stock on the date of grant of the applicable Company Stock Option. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or, other than the Company Notes, convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote. Neither the Company nor any Company Subsidiary is a party to any voting agreement with respect to the voting of any Company Securities.

(c) Except as set forth in this Section 4.05 and for changes since December 15, 2016 resulting from the exercise of Company Stock Options outstanding on such date, the

settlement of Company RSUs outstanding on such date and the exercise of purchase rights under the ESPP outstanding on such date, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of or ownership interests in the Company, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or other voting securities of or ownership interests in the Company, (iii) warrants, calls, options or other rights to acquire from the Company, or other obligation of the Company to issue, any capital stock, voting securities, other ownership interests or securities convertible into or exchangeable for capital stock or voting securities of or ownership interests in the Company or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, phantom stock or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or voting securities of or other ownership interests in the Company (the items in clauses (i) through (iv) being referred to collectively as the **Company Securities**). There are no outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any of the Company Securities, other than pursuant to the Company Notes and Company Notes Indenture and the Company Hedge Options.

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(d) The Company does not have in place, nor is it subject to, a stockholder rights plan, poison pill or similar plan or instrument.

(e) The Company has not repurchased any shares of Company Stock, Company Stock Options, Company RSUs or Company Restricted Stock (other than in connection with the exercise, settlement or vesting of such stock or awards in accordance with their respective terms, and in connection with the payment of Taxes related thereto) in the last three years.

(f) No Company Securities are owned by any Subsidiary of the Company (each a **Company Subsidiary**).

Section 4.06 Subsidiaries.

(a) Each Company Subsidiary has been duly organized, is validly existing and (where applicable) in good standing under the laws of its jurisdiction of organization and has all organizational powers and all governmental licenses, franchises, authorizations, permits, certificates, consents and approvals required to carry on its business as now conducted, except for those licenses, franchises, authorizations, permits, certificates, consents and approvals the absence of which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. Each Company Subsidiary is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. All Company Subsidiaries and their respective jurisdictions of organization are set forth in the Company 10-K.

(b) All of the outstanding shares of capital stock or other equity securities of, or other ownership interests in, each Company Subsidiary are, where applicable, duly authorized, validly issued, fully paid and nonassessable, and all such shares, securities or interests are owned by the Company or by a Company Subsidiary free and clear of any Liens (other than Permitted Liens) or limitations on voting rights. There are no subscriptions, options, warrants, calls, rights, convertible securities or other agreements or commitments of any character relating to the issuance, transfer, sales, delivery, voting or redemption (including any rights of conversion or exchange under any outstanding security or other instrument) for any of the capital stock or other voting securities of, or other ownership interests in, any Company Subsidiary. Except for the Company Subsidiaries, the Company does not own, directly or indirectly, any capital stock and/or other ownership interest in any Person. Neither the Company or any Company Subsidiary has an obligation to acquire any equity interest, or security of, or right, agreement or obligation to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in, any Person.

Section 4.07 SEC Filings and the Sarbanes-Oxley Act.

(a) The Company has timely filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required

to be filed or furnished by the Company since March 30, 2013 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the **Company SEC Documents**). None of the Company Subsidiaries is or has been required to file any forms, reports or other documents with the SEC.

(b) As of its filing date (or, if amended, as of the date of the last such amendment), each Company SEC Document complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as the case may be, each as in effect on the date so filed, and none of the Company SEC Documents, together with any amendments thereto, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) There are no outstanding or unresolved comment letters received from the SEC staff with respect to any of the Company SEC Documents and, to the knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review.

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(d) The Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are reasonably effective in timely alerting the Company s principal executive officer and principal financial officer to material information required to be included in the Company s periodic and current reports required under the Exchange Act. For purposes of this Agreement, principal executive officer and principal financial officer shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(e) The Company and each Company Subsidiary has established and maintained a system of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) designed to provide reasonable assurance regarding the reliability of the Company s financial reporting and the preparation of Company financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on its most recent evaluation of internal controls prior to the date hereof, to the Company s auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company s ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls over financial reporting. The Company has made available to Parent a summary of any such disclosure made by management to the Company s auditors and audit committee, since March 30, 2013.

(f) Since March 30, 2013, the Company has complied in all material respects with the applicable listing and corporate governance rules and regulations of the New York Stock Exchange (the **NYSE**).

(g) Since March 30, 2013, each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) have made all certifications required by Rule 13a-14 and 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are complete and correct.

Section 4.08 Financial Statements.

(a) The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company (collectively, the **Company Financial Statements**) included or incorporated by reference in the Company SEC Documents fairly presented in all material respects, in conformity with GAAP (except, in the case of unaudited statements, as permitted by the rules and regulations of the SEC) applied on a consistent basis (except as may be indicated in the notes thereto), the

consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal and recurring year-end audit adjustments the effect of which would not be material in the case of any unaudited interim financial statements and except as indicated in the notes to such Company Financial Statements or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC, and except that the unaudited Company Financial Statements may not contain footnotes, none of which either individually or in the aggregate will be material in amount). The Company Financial Statements were prepared from, and are in accordance with, the books and records of the Company and its consolidated Subsidiaries in all material respects and complied, as of their respective dates of filing with the SEC, in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act.

(b) Neither the Company nor any Company Subsidiary is a party to, nor does it have any commitment to become a party to, any off-balance sheet joint venture, off-balance sheet partnership or any other off-balance sheet arrangements (as defined in Item 303(a) of Regulation S-K of the SEC).

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(c) Since March 30, 2013, (i) none of the Company or any Company Subsidiary, nor to the knowledge of the Company, any director or officer of the Company has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding accounting, internal accounting controls or auditing practices, procedures, methodologies or methods of the Company or any Company Subsidiary or any material complaint, allegation, assertion or claim from employees of the Company or any Company Subsidiary regarding questionable accounting or auditing matters with respect to the Company or any Company Subsidiary, and (ii) no attorney representing the Company or any Company Subsidiary, whether or not employed by the Company or any Company Subsidiary, has reported evidence of a violation of securities Laws, breach of fiduciary duty or similar violation by the Company, any Company Subsidiary or any of their respective officers, directors, employees or agents to the Board of Directors of the Company or any committee thereof, or to the General Counsel or Chief Executive Officer of the Company.

Section 4.09 Disclosure Documents. At the time the proxy statement of the Company to be filed with the SEC in connection with the Merger (the **Proxy Statement**) or any amendments or supplements thereto is first mailed to the stockholders of the Company and at the time of the Company Stockholder Approval, the Proxy Statement, as supplemented or amended, if applicable, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 4.09 will not apply to statements or omissions included or incorporated by reference in the Proxy Statement based upon information supplied in writing by Parent, Merger Subsidiary or any of their respective Representatives or advisors specifically for use or incorporation by reference therein.

Section 4.10 Absence of Certain Changes. Since the Company Balance Sheet Date, except for the execution and performance of this Agreement and the discussions and negotiations related thereto, (a) the business of the Company and each Company Subsidiary has been conducted in all material respects in the ordinary course consistent with past practices; (b) as of the date hereof, none of the Company nor any Company Subsidiary has undertaken any action that if taken after the date of this Agreement would require Parent s consent pursuant to Section 6.01(b), (e), (f), (i), (j), or (m) or Section 6.07(a); and (c) there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 4.11 No Undisclosed Material Liabilities. There are no liabilities or obligations of the Company or any Company Subsidiary of any nature, whether accrued, contingent, absolute, determined or determinable, other than (i) liabilities or obligations disclosed on, reserved against or provided for in the Company Balance Sheet or in the notes thereto; (ii) liabilities or obligations incurred in the ordinary course of business since the Company Balance Sheet Date which have not had or would not reasonably be expected to have a material and adverse effect on the

Company or any Company Subsidiary; (iii) incurred under this Agreement or in connection with the transactions contemplated hereby and (iv) liabilities or obligations that would not have or would reasonably be expected not to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 4.12 Compliance with Laws and Court Orders; Permits.

(a) Neither the Company nor any Company Subsidiary is, and, since January 1, 2011, neither the Company nor any Company Subsidiary has been, in violation of Applicable Law or law by which any of their respective properties or businesses are bound or any regulation issued under any of the foregoing, except for any such violation that, individually or in the aggregate, has not had a Material Adverse Effect on the Company or any Company Subsidiary, taken as a whole. Since January 1, 2011, neither the Company nor any Company Subsidiary has been notified by any Governmental Authority of any material violation, or any material investigation with respect to any such Applicable Law or provided any notice to any Governmental Authority regarding any material violation by the Company or any Company Subsidiary of any Applicable Law.

(b) The Company and the Company Subsidiaries hold, and have at all times since January 1, 2011, held, all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates,

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approvals, clearances, permissions, qualifications and registrations and orders of all applicable Governmental Authorities necessary for the lawful operation of the businesses of the Company and the Company Subsidiaries, and have filed all tariffs, reports, notices and other documents with all Governmental Authorities necessary for the Company and the Company Subsidiaries to own, lease and operate their properties and assets and to carry on their businesses as they are now being conducted (the **Company Permits**) and have paid all fees and assessments due and payable in connection therewith, except where the failure to have, file or pay has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) all Company Permits are valid and in full force and effect, are not subject to any administrative or judicial proceeding that could result in any modification, termination or revocation thereof and, to the knowledge of the Company, no suspension or cancellation of any such Company Permit is threatened; and (ii) the Company and each Company Subsidiary is in material compliance with the terms and requirements of all Company Permits.

(c) Within the past five years, none of the Company or any Company Subsidiary, or any Representative acting on behalf of the Company or any Company Subsidiary has, directly or indirectly, violated or is in violation of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the **FCPA**), the UK Bribery Act of 2010 or its predecessor laws (the **Bribery Act**), or any analogous anti-corruption Law (collectively, the **Anti-Corruption Laws**), nor engaged in any unlawful transaction or dealing in property or interests in property of, received from or made any contribution of funds, goods or services to or for the benefit of, provided any payments or material assistance to, or otherwise engage in or facilitated any transactions with or involving a Person that is designated on, or at the time of the transaction or dealing was designated on, or a Person that is or was owned or controlled by any Person that is designated on, or at the time of the transaction or dealing was designated on, any list of restricted Persons maintained by any United States Governmental Authority. No proceeding by or before any Governmental Authority involving the Company, any Company Subsidiary or any Affiliate of the Company, or any of their Representatives acting for or on their behalf, with respect to any Anti-Corruption Law is pending or, to the knowledge of the Company, threatened, nor have any disclosures been submitted to any Governmental Authority with respect to actual or potential violations of any Anti-Corruption Law by any such Person.

(d) Within the past five years, the Company and each Company Subsidiary has complied in all material respects with all applicable U.S. import, export, re-export, anti-boycott and economic sanctions Laws and controls and all other applicable import, export and re-export Laws, including the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Regulations, executive orders, regulations and other Laws implemented by the United States Department of the Treasury, Office of Foreign Assets Control and the Laws administered by United States Customs and Border Protection, and all other applicable import, export, re-export, anti-boycott and economic sanctions Laws and controls in other countries in which the Company or any Company Subsidiary has conducted or

currently conduct business.

(e) Within the past five years, the Company and each Company Subsidiary has obtained all material consents, orders and declarations from, provided all material notices to, and made all material filings with, all Governmental Authorities required for (i) the export, import and re-export of its products, services, software and technologies, and (ii) releases of technologies and software to foreign nationals located in and outside the United States and abroad (the **Export Approvals**), and each of the Company and the Company Subsidiaries is and, within the past five years, has been in compliance in all material respects with the terms of all Export Approvals. There are no pending or, to the knowledge of the Company, threatened, claims against the Company or any Company Subsidiary with respect to such Export Approvals.

Section 4.13 Litigation. There is no claim or Legal Proceeding pending against, or, to the knowledge of the Company, threatened in writing against, the Company, any Company Subsidiary, any present or former executive officer, or director of the Company or any Company Subsidiary, in their capacities as such or any of their respective properties before (or, in the case of threatened actions, suits, investigations or proceedings, that would

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be before) or by (or, in the case of threatened actions, suits, investigations or proceedings, that would be by) any Governmental Authority or arbitrator that (i) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company and the Company Subsidiaries, taken as a whole, or (ii) in any manner seeks to prevent, enjoin, alter or materially delay the Merger or any of the other transactions contemplated hereby. Section 4.13 of the Company Disclosure Schedule sets forth a correct and complete list, as of the date of this Agreement, of all material claims and Legal Proceedings pending or, to the knowledge of the Company, threatened in writing against the Company or any Company Subsidiary.

Section 4.14 Properties.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and the Company Subsidiaries have good title to, or valid leasehold interests in, all property and assets reflected on the Company Balance Sheet or acquired after the Balance Sheet Date, except as have been disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice, in each case free and clear of all Liens, other than Permitted Liens. Notwithstanding the foregoing, it is understood and agreed that matters regarding the infringement or violation of Intellectual Property Rights of a Third Party are addressed solely in Section 4.15 and not in this Section 4.14.

(b) Section 4.14(b) of the Company Disclosure Schedule sets forth an accurate and complete list of all real property leased, subleased, licensed or sublicensed by the Company or any Company Subsidiary (collectively, the **Leased Real Property**). Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and the Company Subsidiaries have valid leasehold interests in all Leased Real Property, in each case free and clear of all Liens, other than Permitted Liens. Neither the Company nor any Company Subsidiary is currently subleasing, licensing or otherwise granting a Person any right to use or occupy a Leased Real Property.

(c) Neither the Company nor any Company Subsidiary owns or has ever owned any real property.

Section 4.15 Intellectual Property.

(a) Section 4.15(a) of the Company Disclosure Schedule sets forth a true and complete list of all registrations, applications for registration and filings made or taken pursuant to the Applicable Laws by the Company and each Company Subsidiary to record, perfect or protect any Owned Intellectual Property Rights. To the knowledge of the Company, none of the registrations or applications have been abandoned, and all renewal and maintenance fees, taxes, annuities or other fees payable in respect of such Intellectual Property Right and due before the Closing Date have been paid in full through the Closing Date. All actions required to record each owner throughout the entire chain of title (starting with each inventor/author and ending with the Company

or a Company Subsidiary) of each such registration or application with each applicable Governmental Authority into the name of the Company or a Company Subsidiary have been taken, including payment of all costs, fees, taxes and expenses associated with such recording activities. To the knowledge of the Company, each such item of Owned Intellectual Property Rights that is issued or registered is valid and enforceable.

(b) (i) The Company and the Company Subsidiaries are sole owners of all Owned Intellectual Property Rights material to the Company and the Company Subsidiaries and hold all right, title and interest in and to all Owned Intellectual Property Rights free and clear of any Liens, and (ii) to the Company s knowledge, the Company and the Company Subsidiaries own, are licensed or have a valid and enforceable right to use, all of the Intellectual Property Rights used or held for use in, and material to, the conduct of the business of the Company and each of the Company Subsidiaries. The transactions contemplated by this Agreement will not impair the right, title, or interest of the Company or the Company Subsidiaries in or to any of the Owned Intellectual Property and each item of Owned Intellectual Property will continue to be solely owned by the Company or the Company Subsidiaries immediately after the Closing.

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(c) To the knowledge of the Company, the conduct of the business of the Company and each Company Subsidiary as presently and formerly conducted and the products, processes and services of the Company and each Company Subsidiary have not infringed (directly or indirectly), misappropriated or otherwise violated, and do not infringe, misappropriate or otherwise violate, the Intellectual Property Rights of any other Person in any material respect. To the knowledge of the Company, no Person has challenged the patentability, validity, or enforceability of, or infringed, misappropriated or otherwise violated any Owned Intellectual Property Rights. Neither the Company nor any Company Subsidiary has received any written notice of or, to the knowledge of the Company, is there threatened, any claim or Legal Proceeding alleging that the Company or any Company Subsidiary infringes (directly or indirectly), misappropriates or otherwise violates any Intellectual Property Rights of any other Person (including any claim that the Company or a Company Subsidiary must license or refrain from using any Intellectual Property Right of any other Person).

(d) The Company and each Company Subsidiary has at all times taken all customary and reasonable actions to protect their material trade secrets, Company Software, and other material confidential information, and to protect the trade secrets and confidential information of others provided to them.

(e) To the knowledge of the Company (i) neither the Company Software nor materials distributed or otherwise provided by the Company or a Company Subsidiary to any other Person contains, references, links to or was created or modified using any Open Source Materials or derivative thereof that would subject the Company Software to the terms of a license that would adversely affect the proprietary nature of the product, (ii) none of the products sold, licensed or distributed by the Company or any Company Subsidiary were created using or incorporating any software that would subject the product to the terms of a license that would adversely affect the proprietary nature of the product, and (iii) there are no material problems or defects in any Company Software that prevent the Company Software from operating substantially as described in its related documentation or specifications, or as otherwise warranted to any Person.

Section 4.16 Taxes.

(a) All material Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, the Company or any Company Subsidiary have been filed when due in accordance with all Applicable Law, and all such material Tax Returns are, or shall be at the time of filing, true, correct and complete in all material respects.

(b) Each of the Company and each Company Subsidiary has timely paid or withheld and remitted to the appropriate Taxing Authority all material Taxes due and payable, or, where payment is not yet due, has established in accordance with GAAP an adequate accrual for all material Taxes, which accrual is reflected in the Company Financial Statements through the end of the last period for which the Company and each Company Subsidiary ordinarily record items on their respective books.

(c) No deficiencies for Taxes or other assessments relating to Taxes have been threatened or proposed in writing or assessed against the Company that have not been disclosed and adequately reserved for in the Company Financial Statements. There is no material claim or Legal Proceeding now pending or threatened in writing against or with respect to the Company or any Company Subsidiary in respect of any material Tax or Tax Asset. Neither the Company nor any Company Subsidiary has waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to a Tax audit, assessment or deficiency.

(d) During the two-year period ending on the date hereof, neither the Company nor any Company Subsidiary was a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(e) Neither the Company nor any Company Subsidiary has been a party to any listed transaction within the meaning of Treasury Regulations Section 1.6011-4.

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(f) The Company will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period ending after the Closing Date as a result of any: (i) change in method of accounting under Section 481 of the Code or any similar provision of Applicable Law; (ii) installment sale or other open transaction disposition; (iii) closing agreement described in Section 7121 of the Code or any similar provision of Applicable Law; (iv) an election under Section 108(i) of the Code; or (v) intercompany transaction or excess loss account described in Treasury Regulations Section 1.1502 or any similar provision of Applicable Law, in each case occurring, entered into, made or in existence prior to the Effective Time.

(g) Neither the Company nor any Company Subsidiary has, nor has it ever had (during any taxable period remaining open for the assessment of Tax by any applicable Taxing Authority), any place of business or permanent establishment in any jurisdiction outside the jurisdiction of its organization. No claim or inquiry has been made by a Taxing Authority in a jurisdiction where the Company or any Company Subsidiary does not file Tax Returns asserting that it may be subject to taxation by that jurisdiction or that it has a duty to collect Taxes.

(h) The Company has properly and timely documented its transfer pricing methodology in compliance with Sections 482 and 6662 of the Code and any similar provision of Applicable Law.

(i) There are no Tax rulings, requests for rulings or closing agreements in effect or pending with any Taxing Authority relating to the Company or any Company Subsidiary.

(j) Neither the Company nor any Company Subsidiary has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(k) **Tax** means (i) any federal, state, local, foreign or other taxes, governmental fees, customs, duties, levies, imposts, assessments, impositions or other similar government charges or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a **Taxing Authority**) responsible for the imposition of any such tax (domestic or foreign), and any liability for any of the foregoing as transferee or successor, (ii) in the case of the Company or any of Company Subsidiary, liability for the payment of any amount of the type described in clause (i) as a result of being or having been before the Effective Time a member of an affiliated, consolidated, combined or unitary group, or a party to any agreement or arrangement, as a result of which liability of the Company or any Company Subsidiary to a Taxing Authority is determined or taken into account with reference to the activities of any other Person, and (iii) liability of the Company or any Company Subsidiary for the payment of any amount as a result of being party to any Tax Sharing Agreement or with respect to the payment of any amount imposed on any Person of the type described in (i) or (ii) as a result of any existing express or implied agreement or arrangement (including an indemnification

agreement or arrangement). **Tax Return** means any report, return, document, declaration or other information or filing (including any attachments thereto and any amendment thereof) required to be supplied to any Taxing Authority with respect to Taxes, including information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information. **Tax Sharing Agreement** means any existing agreement or arrangement (whether or not written) binding the Company or any Company Subsidiary that provide for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts, or gains for the purpose of determining any Person s Tax liability (other than any such agreement or arrangement (such as a lease) the principal purpose of which is not the sharing or allocation of Tax). **Tax Asset** means any net operating loss, net capital loss, investment tax credit, foreign tax credit, charitable deduction or any other credit or tax attribute that could be carried forward or back to reduce Taxes (including without limitation deductions and credits related to alternative minimum Taxes).

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Section 4.17 Employees and Employee Benefit Plan.

(a) Section 4.17(a) of the Company Disclosure Schedule contains a correct and complete list identifying each material Employee Plan and specifies whether such plan is a US Plan or an International Plan, provided that, any government program administered by a Governmental Authority and with respect to which the employer s sole obligation is to make contributions in the form of payroll or other taxes, and any plan, agreement, arrangement, program or policy maintained solely to comply with statutory requirements shall not be required to be listed on Section 4.17(a) of the Company Disclosure Schedule. For each material Employee Plan, the Company has provided or made available to Parent (i) a copy of such plan (or a description, if such plan is not written) and all amendments thereto, as applicable, (ii) all trust agreements, insurance contracts or other funding arrangements and amendments thereto, (iii) the current prospectus or summary plan description and all summaries of material modifications thereto as well as all annual reports and summary annual reports, (iv) the most recent favorable determination or opinion letter from the IRS, (v) the most recently filed annual return/report (Form 5500) and accompanying schedules and attachments thereto, and (vi) the most recently prepared actuarial report and financial statements. For each material International Plan (other than such plans for which the terms are prescribed by Applicable Law), the Company has provided to Parent documents that are substantially comparable (taking into account differences in Applicable Law and practices) to the documents required to be provided in clauses (i), (ii) and (vi).

(b) With respect to any US Plan, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause the Company or any Company Subsidiary to incur any material liability under ERISA or the Code, and there has been no material breach of any of the duties imposed on fiduciaries (within the meaning of Section 3(21) of ERISA) by ERISA with respect to the US Plans that would reasonably be expected to result in any material liability or excise tax under ERISA or the Code being imposed on the Company or any Company Subsidiary. Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has in the past six years sponsored, maintained, administered or contributed to (or had any obligation to contribute to), or has or is reasonably expected to have any direct or indirect liability with respect to, any plan that is (i) subject to Title IV of ERISA or (ii) a multiemployer plan (as defined in Section 3(37) of ERISA or Section 414(f) of the Code).

(c) Each Employee Plan, and any award thereunder, that is or forms part of a nonqualified deferred compensation plan within the meaning of Section 409A or 457A of the Code has materially complied in form and operation with, all applicable requirements of Section 409A and 457A of the Code. Neither the Company nor any Company Subsidiary has any agreement to gross-up, indemnify or otherwise reimburse any current or former Service Provider for any Tax incurred by such Service Provider, including under Section 409A, 457A or 4999 of the Code.

(d) Each US Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and has been established pursuant to a preapproved prototype or volume submitter plan document for which an IRS opinion letter has been obtained, each trust created thereunder is exempt from Tax under the provisions of Section 501(a) of the Code, and, to the knowledge of the Company, nothing has occurred that would reasonably be expected to result in the loss of such qualification or exemption. Each US Plan has been maintained, operated, and administered in compliance in all material respects with its terms and any related documents or agreements and in compliance in all material respects with the requirements of Applicable Law, including ERISA and the Code. No events have occurred with respect to any US Plan that could reasonably be expected result in assessment against the Company of any material excise taxes under ERISA or the Code.

(e) All contributions, premiums and payments that are due have been made for each Employee Plan within the time periods prescribed by the terms of such plan and Applicable Law in all material respects, and all contributions, premiums and payments for any period ending on or before the Closing Date that are not due are properly accrued to the extent required to be accrued under applicable accounting principles in all material

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respects. To the knowledge of the Company, all material benefits, expenses and other amounts due and payable under any Employee Plan prior to the date of this Agreement have been paid, made or accrued on or before the date of this Agreement.

(f) Except as set forth on Section 4.17(f) of the Company Disclosure Schedule, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement (either alone or together with any other event) will (i) entitle any current or former Service Provider (or any dependents of such Persons) to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, (ii) enhance any benefits or accelerate the time of payment or vesting or trigger any payment of funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Employee Plan or otherwise, or (iii) limit or restrict the right of the Company or any Company Subsidiary or, after Closing, Parent, to merge, amend or terminate any Employee Plan (excluding any awards under any Company Stock Plan, and International Plans the continued maintenance of which is mandated by Applicable Law). The Company and each Company Subsidiary has reserved all rights necessary to amend or terminate each of the Employee Plans (excluding International Plans the terms of which are mandated by Applicable Law) without the consent of any other Person. Except as set forth in Section 2.04, neither the Company nor any Company Subsidiary has agreed or committed to institute any plan, program, arrangement or agreement for the benefit of employees or former employees of the Company or any Company Subsidiary other than the Employee Plans, or to make any amendments to any of the Employee Plans.

(g) Except as set forth on Section 4.17(g) of the Company Disclosure Schedule, no amount that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement by any employee, officer or director of the Company or any of its Affiliates who is a disqualified individual (as such term is defined in Treasure Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Employee Plan currently in effect that would be characterized as an excess parachute payment (as such term is defined in Section 280G(b)(1) of the Code).

(h) Except as set forth on Section 4.17(h) of the Company Disclosure Schedule, no Employee Plan provides or promises any post-employment or post-retirement payments or benefits, including medical, dental, disability, hospitalization, life or similar benefits (whether insured or self-insured), to any current or former Service Provider (other than coverage mandated by Applicable Law, including the Consolidated Omnibus Budget Reconciliation Act of 1985). No Employee Plan provides benefits to any individual who is not a current or former Service Provider of the Company or any Company Subsidiary, or the dependents or other beneficiaries of any such current or former Service Provider.

(i) With respect to any insurance policy providing funding for benefits under any Employee Plan, (i) there is no material liability of the Company or any Company Subsidiary in the nature of a retroactive rate adjustment, loss sharing arrangement, or

other actual or contingent liability, nor would there be any such material liability if such insurance policy was terminated on the date hereof, and (ii) to the knowledge of the Company, no insurance company issuing any policy is in receivership, conservatorship, liquidation or similar proceeding and, to the knowledge of the Company, no such proceeding with respect to any such insurer are, to the knowledge of the Company, imminent.

(j) There is no claim or Legal Proceeding (or any basis therefore) (other than routine claims for benefits) pending against or involving, or, to the Company s knowledge, threatened against or involving any Employee Plan before any arbitrator or any Governmental Authority, including the IRS or the Department of Labor that, if determined or resolved adversely in accordance with plaintiff s demands, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and each Company Subsidiary is, and, to the Company s knowledge, for the past five years have been, in material compliance with all Applicable Laws with respect to labor relations, employment and employment practices, including those relating to labor management relations, wages, hours, overtime, discrimination, sexual harassment, civil rights, affirmative action,

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work authorization, immigration, safety and health, information privacy and security, workers compensation, and wage payment. To the knowledge of the Company, each Service Provider is in compliance with all applicable visa and work permit requirements.

(k) Each International Plan (i) has been maintained in compliance with its terms and Applicable Law, except for failures to comply or violations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, (ii) if intended to qualify for special tax treatment, complies in all material respects with all the requirements for such treatment, and (iii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles.

(l) Neither the Company nor any Company Subsidiary is or has been party to or subject to, or is currently negotiating in connection with entering into, any Collective Bargaining Agreement. During the past five years, there has not been any organizational campaign, petition or other unionization or works council activity seeking recognition of a collective bargaining unit relating to any Service Provider. There are no, and for the past five years, there have not been any, labor strikes, slowdowns, stoppages, picketing, interruptions of work or lockouts pending, other material labor difficulty involving the Company or any Company Subsidiary employees or, to the Company s knowledge, threatened against or affecting the Company or any Company Subsidiary. There are no unfair labor practice complaints pending or, to the Company s knowledge, threatened against the Company or any Company Subsidiary before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving Service Providers.

(m) The Company and each Company Subsidiary is, and has been, in compliance with WARN in all material respects. Neither the Company nor any Company Subsidiary has taken any action that (i) would reasonably be expected to cause Parent or any of its Affiliates to have any material liability or other obligation following the Closing Date under WARN as determined without regard to any action taken after the Closing, (ii) would constitute a mass layoff or plant closing within the meaning of WARN or would otherwise trigger notice requirements or liability under WARN, or (iii) resulted in the termination of employment of 50 or more employees or more than 10% of the employees in any country outside of the United States during any 90 day period.

(n) All employees of the Company and each Company Subsidiary are employed on an at will basis, except as provided by Applicable Law outside of the United States.

(o) To the knowledge of the Company, no Service Provider is in violation in any material respect of any term of any employment agreement, non-disclosure, confidentiality agreement, or consulting agreement with the Company or any Company Subsidiary or non-competition agreement, non-solicitation agreement or any restrictive covenant with a former employer relating to the right of any such employee

to be employed by or provide services to the Company or any Company Subsidiary because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others.

Section 4.18 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company:

(a) no written notice, order, complaint or penalty has been received by the Company or any Company Subsidiary arising out of any Environmental Laws, and there are no judicial, administrative or other claims or Legal Proceedings pending or, to the Company s knowledge, threatened which allege a violation by the Company or any Company Subsidiary of any Environmental Laws;

(b) the Company and each Company Subsidiary has and in the past has had all Environmental Permits necessary for their operations to comply with all applicable Environmental Laws and are in compliance with the terms of such Environmental Permits;

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(c) the operations of the Company and each of Company Subsidiary are and have been in compliance with the terms of applicable Environmental Laws;

(d) the operations of the Company and Company Subsidiary have not caused any releases of Hazardous Substances at any location requiring any investigation or remediation under any Environmental Law; and

(e) the Company has made available to Parent true and correct copies of all environmental records, reports, notifications, certificates of need, permits, pending permit applications, engineering studies and environmental studies or assessments in the possession of the Company or any Company Subsidiary or any of their advisors related to any property leased or used by the Company or any Company Subsidiary.

Section 4.19 Material Contracts.

(a) Section 4.19(a) of the Company Disclosure Schedule sets forth an accurate and complete list of each Contract of the following nature to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary is bound:

(i) any material contract (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC);

(ii) any Contract with a Major Supplier, excluding any purchase orders issued in the ordinary course of business;

(iii) any Contract with a Major Customer, excluding any purchase orders issued in the ordinary course of business pursuant to a Contract listed in Section 4.19(a)(iii) of the Company Disclosure Schedule between the Company or any Company Subsidiary and such Major Customer; *provided*, *however*, that any purchase orders defining the term Restricted Technology shall be listed;

(iv) any Contract with a Major Distributor;

(v) any Contract relating to the Leased Real Property;

(vi) any lease or sublease of personal property providing for annual payments of $500,000 or more;

(vii) any Contract relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);

(viii) any partnership, joint venture, revenue-sharing or other similar Contract;

(ix) any Contract that limits or purports to limit the freedom of the Company or any Company Subsidiary to sell any products or services, solicit any customer or employee or to compete in any line of business or with any Person or in any area or during any period of time or which would so limit the freedom of the Company,

Parent or any of their respective Subsidiaries after the Closing Date;

(x) any Contract relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of $2,000,000 pursuant to which the Company or a Company Subsidiary has ongoing obligations;

(xi) any Contract that grants any Person most favored nation status or any type of special discount rates or obligates the Company or any Company Subsidiary (or following the Effective Time, Parent or its Subsidiaries) to conduct business with any Person on a preferential or exclusive basis;

(xii) any Contract with any director or officer of the Company or any Company Subsidiary or with any associate or any member of the immediate family (as such terms are respectively defined in Rules 12b-2 and 16a-1 of the Exchange Act) of any such director or officer, except for Employee Plans;

(xiii) any Contract pursuant to which the Company or any Company Subsidiary obtains any license, sublicense, right to use, covenant not to be sued, immunity from suit, option, right of first refusal, right of

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first offer or other similar right with respect to any Intellectual Property Right or otherwise requires the Company or any Company Subsidiary to make payments that are based on the amount of income or revenue of the Company or the Company Subsidiaries, other than any commercial off-the-shelf software licensed by the Company or any Company Subsidiary not customized for the Company s or any Company Subsidiary s use with a replacement cost and/or aggregate annual license and maintenance fee of less than $100,000;

(xiv) any Contract pursuant to which the Company or any Company Subsidiary grants any license, sublicense, right to use, covenant not to be sued, immunity from suit, option, right of first refusal, right of first offer or other similar right with respect to any Intellectual Property Right, other than any non-exclusive licenses granted to customers entered into in the ordinary course of business in connection with the sale of the Company s products or services;

(xv) any Contract wherein the Company or any Company Subsidiary assigns or is obligated to assign, any title, in whole or in part, solely or jointly, beneficially or actually, with respect to any Intellectual Property Right, or any Person has an option or other right concerning any of the foregoing;

(xvi) any Contract providing for the development of any Intellectual Property Right for the Company or a Company Subsidiary or that contains an assignment, an obligation to assign, or an option or right of first refusal for any of the foregoing with respect to any Intellectual Property Right, other than Contracts between the Company or a Company Subsidiary and its respective employee entered in the standard form of agreement disclosed to Parent;

(xvii) any Contract that, upon the execution of this Agreement or the consummation of the Merger may, either alone or in combination with any other event, result in any payment (whether of severance pay or otherwise) becoming due from the Company or any Company Subsidiary to any officer or employee thereof;

(xviii) any Collective Bargaining Agreement;

(xix) any Contract that obligates the Company or any Company Subsidiary to make any loans, advances or capital contributions to, or investments in, any Person;

(xx) any Contract entered into since March 30, 2013 in connection with the settlement or resolution of any Legal Proceeding or material claim;

(xxi) any Contract that involved the payment of more than $3,000,000 by the Company together with the Company Subsidiaries in 2015 or that is expected to result in the payment of such amount by the Company and the Company Subsidiaries in 2016, excluding (A) purchase orders issued in the ordinary course of business involving the payment of less than $1,000,000 by the Company and any Company Subsidiary in 2015 or that is expected to result in the payment of such amount by the Company and any Company Subsidiary in 2016 and (B) Contracts with customers, suppliers and distributors;

(xxii) any Contract that involved the receipt of more than $3,000,000 by the Company and any Company Subsidiary in 2015 or that is expected to result in the receipt of such amount by the Company and any Company Subsidiary in 2016, excluding (A) purchase orders issued in the ordinary course of business involving the payment of less than $1,000,000 by the Company and any Company Subsidiary in 2015 or that is expected to result in the payment of such amount by the Company and any Company Subsidiary in 2016 and (B) Contracts with customers, suppliers and distributors;

(xxiii) any Contract providing for the outsourcing, contract manufacturing, testing, assembly, supply or fabrication of any material products, technology or services of the Company or any Company Subsidiary;

(xxiv) any Contract relating to the supply of any item used by the Company or any Company Subsidiary that is a sole source of supply of any raw material, component or service;

(xxv) any Contract for any capital expenditure in excess of $2,000,000 individually or in the aggregate payable to which the Company or any Company Subsidiary has continuing monetary obligations;

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(xxvi) any Contract for which the execution, delivery or performance by the Company of this Agreement and the consummation of the transactions contemplated hereby would require the consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any Company Subsidiary is entitled;

(xxvii) any Government Contract; and

(xxviii) any Contract relating to the creation of any Lien (other than Permitted Liens) with respect to any material asset of the Company or any Company Subsidiary.

The Company has made available to Parent, or with respect to clause (a)(i) of this Section 4.19, filed or furnished with the SEC prior to the date of this Agreement, a correct and complete copy of each contract, agreement, arrangement or understanding of the type described in clauses (i)-(xxviii) of this Section 4.19 (each, a **Material Contract**), including all amendments or modifications thereto.

(b) Except as would not have a Material Adverse Effect on the Company and the Company Subsidiaries, taken as a whole, (i) each Material Contract is a valid and binding obligation of the Company or the applicable Company Subsidiary and, to the knowledge of the Company, of the other party or parties thereto enforceable against the Company or the applicable Company Subsidiary and, to the knowledge of the Company, against the other party or parties thereto in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors rights generally and general principles of equity); (ii) the Company or the applicable Company Subsidiary has performed in all respects all obligations required to be performed by it under, and is not in default under or in breach of, each Material Contract and, to the knowledge of the Company, each other party to each Material Contract has performed all obligations required to be performed by it under, and is not in default under or in breach of, such Material Contract; and (iii) since March 30, 2014, the Company has not received written notice of any violation or default under (nor, to the knowledge of the Company, does there exist any condition which with or without notice or lapse of time or both would cause such a violation of, a material default under or any acceleration or increase of obligations or rights thereunder) any Material Contract. There are no disputes pending or, to the knowledge of the Company, threatened with respect to any Material Contract as of the date of this Agreement. As of the date of this Agreement, neither the Company nor any Company Subsidiary has received any written notice, or to the knowledge of the Company, oral notice from any other party to any Material Contract of its intention to terminate for default, convenience or otherwise such Material Contract prior to its stated expiration date or that it intends to not renew or to materially and adversely change the terms of (whether related to payment, price or otherwise) its relationship with the Company or any Company Subsidiary.

Section 4.20 Additional Payments. Section 4.20 of the Company Disclosure Schedule lists all earn-out, milestone or other contingent payments and any material terms

related thereto under any Contract relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise).

Section 4.21 Customers, Distributors and Suppliers.

(a) Section 4.21(a) of the Company Disclosure Schedule lists the 10 largest customers of the Company and the Company Subsidiaries (determined on the basis of aggregate revenues recognized by the Company and the Company Subsidiaries over the four consecutive fiscal quarter period ended October 2, 2016) (each, a **Major Customer**).

(b) Section 4.21(b) of the Company Disclosure Schedule lists the 10 largest suppliers of the Company and the Company Subsidiaries (determined on the basis of aggregate purchases made by the Company and the Company Subsidiaries over the four consecutive fiscal quarter period ended October 2, 2016) (each, a **Major Supplier**).

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(c) Section 4.21(c) of the Company Disclosure Schedule lists the 10 largest distributors of the Company and the Company Subsidiaries (determined on the basis of aggregate sales made by the distributor over the four consecutive fiscal quarter period ended October 2, 2016) (each, a **Major Distributor**).

Section 4.22 Insurance. The Company has made available to Parent all material insurance policies and fidelity bonds relating to the business, equipment, properties, employees, officers or directors, assets and operations of the Company and its Subsidiaries (collectively, the **Insurance Policies**). Except as would not reasonably be expected to have a Material Adverse Effect on the Company, each of the Insurance Policies are maintained in such amounts and against such risks as is required by Applicable Law and any Contracts of the Company or any Company Subsidiary. Each of the Insurance Policies is in full force and effect, all premiums due and payable thereon have been paid when due and the Company is in compliance in with the terms and conditions of the Insurance Policies. The Company has not received any written notice regarding any invalidation or cancellation of any Insurance Policy that has not been renewed in the ordinary course without any lapse in coverage. During the one-year period prior to the date of this Agreement, neither the Company nor any Company Subsidiary has received any written communication notifying it of any refusal of coverage or rejection of any claim under any Insurance Policy or any material adjustment in the amount of the premiums payable with respect to any Insurance Policy. There are no pending material claims under any Insurance Policies in respect of which the insurer has issued a notice of denial or a reservation of rights.

Section 4.23 Finders Fees. Except for Qatalyst Partners LP, a copy of whose engagement agreement has been provided to Parent, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or any Company Subsidiary who might be entitled to any fee or commission from the Company or any of its Affiliates in connection with the transactions contemplated by this Agreement.

Section 4.24 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Qatalyst Partners LP, financial advisor to the Company, to the effect that, as of the date of such opinion and based upon and subject to the assumptions limitations, qualifications and conditions set forth therein, the consideration to be received by the holders of shares of Company Stock (other than the Parent or any Affiliate of Parent) pursuant to this Agreement is fair, from a financial point of view, to such holders (it being understood and agreed that such opinion is for the benefit of the Board of Directors of the Company and may not be relied upon by Parent or Merger Sub). The Company shall make available to Parent a copy of such opinion promptly following the execution of this Agreement for informational purposes only.

Section 4.25 Government Contracts.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, since January 1, 2011, no money due to the Company or such Company Subsidiary under a Government

Contract has been withheld or set off or, to the knowledge of the Company, threatened to be withheld or set off.

(b) Since January 1, 2011, neither the Company, nor any Company Subsidiary, nor, to the knowledge of the Company, any officer, director, owner or employee of the Company or any Company Subsidiary, has been suspended, debarred, proposed for debarment or excluded from any Government Contract or government program, or determined to be nonresponsible with respect to any Government Contract or government program, and, to the knowledge of the Company, there is no threat, proposal or valid basis for such suspension, debarment, proposal for debarment or exclusion of any of the Company, any Company Subsidiary, or any officer, director, owner or employee of the Company or any Company Subsidiary.

(c) Since January 1, 2011, neither the Company nor any Company Subsidiary has been, with respect to any Government Contract or Bid, audited or investigated by any Governmental Entity, or subject to any civil claim, indictment or information, tolling or consent agreement, termination for convenience or default, notice of intent

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to terminate for default, adverse size determination, cure notice, stop work notice, show cause notice, recoupment or refund, notice of deficiency, material disallowance of claimed costs or penalty for expressly unallowable costs and, to the knowledge of the Company, none of the foregoing actions have been threatened.

Section 4.26 State Takeover Statutes. Assuming the accuracy of Parent s representations in Section 5.07, the Board of Directors of the Company has taken all action necessary to render inapplicable to this Agreement and the transactions contemplated hereby (including the Merger) all potentially applicable state anti-takeover statutes or regulations (including Section 203 of the DGCL) and any similar provisions in the Company Certificate or Company Bylaws.

Section 4.27 Product Liability. Section 4.27 of the Disclosure Schedule sets forth a list of (a) each defective product and service warranty claim, or group of claims arising from substantially similar occurrences, events or set of facts, of the Company and the Company Subsidiaries involving an amount (including amounts related to refunds, compensation and expenses) in excess of $1,000,000 and (b) each product liability and product recall claim of the Company and the Company Subsidiaries, in each of clauses (a) and (b) outstanding or experienced within the past five years.

Section 4.28 Data Privacy.

(a) The Company and each Company Subsidiary (i) are and have been in compliance in all material respects with their published privacy policies and internal privacy policies and guidelines, contractual obligations and, to the Company s knowledge, all Applicable Laws relating to data privacy, data collection, data protection and data security and (ii) take and have implemented and maintain commercially reasonable administrative, technical and physical measures to ensure that personally identifiable information is protected against loss, damage, and unauthorized access, use, modification or other misuse.

(b) To the Company s knowledge, since January 1, 2011, there has been no material loss, damage or unauthorized access, use, unauthorized transmission, modification or other misuse of any personally identifiable information that was collected by or on behalf of the Company or any Company Subsidiary or that is in the possession or control of the Company or any Company Subsidiary, any of their employees or contractors or any other Person. The Company and each Company Subsidiary have made all required disclosures to, and obtained any necessary consents from, users, customers, employees, contractors, Governmental Authorities and other applicable Persons required by Applicable Laws related to data privacy, data collection, data protection and data security and have filed any required registrations with the applicable data protection authority.

(c) The Company and each Company Subsidiary have confidentiality agreements in place with all vendors or other Persons whose relationship with the Company or any Company Subsidiary involves the collection, use, disclosure, storage or processing of material amounts of personally identifiable information on behalf of the Company or any Company Subsidiary, which agreements require such Persons to protect such

personally identifiable information in a manner materially consistent with the Company s published privacy policies and internal privacy policies and which require such vendors to report any breach of security of such personally identifiable information promptly.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PARENT

Parent represents and warrants to the Company that:

Section 5.01 Corporate Existence and Power. Each of Parent and Merger Subsidiary is a corporation duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all material governmental licenses, franchises, authorizations,

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permits, certificates, consents and approvals required to carry on its business as now conducted, except for those jurisdictions where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent or Merger Sub. Since the date of its incorporation, Merger Subsidiary has not engaged in any activities other than in connection with or as contemplated by this Agreement or in connection with arranging any financing required to consummate the transactions contemplated hereby. Merger Subsidiary was incorporated solely for the purpose of engaging in and consummating the Merger and the transactions contemplated hereby. All of the outstanding shares of capital stock of Merger Subsidiary have been validly issued, are fully paid and nonassessable and are owned, and at the Effective Time will be owned, directly or indirectly, by Parent. Parent has heretofore made available to the Company correct and complete copies of the organizational documents of Parent and certificate of incorporation and bylaws of Merger Subsidiary as currently in effect.

Section 5.02 Corporate Authorization. Each of Parent and Merger Subsidiary has the requisite corporate (or other applicable) power and authority to enter into and deliver this Agreement and all other agreements and documents contemplated hereby to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by each of Parent and Merger Subsidiary, the performance by each of Parent and Merger Subsidiary of its obligations hereunder and the consummation by each of Parent and Merger Subsidiary of the Merger have been duly authorized by the boards of directors (or other applicable governing body) of each of Parent and Merger Subsidiary. No other corporate (or other applicable) proceedings on the part of Parent or Merger Subsidiary are necessary to authorize the execution and delivery of this Agreement, the performance by either Parent or Merger Subsidiary of its obligations hereunder and the consummation by either Parent or Merger Subsidiary of the Merger. This Agreement has been duly executed and delivered by each of Parent and Merger Subsidiary and constitutes a valid and binding obligation of each of Parent and Merger Subsidiary, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting the enforcement of creditors rights generally and general principles of equity).

Section 5.03 Governmental Authorization. The execution, delivery and performance by Parent and Merger Subsidiary of this Agreement and the consummation by Parent and Merger Subsidiary of the transactions contemplated hereby require no action by or in respect of, filing with, or consent of any Governmental Authority, other than (a) the filing of the certificate of merger with the Secretary of State of the State of Delaware pursuant to the Delaware Law and related documentation and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (b) compliance with any applicable requirements of the HSR Act and Antitrust Laws set forth on Section 4.03 of the Company Disclosure Schedule, (c) compliance with any applicable requirements of the NYSE, the Securities Act, the Exchange Act, and any other applicable state or federal securities laws, (d) filings with, submissions as may be advisable to, and clearances, permits, authorizations, consents and approvals as may be required from, CFIUS in order to obtain the CFIUS Approval, (e) filings with, submissions as may be advisable to and clearances, permits,

authorizations, consents and approvals as may be required from the *French Ministère de l Economie, de l Industrie et du Numérique* under Articles L.151-3 and R.153-1 et seq. of the French Monetary and Financial Code and (f) such other consents, approvals, orders, waivers, authorizations, actions, nonactions, registrations, declarations, filings, permits and notices the failure of which to be obtained or made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.04 Non-contravention. The execution, delivery and performance by Parent and Merger Subsidiary of this Agreement and the consummation by Parent and Merger Subsidiary of the transactions contemplated hereby do not and will not (a) contravene, conflict with, or result in any violation or breach of any provision of the organizational documents of Parent or Merger Subsidiary, (b) assuming compliance with the matters referred to in Section 5.03, contravene, conflict with or result in a violation or breach of any provision of any Applicable Law, (c) assuming compliance with the matters referred to in Section 5.03, require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any

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right or obligation or the loss of any benefit to which Parent or Merger Subsidiary is entitled under any provision of any agreement or other instrument binding upon Parent or Merger Subsidiary or any license, franchise, authorization, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Parent and Merger Subsidiary or (d) result in the creation or imposition of any Lien (other than Permitted Lines) on any asset of the Parent or Merger Subsidiary, with only such exceptions, in the case of each of clauses (b) through (d), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.05 Disclosure Documents. The information supplied by Parent in writing for inclusion in the Proxy Statement will not, at the time the Proxy Statement and any amendments or supplements thereto is first mailed to the stockholders of the Company and at the time of the Company Stockholder Approval contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 5.06 Litigation. As of the date hereof, there is no claim or Legal Proceeding pending, or to the knowledge of Parent, threatened against, Parent or Merger Subsidiary or any of their respective Affiliates that would reasonably be expected to prevent or materially impair or delay the consummation of the Merger or other transactions contemplated by this Agreement.

Section 5.07 Ownership of Shares. None of Parent, Merger Subsidiary or any of their respective Affiliates owns (beneficially or otherwise) any Company Securities (or any other economic interest through derivative securities or otherwise in the Company).

Section 5.08 Vote/Approval Required. No vote or consent of the holders of any class or series of capital stock of Parent is necessary to approve this Agreement or the Merger or the other transactions contemplated hereby. The vote or consent of Parent as the sole stockholder of Merger Subsidiary (which shall have occurred prior to the Effective Time) is the only vote or consent of the holders of any class or series of capital stock of Merger Subsidiary necessary to approve this Agreement or the Merger or the other transactions contemplated hereby.

Section 5.09 Sufficiency of Funds. Parent and Merger Subsidiary shall have available sufficient funds to consummate the Merger and the other transactions contemplated by this Agreement, and to perform their respective obligations under this Agreement.

Section 5.10 Solvency. Neither Parent nor Merger Subsidiary is entering into the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the transactions contemplated by this Agreement, including the payment of the Merger Consideration and all other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement, including any repayment or refinancing of indebtedness of the Company required in connection with the Merger, assuming (i) satisfaction of the conditions to the obligation of Parent and

Merger Subsidiary to consummate the Merger as set forth herein, (ii) the accuracy in all material respects as of the date of this Agreement and as of the Closing Date of the representations and warranties of the Company set forth in Article 4 (disregarding all Material Adverse Effect and materiality qualifiers, other than the Material Adverse Effect standard in Section 4.10), and (iii) the Company s compliance with its covenants, the Surviving Corporation will be solvent (as such term is used under Delaware Law).

ARTICLE 6

COVENANTS OF THE COMPANY

The Company agrees that:

Section 6.01 Conduct of the Company. From the date hereof until the earlier to occur of the termination of this Agreement in accordance with its terms and the Effective Time, except (w) as expressly required or

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permitted by this Agreement, (x) as set forth in Section 6.01 of the Company Disclosure Schedule, (y) as required by Applicable Law, or (z) with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), the Company shall, and shall cause each Company Subsidiary to conduct its business in the ordinary course and substantially in accordance with past practice. Without limiting the generality of the foregoing, the Company shall, and shall cause each Company Subsidiary to use its commercially reasonable efforts to keep available the services of the current officers, key employees and consultants of the Company and each Company Subsidiary, and preserve the current relationships of the Company and each Company Subsidiary with customers, suppliers and other Persons whom the Company or any Company Subsidiary has significant business relations. Without limiting the generality of the foregoing, except (i) with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed with respect to Section 6.01(d), Section 6.01(g), Section 6.01(h), Section 6.01(i) and Section 6.01(k)), (ii) as expressly permitted or required by this Agreement, (iii) as set forth in Section 6.01 of the Company Disclosure Schedule or (iv) as required by Applicable Law, from the date hereof until the earlier of the Effective Time or the termination of this Agreement in accordance with its terms, the Company shall not, nor shall it permit any of Company Subsidiary to:

(a) amend its certificate of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise), or otherwise take any action to exempt any Person from any provision of its certificate of incorporation, bylaws or other similar organizational documents;

(b) (i) split, combine, subdivide, amend the terms of or reclassify any shares of its capital stock, (ii) make, declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock, other than dividends by any Company Subsidiary to the Company or to another Company Subsidiary, respectively, or (iii) redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or any securities of a Company Subsidiary, except (A) in connection with repurchase of Company Stock consistent with the terms of the Company Stock Plans and in connection with the payment of Taxes related thereto or (B) upon the conversion of Company Notes in accordance with their terms or the exercise of Company Hedge Options in accordance with their terms;

(c) (i) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of any Company Securities or securities of a Company Subsidiary, except (A) issuances of Company Stock Options, Company RSUs, or Company Restricted Stock in accordance with Section 6.01(i), (B) issuances in the ordinary course of business of any securities of a Company Subsidiary to the Company or any other Company Subsidiary, (C) issuances in the ordinary course of business of any shares of Company Stock upon the exercise of Company Stock Options or the vesting or settlement of Company RSUs as required pursuant to the terms of the Company Stock Plans governing such awards as in effect on the date of this Agreement, or (D) issuances of Company Stock pursuant to the Company Notes in accordance with their terms and the Call Spread Warrants in accordance with their terms, (ii) materially amend any

term of any Company Security or any securities of a Company Subsidiary (in each case, whether by merger, consolidation or otherwise), or (iii) enter into any agreement or arrangement with respect to the sale or voting of the Company Securities or securities of a Company Subsidiary other than Confidentiality Agreements in compliance with Section 6.03(b)(i);

(d) incur any capital expenditures or any obligations or liabilities in respect thereof, other than (i) pursuant to and in accordance with the Company capital expenditure plan as set forth in Section 6.01(d) of the Company Disclosure Schedule and (ii) an amount, per quarter, not to exceed $1.0 million in the aggregate, and *provided further*, that if any of the items specified in the Company capital expenditure plan as set forth in Schedule 6.01(d) are not incurred in the designated quarter, the Company may incur those expenditures in future quarters;

(e) (i) sell, transfer, assign, lease, mortgage, encumber or otherwise dispose of any of its Intellectual Property rights, material properties or assets to any Person other than (A) sales of inventory to the Company or a Company Subsidiary, sales of inventory or of obsolete equipment in the ordinary course of business, or pursuant to written contracts or commitments existing as of the date of this Agreement and set forth on Section 6.01(e) of

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the Company Disclosure Schedule or (B) sales, transfers or dispositions of tangible assets in the ordinary course of business in transactions involving an aggregate amount of less than $5,000,000, or (ii) cancel, release or assign any Indebtedness of any Person owed to it or any claims held by it against any Person;

(f) make any loans, advances or capital contributions to, or investments in, any other Person, other than (i) loans, advances or capital contributions to, or investments in, the Company Subsidiaries or (ii) advances to its employees in respect of travel or other related business expenses, in each case in the ordinary course of business consistent with past practice;

(g) (i) create, incur, assume, endorse, suffer to exist or otherwise become liable with respect to any indebtedness for borrowed money or guarantees thereof or issue or sell any debt securities or calls, options, warrants or other rights to acquire any debt securities (directly, contingently or otherwise) other than debt that is equal to or less than $1,000,000 in the aggregate with respect to the Company and all of the Company Subsidiaries that is unsecured and prepayble without penalty or (ii) incur any Lien on any of its material property or assets, except for Permitted Liens;

(h) enter into any Contract that would constitute a Material Contract if it were in effect on the date of this Agreement, or terminate, release, assign, materially amend, extend or otherwise modify or waive any of the terms of any existing Material Contract other than (i) to the extent permitted by Section 6.01(d), Section 6.01(i) or Section 6.01(k) and (ii) the entry, termination, release, assignment, amendment, extension or other modification by the Company or any Company Subsidiary, in the ordinary course of business consistent with past practice of a Material Contract as described in Sections 4.19(a)(i), (a)(ii), (a)(iii), (a)(vi), (a)(xiii), (a)(xxiv), (a)(xxiii);

(i) except as set forth on Section 6.01(i) of the Company Disclosure Schedule, or required under Applicable Law or this Agreement or any Employee Plan, (i) take any action with respect to, adopt, enter into, terminate or amend any Employee Plan (including the Company Stock Plans), or make or implement any increase in compensation, (ii) take any action with respect to, adopt, enter into, terminate or amend any Collective Bargaining Agreement, (iii) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or benefit plan, (iv) hire any Service Provider at the level of vice president or above (or promote into such level), except to replace any vacancy in a current position that arises after the date of this Agreement where such hire (or promotion) is on terms that are no less favorable to the Company than the terms that the Company was providing to the Service Provider that is being replaced and only after consultation with Parent, (v) hire or promote any Service Provider at the level below vice president other than in the ordinary course of business consistent with past practice or (vi) terminate, other than for cause, the employment or service of any Service Provider at the level of vice president or above or who participates in the Company s bonus plan established for top 20% employees;

(j) implement or adopt any change in the Company s financial accounting principles, practices or methods, except as required by concurrent changes in GAAP or in

Regulation S-X of the Exchange Act, as agreed to by its independent public accountants;

(k) settle, or offer or propose to settle, any Legal Proceeding or other claim involving or against the Company or the Company Subsidiaries, other than any such settlement (i) involving solely monetary remedies with a value not in excess of $1,000,000 individually, or $3,000,000 in the aggregate, (ii) which does not impose any restriction on the Company s or any Company Subsidiary s business, (iii) which does not include any admission of liability of the Company or any Company Subsidiaries, (iv) which does not relate to any litigation by the Company s stockholders in connection with this Agreement or the Merger and (v) pursuant to which the Company and the Company Subsidiaries receive a full release of claims;

(l) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

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(m) (i) acquire (whether by merger or consolidation, acquisition of stock or assets or by formation of a joint venture or otherwise) any other Person or business or any material assets, deposits or properties of any other Person, or (ii) make any material investment in any other Person either by purchase of stock or securities, contributions to capital, property transfers or purchase of property or assets of any Person other than a Company Subsidiary;

(n) cancel, permit to lapse, abandon, fail to prosecute, or fail to renew or maintain any material Intellectual Property Rights of the Company or any Company Subsidiary, or disclose to any third party any material trade secret included in the Intellectual Property of the Company or any Company Subsidiary in a way that results in loss of trade secret protection that is material to the operation of the Company s business; or

(o) agree to take, or make any commitment to take, any of the foregoing actions that are prohibited pursuant to this Section 6.01.

For the purposes of clarity, nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company s or the Company Subsidiaries operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and the Company Subsidiaries respective operations.

Section 6.02 Proxy Statement; Company Stockholder Meeting.

(a) The Company shall use its commercially reasonable efforts to prepare (with Parent s cooperation to the extent required) and file with the SEC a preliminary Proxy Statement for the Company Stockholder Meeting that complies in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder and other Applicable Law as soon as practicable following the date hereof (and in any event will file the preliminary Proxy Statement no later than 20 Business Days after the date of this Agreement). The Proxy Statement shall include all information reasonably requested by Parent to be included therein.

(b) The Company shall use its commercially reasonable efforts to respond promptly to any comments from the SEC or the staff of the SEC on the Proxy Statement. The Company shall use its commercially reasonable efforts to cause the Proxy Statement to be mailed to its stockholders as promptly as practicable (and in any event within five Business Days) following the later of (i) the resolution of any comments from the SEC or the staff of the SEC with respect to the preliminary Proxy Statement and (ii) the expiration of the ten day waiting period provided in Rule 14a-6(a) promulgated under the Exchange Act (the later of (i) and (ii), the **Clearance Date**)). The Company shall notify Parent promptly of the receipt of any comments from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement or for additional information and shall supply Parent with copies of all correspondence between the Company or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Proxy Statement and a reasonable description of any oral

comments with respect to the Proxy Statement received from the SEC or the staff of the SEC. No filing of, or amendment or supplement to, or written response to staff comments on, the Proxy Statement will be made by the Company, without providing Parent and its counsel a reasonable opportunity to review and comment thereon (a reasonable amount of time shall be assumed to be a period of five Business Days unless a shorter period of time is required by Applicable Law or a Governmental Authority) and including all reasonable comments given by Parent or its Representatives. If at any time prior to the Company Stockholder Meeting (or any adjournment or postponement thereof) any information relating to the Company or Parent, or any of their respective Affiliates, directors or officers, is discovered by the Company or Parent which is required to be set forth in an amendment or supplement to the Proxy Statement, so that the Proxy Statement would not include any misstatement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and the Company shall use its commercially reasonable efforts to promptly file an appropriate amendment or supplement describing such information with the SEC and, to the extent required by Applicable Law, disseminate such amendment or supplement to the stockholders of the Company.

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(c) The Company shall in consultation with Parent duly call, establish a record date for, give notice of, and use its commercially reasonable efforts to convene and hold a special meeting of its stockholders, for the purpose of voting upon the adoption of this Agreement (the **Company Stockholder Meeting**), so that the Company Stockholder Meeting occurs as soon as possible following the Clearance Date, and in any event within 25 Business Days following the date on which the definitive Proxy Statement is initially mailed to the stockholders of the Company, in accordance with Applicable Law and the Company Certificate and Company Bylaws. The Company shall not include any other proposals (other than a proposal relating to an advisory vote relating to executive compensation and the adjournment of the Company Stockholder Meeting) in the Proxy Statement without the prior written consent of Parent or unless Parent so reasonably requests. The Company shall not adjourn, postpone, cancel, recess or reschedule the Company Stockholder Meeting; provided that (i) the Company may postpone or adjourn the Company Stockholder Meeting without the prior written consent of Parent (but after consultation with Parent) (A) if as of the time for which the Company Stockholder Meeting is originally scheduled (as set forth in the Proxy Statement) there are insufficient shares of Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Company Stockholder Meeting or to the extent that at such time the Company has not received proxies sufficient to allow the receipt of the Company Stockholder Approval at the Company Stockholder Meeting, except that, without the prior written consent of Parent, (1) no single such adjournment or postponement shall be for more than five Business Days and (2) in no event may the Company Stockholder Meeting be postponed to later than the date that is 15 Business Days after the date for which the Company Stockholder Meeting was originally scheduled and (B) to allow time for the filing and dissemination of, and a sufficient period for evaluation by the Company s stockholders of, any supplemental or amended disclosure document to the extent that the Company s Board of Directors has determined in good faith (after consultation with the Company s outside legal counsel) is necessary or required under Applicable Law, except that the duration of such adjournment or postponement shall be limited to the minimum duration reasonably necessary to remedy the circumstances giving rise to such adjournment or postponement, and (ii) the Company shall postpone or adjourn the Company Stockholder Meeting up to two times for up to 30 days each time upon the request of Parent to the extent that at such time the Company has not received proxies sufficient to allow the receipt of the Company Stockholder Approval at the Company Stockholder Meeting (but not later than 10 days prior to the End Date). Except during such time as a valid Adverse Recommendation Change is in effect in accordance with Section 6.03(b), the Company shall solicit the Company Stockholder Approval in accordance with Applicable Law, use commercially reasonable efforts to obtain the Company Stockholder Approval and shall include in the Proxy Statement the Company Board Recommendation. Without limiting the generality of the foregoing, unless this Agreement has been terminated in accordance with its terms, the Company shall submit this Agreement for adoption by its stockholders at the Company Stockholder Meeting whether or not an Adverse Recommendation Change shall have occurred; provided that the Proxy Statement shall include, if applicable, the disclosure of the Adverse Recommendation Change made in accordance with Section 6.03(b).

Section 6.03 No Solicitation; Other Offers.

(a) General Prohibitions. Neither the Company nor any of the Company Subsidiaries shall, nor shall the Company or any of the Company Subsidiaries authorize or permit any of its or their Representatives to, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the making, submission or announcement of any inquiry, proposal or offer (including any inquiry, proposal or offer to the Company s stockholders) which constitutes or would be reasonably expected to lead to any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of the Company Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of the Company Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by any Third Party that is reasonably expected to make, or is otherwise seeking to make, or has made, an Acquisition Proposal (other than, solely in response to an unsolicited inquiry, to refer the inquiring Third Party to this Section 6.03 and to limit its conversation or other communication exclusively to such referral), (iii) (A) publicly propose to, or otherwise change, withhold, withdraw, qualify or modify, in a manner adverse to Parent or Merger Subsidiary, the Company Board

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Recommendation, (B) fail to include the Company Board Recommendation in the Proxy Statement, when mailed, (C) adopt, approve or recommend to stockholders of the Company, or resolve to or publicly propose or announce its intention to adopt, approve or recommend to stockholders of the Company, an Acquisition Proposal or any transaction pursuant to which a Third Party would become an interested stockholder under Section 203 of Delaware Law, (D) if a tender offer or exchange offer that constitutes an Acquisition Proposal is commenced, fail to publicly recommend against acceptance of such tender offer or exchange offer by the Company s stockholders within ten Business Days after the commencement thereof or (E) fail to publicly reaffirm the Company Board Recommendation following any Acquisition Proposal having been publicly made, proposed or communicated (and not publicly withdrawn) within 10 Business Days after Parent so requests in writing (*provided* that Parent shall not be entitled to request such reaffirmation more than one time with respect to an Acquisition Proposal (provided that any modification to the financial or other material terms of such Acquisition Proposal shall constitute a new Acquisition Proposal for purposes of the foregoing) (any of the foregoing in this clause (iii), an **Adverse Recommendation Change**), (iv) fail to enforce or grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of the Company Subsidiaries, *provided that*, with respect to any Third Party that was not invited by the Company to submit an indication of interest or bid to acquire the Company during the period between June 1, 2016 and the date of this Agreement, if the Company s Board of Directors determines in good faith, after consultation with the Company s outside legal counsel, that the failure to take such action would be inconsistent with the directors fiduciary duties under Applicable Law, the Company may waive any such standstill provision applicable to such Third Party solely to the extent necessary to permit such Third Party to make a confidential Acquisition Proposal to the Company s Board of Directors, or (v) approve, adopt, recommend or enter into, or propose to approve adopt, recommend or enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal (whether binding or nonbinding). It is agreed that any material violation of the restrictions on the Company set forth in this Section 6.03 by any Representative of the Company or any of the Company Subsidiaries shall be a breach of this Section by the Company; *provided, however,* that nothing in this Section 6.03(a) shall prohibit the Company or its Representatives from contacting in writing any Person or group of Persons who, following the date of this Agreement, make an unsolicited Acquisition Proposal with such contact being for the sole purpose of clarifying the terms and conditions thereof so as to determine whether such Acquisition Proposal constitutes, or could reasonably be expected to lead to, a Superior Proposal, and any such actions shall not be a breach of this Section 6.03(a), so long as the Company otherwise complies with its obligations under this Section 6.03, including Section 6.03(c), with respect to such Acquisition Proposal. The Company agrees that it and its Affiliates will not enter into any agreement with any Third Party subsequent to the date of this Agreement which prohibits the Company or its Affiliates from providing any information to Parent in accordance with, or otherwise complying with, this Section 6.03.

(b) Exceptions. Notwithstanding Section 6.03(a), at any time after the date of this Agreement and prior to the receipt of the Company Stockholder Approval:

(i) if the Company receives a bona fide unsolicited written Acquisition Proposal from a Third Party, that did not result from a breach of its obligations in Section 6.03(a) or Section 6.03(g) and the Board of Directors of the Company determines in good faith (after consultation with its financial advisor and outside legal counsel) that such Acquisition Proposal constitutes, or would reasonably be expected to lead to, a Superior Proposal, the Company, directly or indirectly through its Representatives, may (A) engage in negotiations or discussions with the Third Party making such Acquisition Proposal and its Representatives regarding such Acquisition Proposal and (B) furnish to such Third Party or its Representatives non-public information relating to the Company or any of the Company Subsidiaries pursuant to a confidentiality agreement (a copy of which shall be provided for informational purposes only to Parent within 24 hours after the Company s entry thereto) with such Third Party with terms in all material respects no less favorable to the Company than those contained in the confidentiality agreement dated June 21, 2016 between the Company and Parent (the **Confidentiality Agreement**); provided that all such information (to the extent that such information has not been previously provided or made available to Parent) is provided or made available to Parent, as the case may be, prior to or substantially concurrently with the time it is provided or made available to such Third Party;

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(ii) subject to the Company s compliance with Section 6.03(c) and Section 6.03(d) (provided that such compliance shall be in all material respects with respect to the timeframes for the Company s actions in Section 6.03(c)), the Board of Directors of the Company may make an Adverse Recommendation Change (A) following receipt of a Superior Proposal or (B) in response to an Intervening Event; and

(iii) subject to the Company s compliance with Section 6.03(c) and Section 6.03(d) (provided that such compliance shall be in all material respects with respect to the timeframes for the Company s actions in Section 6.03(c)), and the procedures set forth in Section 10.01(d)(i) Company may terminate this Agreement to enter into a definitive agreement with respect to a Superior Proposal;

in each case referred to in the foregoing clauses (ii) and (iii), only if the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and its outside legal counsel, that the failure to take such action would be inconsistent with its fiduciary duties under Delaware Law.

(c) Required Notices. The Board of Directors of the Company shall not take any of the actions referred to in Section 6.03(b) unless the Company shall have delivered to Parent a prior written notice advising Parent that it intends to take such action, the Company has advised Parent on a prompt basis of the status and terms of any discussions and negotiations with the Third Party, and the Company has notified Parent promptly (but in no event later than the earliest to occur of (i) one Business Day and (ii) 48 hours) after receipt by the Company (or any of its Representatives) of any request for information relating to the Company or any of the Company Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of the Company Subsidiaries by any Third Party that has made, or that is reasonably likely to make, an Acquisition Proposal. The Company shall provide such notice orally and in writing (email shall be sufficient if sent in accordance with all of the relevant provisions of Section 11.01 hereof) and shall identify the Third Party making, and the financial and other material terms and conditions (including the financing thereof) of, any such Acquisition Proposal, indication or request. The Company shall keep Parent fully informed, on a prompt basis (and in any event no later than the earliest to occur of (i) one Business Day and (ii) 48 hours), of the status and material terms of any such Acquisition Proposal, indication or request. The Company shall promptly (but in no event later than the earliest to occur of (i) one Business Day and (ii) 48 hours) after receipt provide to Parent copies of all correspondence and other written materials sent or provided to the Company, any of the Company Subsidiaries or any of their Representatives after the date of this Agreement by any Third Party that has made, or that is reasonably likely to make, an Acquisition Proposal that describes any financial or other material terms or conditions of any Acquisition Proposal (as well as written summaries of any additional or modified material terms or conditions conveyed orally to the Company, to the extent not already provided to Parent within the earliest to occur of (i) one Business Day and (ii) 48 hours after receipt by the Company, any of the Company Subsidiaries or any of their Representatives). The Company shall provide to Parent prior to or substantially concurrently with the time it is provided or made available to such Third Party by the Company, any of the Company Subsidiaries or any of the their Representatives all

correspondence and other written materials to any Third Party that, after the date of this Agreement, has made, or that is reasonably likely to make, an Acquisition Proposal that describes any financial or other material terms or conditions of any Acquisition Proposal (as well as written summaries of any additional or modified material terms or conditions conveyed orally by or on behalf of the Company, to the extent not already provided to Parent). Any amendment to the financial or other material terms of any Acquisition Proposal will be deemed to be a new Acquisition Proposal for purposes of the Company s compliance with this Section 6.03(c).

(d) Last Look . Further, the Board of Directors of the Company shall not make an Adverse Recommendation Change (or terminate this Agreement pursuant to Section 10.01(d)(i)), unless (i) the Company notifies Parent (which notice, in and of itself, shall not constitute an Adverse Recommendation Change), in writing at least five Business Days before taking that action, of its intention to do so (such period, the **Negotiation Period**), including (A) in the case of an Adverse Recommendation Change to be made following receipt of a Superior Proposal, the most current version of the proposed agreements under which such Superior Proposal is proposed to be consummated (including any proposed merger agreement, acquisition agreement,

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option agreement, voting agreement or other similar instrument relating to such Superior Proposal and a copy of any financing commitments relating thereto (or, in each case, if not provided in writing to the Company, a written summary of the financial and other terms thereof)) and the identity of the Third Party making the Acquisition Proposal, or (B) in the case of an Adverse Recommendation Change to be made in response to an Intervening Event, a reasonably detailed description of the reasons for making such Adverse Recommendation Change, and (ii) following the end of the Negotiation Period, the Board of Directors of the Company shall have considered in good faith any revisions to the terms of this Agreement proposed in writing by Parent, and shall have determined, after consultation with its financial advisor and outside legal counsel, that Parent did not make, within the Negotiation Period, an offer that (A) in the case of an Adverse Recommendation Change to be made following receipt of a Superior Proposal, is at least as favorable to the stockholders of the Company as such Superior Proposal provided, that in the event there is any modification to the financial or other material terms of any such Superior Proposal (including any modification in the amount, form or mix of consideration proposed to be payable to the Company s stockholders pursuant to such Superior Proposal), the Company shall have provided to Parent a notice of such modification and such Superior Proposal shall be deemed a new Superior Proposal to which the requirements of this Section 6.03(d) shall apply; provided, further that with respect to such new Superior Proposal, the Negotiation Period shall be deemed to be a three Business Day period rather than a five Business Day period (except that in no event will the Negotiation Period expire earlier than any Negotiation Period then in effect would have expired) or (B) in the case of an Adverse Recommendation Change to be made in response to an Intervening Event, obviates the need for such recommendation change.

(e) Definition of Superior Proposal. For purposes of this Agreement, **Superior Proposal** means a bona fide written Acquisition Proposal obtained after the date hereof that is not subject to any due diligence investigation, does not require a closing condition that the Third Party has obtained financing or that committed financing actually be funded, and, with respect to any cash consideration, is fully financed with available cash on hand or binding written financing commitments in full force and effect, or a combination of the foregoing, that the Board of Directors of the Company determines in good faith, after considering the advice of a financial advisor of nationally recognized reputation and outside legal counsel, taking into account the identity of the Third Party making such Acquisition Proposal, all terms of such Acquisition Proposal that the Company s Board of Directors deems relevant (including any termination or break-up fees and conditions to consummation) and the reasonable likelihood and timing of consummation of such Acquisition Transaction, would be more favorable from a financial point of view to the Company s stockholders (in their capacity as such) than the Merger (taking into account any proposal by Parent to amend the terms of this Agreement pursuant to Section 6.03(d); provided that for purposes of this definition, all references to 20% in the definition of Acquisition Proposal shall be deemed to be 80%.

(f) Definition of Intervening Event. For purposes of this Agreement, **Intervening Event** means any material change, event, occurrence or development that occurs,

arises or becomes known to the Board of Directors of the Company after the date of this Agreement and prior to obtaining the Company Stockholder Approval, to the extent that such change, event, occurrence or development was unknown to the Board of Directors of the Company and was not reasonably foreseeable, in each case, as of the date of this Agreement; provided that the receipt by the Company, the existence or the terms of an Acquisition Proposal or a Superior Proposal shall not, in any event, be deemed to constitute an Intervening Event.

(g) Obligation to Terminate Existing Discussions. The Company shall, and shall cause the Company Subsidiaries and its and their Representatives to, cease immediately and cause to be terminated any and all existing activities, discussions or negotiations, if any, with any Third Party and its Representatives conducted prior to the date hereof with respect to any Acquisition Proposal. The Company shall, and shall cause its Affiliates to, promptly request any Third Party that has executed a confidentiality or non-disclosure agreement and received any non-public information relating to the Company or any of the Company Subsidiaries during the period between June 1, 2016 and the date of this Agreement return or destroy all confidential information in the possession of such Third Party or its Representatives.

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(h) Stop , Look and Listen . Nothing contained in this Agreement shall prohibit the Board of Directors of the Company from (i) complying with its disclosure obligations under United States federal or state law with regard to an Acquisition Proposal, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9, 14e-2(a) or Item 1012(a) of Regulation M-A promulgated under the Exchange Act, (ii) making any stop-look-and-listen communication to the stockholders of the Company pursuant to Rule 14d-9(f) promulgated under the Exchange Act, it being agreed that the making of such communication containing only the information contemplated by Rule 14d-9f shall not be an Adverse Recommendation Change or (iii) making any disclosure to the Company s stockholders that is required by Applicable Law; provided, however, that in the case of clause (i), (ii) or (iii), any such disclosure or communication that constitutes or contains an Adverse Recommendation Change shall only be made in compliance with this Section 6.03 (excluding this Section 6.03(h)).

Section 6.04 Access to Information. Subject to the last sentence of this Section 6.04, from the date hereof until the Effective Time and subject to Applicable Law and the Confidentiality Agreement, upon reasonable written prior notice, the Company shall (i) give to Parent, its counsel, financial advisors, auditors and other authorized Representatives reasonable access during normal business hours to the personnel, offices, properties, books and records (including Tax records) of the Company and the Company Subsidiaries, (ii) furnish to Parent, its counsel, financial advisors, auditors and other authorized Representatives such financial and operating data and other information as such Persons may reasonably request and (iii) instruct its employees, counsel, financial advisors, auditors and other authorized Representatives to cooperate with Parent in its investigation of the Company and the Company Subsidiaries. Any investigation pursuant to this Section 6.04 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company and the Company Subsidiaries. No information or knowledge obtained in any investigation pursuant to this Section 6.04 shall affect or be deemed to modify any representation or warranty made by any party hereunder. Notwithstanding anything herein to the contrary, under no circumstances shall the Company, the Company Subsidiaries or their respective Representatives be required to furnish any person with, or be required to provide access to any person to, information about the Company or any of the Company Subsidiaries that is prohibited by any Applicable Law or contractual restraint enforceable upon the Company or any of the Company Subsidiaries, or where such access to information would reasonably be expected to involve the waiver of any attorney-client privilege; provided that the Company will inform Parent of the general nature of the document or information being withheld and reasonably cooperate with Parent to provide such document or information in a manner that would not result in a violation of Law or any such contractual restraint or the loss or waiver of such privilege.

Section 6.05 Stockholder Litigation. Until the earlier of the termination of this Agreement in accordance with its terms or the Effective Time, the Company shall give Parent the right to review and comment in advance on all material filings or responses to be made by the Company in connection with any litigation against the Company and/or its directors relating to the Merger, and the right to consult on any settlement

with respect to such litigation, and the Company will in good faith take such comments into account. The Company shall promptly notify Parent of the filing of, or the threat of the filing of, any such litigation and shall keep Parent reasonably and promptly informed with respect to the status thereof. The Company shall not settle or offer to settle any such litigation without the prior written consent of Parent.

Section 6.06 Company Notes. The Company shall use commercially reasonable efforts to comply with its obligations under the Company Notes Indenture that arise as a result of the execution, delivery or performance by the Company of this Agreement and the consummation of the transactions contemplated hereby, including the delivery of any notices, certificates and opinions required in connection with the transactions contemplated hereby.

Section 6.07 Tax Matters.

(a) From the date hereof until the Effective Time, neither the Company nor any of the Company Subsidiaries shall make, change or revoke any material Tax election, change any annual Tax accounting period,

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adopt or change any method of tax accounting, file any material amended Tax Returns or claims for material Tax refunds, enter into any material closing agreement within the meaning of Section 7121 of the Code (or any analogous or similar provision of state, local or foreign law), request any Tax ruling from a Governmental Authority, surrender, settle, concede or compromise any material Tax claim, audit or assessment, surrender or settle any right to claim a material Tax refund, offset or other reduction in Tax liability, consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment or take or omit to take any other action, if any such action or omission would have the effect of increasing the Tax liability or reducing any Tax Asset of the Company or any of the Company Subsidiaries.

(b) The Company and each Company Subsidiary shall establish or cause to be established in accordance with GAAP on or before the Effective Time an adequate accrual for all material Taxes due with respect to any period or portion thereof ending prior to or as of the Effective Time.

(c) The payment of any transfer, documentary, sales, use, stamp, registration, value added and other Taxes and fees (including any penalties and interest) incurred solely by a holder of Company Stock in connection with the Merger, and the filing of any related Tax Returns and other documentation with respect to such Taxes and fees, shall be the sole responsibility of such holder.

Section 6.08 ESPP. Prior to the Effective Time, the Company shall take all actions necessary, including adopting any resolutions or amendments, with respect to the ESPP to: (a) cause the Purchase Period (as defined in the ESPP) ongoing as of the date of this Agreement to be the final Purchase Period under the ESPP and the options under the ESPP to be exercised on the earlier of (i) the scheduled purchase date for such Purchase Period and (ii) the date that is five Business Days prior to the anticipated Effective Time, (b) apply participant accounts in accordance with the ESPP to purchase shares of Company Stock immediately following the termination of such final offering period and (c) terminate the ESPP effective immediately prior to the Closing Date. Any shares of Company Stock so purchased shall be treated in accordance with Section 2.02. All amounts withheld by the Company on behalf of the participants in the ESPP that have not been used to purchase shares of Company Stock prior to the termination of the ESPP will be returned to the participants without interest pursuant to the terms of the ESPP upon the termination of the ESPP.

ARTICLE 7

COVENANTS OF PARENT

Parent agrees that:

Section 7.01 Obligations of Merger Subsidiary. Parent shall take all action necessary to cause Merger Subsidiary to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. Immediately following the execution of this Agreement, Parent shall execute and deliver, in accordance with Delaware Law and in its capacity as the sole stockholder

of Merger Subsidiary, a written consent adopting this Agreement and approve the Merger in accordance with Delaware Law.

Section 7.02 Director and Officer Liability. Parent shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to do the following:

(a) Parent and Merger Subsidiary agree that all rights to indemnification, advancement of expenses and exculpation by the Company or the Company Subsidiaries existing as of the date of this Agreement in favor of each Person who is now, or has been at any time prior to the date of the Agreement or who becomes prior to the Effective Time an officer or director of the Company or the Company Subsidiaries (each an **Indemnified Person**) as provided in the Company Certificate and Company Bylaws or similar governing documents of the Company Subsidiaries, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date of the Agreement and disclosed in Section 7.02 of the Company Disclosure Schedule (the

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Indemnification Contracts) (or with respect to Persons who become a director or officer of the Company prior to the Effective Time, in a form substantially similar the Indemnification Contracts) for acts or omissions occurring prior to the Effective Time (including acts or omissions occurring in connection with this Agreement and the consummation of the Merger) shall be honored by the Surviving Corporation and its Subsidiaries and shall survive the Merger and shall remain in full force and effect in accordance with their terms, and shall not be amended, repealed or otherwise modified for a period of six years after the Effective Time in any manner that would adversely affect the rights thereunder of such Indemnified Persons. Parent shall, and shall cause the Surviving Corporation and its Subsidiaries to, honor and fulfill in all respects the obligations of the Company and the Company Subsidiaries under any and such Indemnification Contracts.

(b) For six years after the Effective Time, to the fullest extent permitted under Applicable Law, Parent and the Surviving Corporation and any successor to the Surviving Corporation shall, and Parent shall cause the Surviving Corporation or its successor to indemnify, defend and hold harmless each Indemnified Person against all losses, claims, damages, liabilities, fees, expenses, judgments and fines arising directly or indirectly, in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the transactions contemplated by this Agreement), and shall advance and/or reimburse each Indemnified Person for any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments and fines as the same are incurred, subject to the Surviving Corporation s receipt of an undertaking by such Indemnified Person to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final non appealable judgment of a court of competent jurisdiction that such Indemnified Person is not entitled to be indemnified under Applicable Law; *provided however*, that the Surviving Corporation will not be liable for any settlement effected without the Surviving Corporation s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Parent shall cause the Surviving Corporation to provide, for an aggregate period of not less than six years from the Effective Time, the Company s current directors and officers an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time (the **D&O Insurance**) that is no less favorable than the Company s existing policy as of the date of this Agreement or, if insurance coverage that is no less favorable is unavailable, the best available coverage; *provided, however*, that the Surviving Corporation shall not be required to pay an annual premium for the D&O Insurance in excess of 250% of the last annual premium paid prior to the date of this Agreement (the **Premium Cap**) or, if less, the cost of a policy providing coverage on the same terms as the Company s existing policy as of the date of this Agreement; provided, further, that the Company or Parent may prior to the Effective Time substitute therefor a single premium tail coverage with respect to D&O Insurance with the maximum coverage available for a total cost equal to the Premium Cap or, if less, the cost of a single premium tail policy providing the same coverage limits as the Company s existing policy as of the date of this Agreement. If such premiums for such insurance would at any time exceed the Premium Cap, then the

Surviving Corporation shall cause to be maintained policies of insurance which, in the Surviving Corporation s good faith determination, provide the maximum coverage available for a total cost equal to the Premium Cap.

(d) The obligations of Parent and the Surviving Corporation under this Section 7.02 shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to adversely affect any Indemnified Person to whom this Section 7.02 applies without the consent of such affected Indemnified Person (it being expressly agreed that the Indemnified Person to whom this Section 7.02 applies shall be third party beneficiaries of this Section 7.02, each of whom may enforce the provisions of this Section 7.02).

(e) In the event the Surviving Corporation or any of its respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers or licenses all or substantially all of its properties and assets (including Intellectual Property Rights) to any Person, then, and in either such case, proper provision shall be made so that each of such successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in

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this Section 7.02 to the extent of the assets transferred to such successor or assign. The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Person is entitled, whether pursuant to Applicable Law, Contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors and officers insurance claims under any policy that is or has been in existence with respect to the Company or its officers, directors and employees, it being understood and agreed that the indemnification provided for in this Section 7.02 is not prior to, or in substitution for, any such claims under any such policies.

Section 7.03 Employee Matters.

(a) During the period beginning at the Effective Time and ending on the first anniversary of the Closing Date (or such shorter period of employment, as the case may be), Parent shall, or shall cause its Subsidiaries to provide to each employee of the Company or the Company Subsidiaries at the Effective Time (each, a **Covered Employee**), (i) a base salary or rate of pay that is at least equal to such Covered Employee s base salary or rate of pay immediately prior to the Effective Time, (ii) an incentive pay opportunity that is at least equal, taken in the aggregate and together with base salary or rate of pay, to such Covered Employee s incentive pay opportunity, taken in the aggregate and together with base salary or rate of pay, immediately prior to the Effective Time (iii) severance benefits that are no less favorable than the severance benefits provided to such Covered Employee immediately prior to the Effective Time and (iv) other compensation and employee benefits that are substantially similar in the aggregate to the other compensation and employee benefits that were provided to such Covered Employee under the Employee Plans immediately prior to the Effective Time, provided that, for purposes of this Section 7.03(a)(iv), Parent and its Subsidiaries shall not be obligated to grant equity to such Covered Employee, but equity granted to such Covered Employee under the Employee Plans prior to the Effective Time shall be considered in determining whether the incentive pay opportunity provided by Parent and/or its Subsidiaries to the applicable Covered Employee after the Effective Time is at least equal to that provided immediately prior to the Effective Time pursuant to Section 7.03(a)(ii).

(b) Crediting of Payments. In the event any Employee Plan under which a Covered Employee receives health, medical, prescription, dental or vision benefits is terminated and such Covered Employee becomes eligible to participate under any employee benefit plan, program, policy or arrangement of Parent or any of its Subsidiaries (each, a **Parent Plan**) following the Effective Time, Parent shall, or shall cause its Subsidiaries to (i) use its or their commercially reasonable efforts to waive any preexisting condition exclusions and waiting periods with respect to participation and coverage requirements applicable to such Covered Employee (and any eligible dependents thereof) for any corresponding Parent Plan providing medical, dental or vision benefits to the same extent such limitation would have been waived or satisfied under the Employee Plan such Covered Employee participated in immediately prior to coverage under such Parent Plan and (ii) provide such Covered Employee with credit for any copayments, coinsurance and deductibles paid under an Employee Plan prior to such Covered Employee s coverage under any Parent Plan during the calendar year

in which such amount was paid, to the same extent such credit was given under the Employee Plan such Covered Employee participated in immediately prior to coverage under such Parent Plan in satisfying any applicable deductible or out-of-pocket requirements under such Parent Plan.

(c) Service Crediting. As of the Effective Time, Parent shall, or shall cause its Subsidiaries to, recognize all service of each Covered Employee prior to the Effective Time with the Company and the Company Subsidiaries reflected in the records of the Company (or any predecessor entities of either to the extent the Company or one of the Company Subsidiaries provides such past-service credit under a similar Employee Plan) for purposes of vesting and eligibility and determining the rate of accrual for leave benefits under any Parent Plan in which such Covered Employees are eligible to participate following the Closing. In no event shall anything contained in this Section 7.03(c) result in any duplication of benefits for the same period of service.

(d) Company 401(k) Plans. At the request of Parent no later than 10 Business Days prior to the Closing Date, the Company shall take all actions necessary so that effective as of immediately prior to the Effective

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Time, the Company shall terminate any Employee Plan that includes a 401(k) feature pursuant to resolutions of the Company s Board of Directors that are reasonably satisfactory to Parent. In connection with any termination of such plans, Parent shall permit each Covered Employee to make rollover contributions of eligible rollover distributions (within the meaning of Section 401(a)(31) of the Code, including all participant loans) in cash or notes (in the case of participant loans) in an amount equal to the eligible rollover distribution portion of the account balance distributed to each such Covered Employee from such plan to an eligible retirement plan (within the meaning of Section 401(a)(31) of the Code) of Parent or any of its Subsidiaries.

(e) Without limiting the generality of Section 11.05, nothing in this Section 7.03, express or implied, (i) is intended to or shall confer upon any Person other than the parties hereto, including any Covered Employee or any former Service Provider or any beneficiary or dependent thereof, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish, or constitute an amendment, termination or modification of, or an undertaking to amend, establish, terminate or modify, any benefit plan, program, agreement or arrangement, (iii) shall alter or limit the ability of Parent or any of its Subsidiaries (or, following the Effective Time, the Company or any of the Company Subsidiaries) to amend, modify or terminate any benefit plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them, or (iv) shall create any obligation on the part of Parent or its Subsidiaries (or, following the Effective Time, the Company or any of the Company Subsidiaries) to employ any Covered Employee for any period following the Closing Date.

ARTICLE 8

COVENANTS OF PARENT AND THE COMPANY

The parties hereto agree that:

Section 8.01 Regulatory Approvals, Notices and Consents.

(a) Subject to the terms and conditions of this Agreement, Parent, Merger Subsidiary and the Company shall use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate the transactions contemplated by this Agreement, including using their commercially reasonable efforts to (i) prepare and file as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtain and maintain all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement including the commencement or defense of litigation seeking the entry of, or, as the case may be, to effect the dissolution of, any temporary injunction, temporary restraining order or other temporary or appealable order in any suit or proceeding, which would otherwise have the effect of

delaying or preventing the consummation of the transactions contemplated by this Agreement; *provided* that the parties hereto understand and agree that Parent and Merger Subsidiary shall not be required to, and, without the prior written consent of Parent, the Company shall not, (A) enter into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Authority in connection with the transactions contemplated by this Agreement, or (B) propose, negotiate, commit to or effect, by consent decree, hold separate orders, or otherwise that in the case of the foregoing clauses (A) or (B) would impose or provide for any of the following: (1) any restrictions on the operation of the business of the Company by Parent (including the termination or cancellation of all or a portion of sales contracts with customers), (2) the sale, license, assignment, transfer, lease, or other divestiture or disposition of the assets, properties or businesses of Parent or its Subsidiaries (excluding the Company following the Effective Time), or (3) the sale, license, assignment, transfer, lease or other divestiture or disposition of any assets or businesses of the Company or any Company Subsidiary that would reduce the reasonably anticipated benefits to Parent (including anticipated synergies) of the transactions contemplated by this Agreement in an amount that is financially material relative to

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the value of the Company and the Company Subsidiaries as a whole (which the Company shall not undertake, propose or agree to without Parent s consent). Notwithstanding anything in this Agreement to the contrary, neither Parent and Merger Subsidiary, on the one hand, nor the Company and the Company Subsidiaries, on the other hand, shall be required to agree to any term or take any action in connection with obtaining the necessary approvals from Governmental Authorities or third parties that is not conditioned upon the consummation of the Merger and the other transactions contemplated by this Agreement. Each of Parent and the Company shall (x) cooperate in all respects and consult with each other in connection with filings, including by allowing the other party to have a reasonable opportunity to review in advance and comment on drafts of filings and submissions, (y) promptly inform the other party of any communication received by such party from, or given by such party to, Governmental Authorities, by promptly providing copies to the other party of any such written communications and (z) permit the other party to review in advance any communication that it gives to, and consult with each other in advance of any meeting, substantive telephone call or conference with Governmental Authorities, and to the extent not prohibited by a Governmental Authority, give the other party the opportunity to attend and participate in any in-person meetings with that Governmental Authority. The Company shall under no circumstances be required to pay or commit to pay any material amount or incur any material obligation in favor of or offer or grant any material accommodation (financial or otherwise, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any Person to obtain any consents, approvals, authorizations or terminations or expirations of any waiting period under any Applicable Law.

(b) Without limiting the generality of the Parent s and Merger Subsidiary s undertaking pursuant to Section 8.01(a) but subject thereto, each of Parent and the Company shall (i) make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and in any event within 15 Business Days after the date hereof and (ii) make all necessary filings, notifications and other submissions with respect to this Agreement and the transactions contemplated hereby under other applicable Antitrust Laws where such filings, notifications or other submissions are required, as promptly as practicable and, with respect to (i) and (ii) above to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the Antitrust Laws and, subject to the provisions of Section 8.01(a), to use their commercially reasonable efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the Antitrust Laws as soon as practicable.

(c) Without limiting the generality of the Parent s and Merger Subsidiary s undertaking pursuant to Section 8.01(a) but subject to the restrictions thereof, Parent and the Company shall use their commercially reasonable efforts to obtain the CFIUS Approval. Such commercially reasonable efforts shall include promptly after the date hereof making any draft and final filings (including joint filings) required in connection with the CFIUS Approval in accordance with the DPA, and providing any information requested by CFIUS or any other agency or branch of the U.S.

government in connection with the CFIUS review or investigation of the transactions contemplated by this Agreement within the timeframes required by the DPA, unless CFIUS agrees in writing to an extension of such timeframe; *provided*, that in the event that CFIUS notifies Parent, Merger Subsidiary or the Company that CFIUS (x) has completed its review or investigation and (y) intends to send a report to the President of the United States recommending that the President act to prohibit the Merger or any of the other transactions contemplated by this Agreement, Parent may request a withdrawal of any filing or notification made to CFIUS; *provided*, however, that if Parent does not re-file a CFIUS notification within 20 Business Days or such different period of time agreed upon by the parties, a CFIUS Turndown shall be deemed to have occurred.

Section 8.02 Public Announcements. Parent, Merger Subsidiary and the Company shall consult with each other before issuing any press release, having any communication with the press (whether or not for attribution), making any other public statement or scheduling any press conference or conference call with investors or analysts with respect to this Agreement or the transactions contemplated hereby and the Company shall not issue any such press release or make any such other public statement or schedule any such press conference or conference call without such consultation; *provided, however*, that the restrictions set forth in this Section 8.02

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shall not apply to any release or public statement (a) required by Applicable Law or any applicable listing authority (in which case the parties shall use commercially reasonable efforts to (i) consult with each other prior to making any such disclosure and (ii) cooperate (at the other party s expense) in connection with the other party s efforts to obtain a protective order), (b) issued by the Company in response to or in connection with the receipt and existence of an Acquisition Proposal, or its making of an Adverse Recommendation Change, (c) following any public statement, release or disclosure by the Company in respect of any Acquisition Proposal or Adverse Recommendation Change, issued by Parent with respect to such matters or (d) in connection with any dispute between the parties regarding this Agreement, the Merger or the other transactions contemplated hereby; *provided, further*, that (x) each of the Company and Parent may make press releases or public announcements concerning this Agreement or the Merger that consist solely of information previously disclosed in all material respects in previous press releases or announcements made by Parent and/or the Company in compliance with this Section 8.02 and (y) each of the Company and Parent may make any public statements in response to questions by the press, analysts, investors or analysts or those participating in investor calls or industry conferences, so long as such statements consist solely of information previously disclosed in all material respects in previous press releases, public disclosures or public statements made by Parent and/or the Company in compliance with this Section 8.02.

Section 8.03 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or Merger Subsidiary, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Subsidiary, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 8.04 Notices of Certain Events. Each of the Company and Parent shall promptly notify the other of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;

(c) any Legal Proceedings or material claim commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any Company Subsidiary or Parent or any of its Subsidiaries, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any Section of this Agreement or that relate to the consummation of the transactions contemplated by this Agreement;

(d) any inaccuracy of any representation or warranty contained in this Agreement at any time during the term hereof that could reasonably be expected to cause any condition set forth in Article 9 not to be satisfied; and

(e) any failure of that party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder that could reasonably be expected to cause any condition set forth in Article 9 not to be satisfied;

provided, that the delivery of any notice pursuant to this Section 8.04 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

Section 8.05 Section 16 Matters. Prior to the Effective Time, the Company shall take all steps as may be required to cause any dispositions of Company Stock (including derivative securities with respect to Company Stock) resulting from the transactions contemplated by Article 2 of this Agreement by each officer and director of the Company who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

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Section 8.06 Stock Exchange De-listing; Exchange Act Deregistration. Prior to the Effective Time, the Company shall cooperate with Parent and use its commercially reasonable efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under Applicable Laws and rules and policies of the NYSE to enable the de-listing by the Surviving Corporation of the Company Stock from the NYSE and the deregistration of the Company Stock under the Exchange Act as promptly as practicable after the Effective Time.

Section 8.07 Takeover Statutes. If any Takeover Statute shall become applicable to the transactions contemplated by this Agreement, each of the Company, Parent and Merger Subsidiary and the respective members of their boards of directors shall, to the extent permitted by Applicable Law, use commercially reasonable efforts to grant such approvals and to take such actions as are reasonably necessary so that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated herein and otherwise to take all such other actions as are reasonably necessary to eliminate or minimize the effects of any such statute or regulation on the transactions contemplated hereby.

Section 8.08 Director Resignations. The Company shall cause to be delivered to Parent prior to the Closing resignations executed by each director of the Company in office as of immediately prior to the Effective Time and effective upon the Effective Time.

ARTICLE 9

CONDITIONS TO THE MERGER

Section 9.01 Conditions to the Obligations of Each Party. The respective obligations of each of the Company, Parent and Merger Subsidiary to consummate the Merger are subject to the satisfaction (or waiver, if permissible under Applicable Law) on or prior to the Closing Date of the following conditions:

(a) the Company Stockholder Approval shall have been obtained in accordance with Delaware Law;

(b) no Applicable Law shall temporarily or permanently make consummation of the Merger illegal or otherwise prohibited;

(c) any applicable waiting period (and any extension thereof) under the HSR Act or any other applicable Antitrust Laws relating to the Merger shall have expired or been terminated; and

(d) the CFIUS Approval shall have been obtained.

Section 9.02 Conditions to the Obligations of Parent and Merger Subsidiary. The obligations of Parent and Merger Subsidiary to consummate the Merger are subject to the satisfaction (or waiver, if permissible under Applicable Law) on or prior to the

Closing Date of the following further conditions:

(a) (i) the Company shall have performed or complied in all material respects with all of its obligations and covenants hereunder required to be performed or complied with by it at or prior to the Effective Time, (ii)(A) the representations and warranties of the Company contained in Section 4.05(a), Section 4.05(c) or in any certificate or other writing relating to Section 4.05(a) or Section 4.05(c) delivered by the Company pursuant thereto (other than the information set forth on Section 4.05(a) or Section 4.05(c) of the Company Disclosure Schedule with respect to the holder and the date of grant) shall be true at and as of the date of this Agreement and the Effective Time as if made at and as of such time, other than with respect to *de minimis* inaccuracies and (B) the representations and warranties of the Company contained in Section 4.01(a), Section 4.02, Section 4.03, the first and third sentences of Section 4.05(b), Section 4.05(d), and Section 4.23 or in any certificate or other writing delivered by the Company relating to Section 4.01(a), Section 4.02, Section 4.03, the first and third sentences of Section 4.05(b), Section 4.05(d), or Section 4.23 (disregarding all materiality and Material Adverse Effect

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qualifications contained therein) shall be true at and as of the date of this Agreement and the Effective Time as if made at and as of such time (other than representations and warranties that by their terms address matters only as of another specified time, which shall be true only as of such time), in all material respects, and (C) the other representations and warranties of the Company contained in this Agreement or in any certificate or other writing delivered by the Company pursuant hereto (disregarding all materiality and Material Adverse Effect qualifications contained therein) shall be true at and as of the date of this Agreement and the Effective Time as if made at and as of such time (other than representations and warranties that by their terms address matters only as of another specified time, which shall be true only as of such time), with, in the case of this clause (C), only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company; and (iii) Parent shall have received a certificate signed by an executive officer of the Company to the foregoing effect;

(b) there shall not have occurred since the date of this Agreement any event, occurrence, revelation or development of a state of circumstances or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on the Company, and Parent shall have received a certificate signed by an executive officer of the Company to the foregoing effect; and

(c) the Company shall have provided to Parent a certification that complies with the requirements of Treasury Regulation Sections 1.897-2(h) and 1.1445-2(c)(3) to the effect that the shares of Company Stock are not U.S. real property interests within the meaning of Section 897 of the Code.

Section 9.03 Conditions to the Obligations of the Company. The obligations of the Company to consummate the Merger are subject to the satisfaction (or waiver, if permissible under Applicable Law) on or prior to the Closing Date of the following further conditions:

(a) (i) each of Parent and Merger Subsidiary shall have performed or complied with in all material respects all of its obligations and covenants hereunder required to be performed or complied with by it at or prior to the Effective Time, (ii) the representations and warranties of Parent and Merger Subsidiary contained in this Agreement or in any certificate or other writing delivered by Parent or Merger Subsidiary pursuant hereto (disregarding all materiality qualifications contained therein) shall be true and correct at and as of the date hereof and the Effective Time as if made at and as of such time (other than representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct only as of such time), with only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent; and (iii) the Company shall have received a certificate signed by an executive officer of Parent to the foregoing effect.

ARTICLE 10

TERMINATION

Section 10.01 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the stockholders of the Company):

(a) by mutual written agreement of the Company and Parent;

(b) by either the Company or Parent, if:

(i) the Merger has not been consummated on or before 11:59 p.m. Pacific time on June 21, 2017 (the **End Date**); p*rovided, however*, that if at June 21, 2017 all conditions to the Parties obligations to consummate the Merger set forth in Article 9 have been satisfied (other than those of a nature to be satisfied at Closing, but which shall be capable of being satisfied) and other than the conditions set forth in Sections 9.01(c) or (d), then the End Date shall instead be September 21, 2017; *provided*; *further* that the right to

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terminate this Agreement pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement proximately causes or results in the failure of the Merger to be consummated by such time;

(ii) there shall be any Applicable Law that (A) makes consummation of the Merger illegal or otherwise prohibited or (B) enjoins the Company or Parent from consummating the Merger and such injunction shall have become final and nonappealable;

(iii) there shall have been a CFIUS Turndown; or

(iv) at the Company Stockholder Meeting (including any adjournment or postponement thereof), the Company Stockholder Approval shall not have been obtained upon a vote taken thereon; or

(c) by Parent, if:

(i) an Adverse Recommendation Change shall have occurred or the Company shall have intentionally breached any of its obligations under Section 6.03 in any material respect; or

(ii) a breach of any representation or warranty or failure to perform or comply with any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause the condition set forth in Section 9.02(a) not to be satisfied, and (A) such condition is incapable of being satisfied by the earlier of (1) the End Date and (2) the date that is 30 days following receipt by the Company of written notice of such breach or failure or, (B) if curable, is not cured by the Company by the earlier of (1) the End Date and (2) the 30th day following receipt by the Company of written notice of such breach or failure; *provided*, that Parent shall not have the right to terminate this Agreement pursuant to this Section 10.01(c)(ii), if, at the time of the delivery of such notice, Parent or Merger Subsidiary is in material breach of its or their obligations under this Agreement.

(d) by the Company, if:

(i) prior to receipt of the Company Stockholder Approval, the Board of Directors of the Company shall have made an Adverse Recommendation Change in compliance with the terms of this Agreement, including Section 6.03(d), in order to enter into a definitive, written agreement concerning a Superior Proposal; *provided*, that (A) concurrently with such termination, the Company shall enter into such definitive, written agreement for such Superior Proposal and (B) the Company shall have paid any amounts due pursuant to Section 11.04(b) prior to, or concurrently with, such termination; or

(ii) a breach of any representation or warranty or failure to perform or comply with any covenant or agreement on the part of the Parent or Merger Subsidiary set forth in this Agreement shall have occurred that would cause the condition set forth in Section 9.03(a) not to be satisfied, and (A) such condition is incapable of being satisfied by the

earlier of (1) the End Date and (2) the date that is 30 days following receipt by the Company of written notice of such breach or failure or, if curable, is not cured by Parent by the earlier of (x) the End Date and (y) the 30th day following receipt by Parent of written notice of such breach or failure; *provided*, that Company shall not have the right to terminate this Agreement pursuant to this Section 10.01(d)(ii), if, at the time of the delivery of such notice, Company is in material breach of its obligations under this Agreement.

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give notice of such termination to the other party.

Section 10.02 Effect of Termination. If this Agreement is terminated pursuant to Section 10.01, this Agreement shall become void and of no effect without liability of any party (or any stockholder, director, officer, employee, agent, consultant or Representative of such party) to the other party hereto; *provided* that, if such termination shall result from the intentional (a) failure of either party to fulfill a condition to the performance of the obligations of the other party, (b) failure of either party to perform a covenant set forth in this Agreement or

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(c) breach by either party of any of their representations or warranties set forth in this Agreement, such party shall be fully liable for any and all liabilities and damages incurred or suffered by the other party as a result of such failure. The provisions of this Section 10.02 and Article 11, and the Confidentiality Agreement shall survive any termination hereof pursuant to Section 10.01.

ARTICLE 11

MISCELLANEOUS

Section 11.01 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail (**e-mail**) transmission and shall be given,

if to Parent or Merger Subsidiary, to:

TDK Corporation
3-9-1, Shibaura
Minato-ku, Tokyo 108-0026
Japan
Attention: Noboru Saito
Facsimile: +81-3-6852-7164
E-mail:

with a copy to:

Jones Day
3161 Michelson Drive, Suite 800
Irvine, California 92648
Attention: Jonn Beeson and Kevin Espinola
Facsimile: 1-949-553-7539
E-mail:

with a copy to:

Jones Day
Kamiyacho Prime Place
1-17, Toranomon 4-chome
Minato-ku, Tokyo 105-0001
Japan
Attention: Stephen DeCosse
Facsimile: 81-3-5401-2725
E-mail:

if to the Company, to:

InvenSense, Inc.
1745 Technology Drive, Suite 200

San Jose, California 95110
Attention: David Young, General Counsel
Facsimile: 408-452-5753
E-mail:

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with a copy to:

Pillsbury Winthrop Shaw Pittman LLP
2550 Hanover Street
Palo Alto, California 94304-1115
Attention: Jorge del Calvo
Allison Leopold Tilley
Facsimile: 650-233-4545
E-mail:

or to such other address, or facsimile number or electronic mail address as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. In order to be deemed valid notice under this Section 11.01, e-mail notice must state that it constitutes notice under this Agreement and must be followed by written notice delivered by overnight courier or hand-delivered via valid delivery pursuant to such method within two Business Days from the date of the original e-mail notice.

Section 11.02 Survival of Representations and Warranties. The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time.

Section 11.03 Amendments and Waivers.

(a) Any provision of this Agreement may be amended, supplemented or waived prior to the Effective Time, whether before or after receipt of the Company Stockholder Approval, if, but only if, such amendment, supplement or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; *provided* that after the Company Stockholder Approval has been obtained there shall be no amendment or waiver that would require the further approval of the stockholders of the Company under Delaware Law without such approval having first been obtained.

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

Section 11.04 Termination Fees.

(a) General. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

(b) Company Termination Fee.

(i) If this Agreement is terminated (A) by Parent pursuant to Section 10.01(c)(i) (*provided* that if either Parent or the Company terminates this Agreement pursuant to Section 10.01(b)(iv) at a time when Parent would have been entitled to terminate this Agreement pursuant to Section 10.01(c)(i), this Agreement shall be deemed to have been terminated pursuant to Section 10.01(c)(i) for purposes of this Section 11.04) or (B) by the Company pursuant to Section 10.01(d)(i), then the Company shall pay to Parent in immediately available funds $46,700,000 (the **Termination Fee**), in the case of a termination by Parent, within two Business Days after such termination and, in the case of a termination by the Company, prior to or concurrently with, and as a condition to, such termination.

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(ii) If (A) this Agreement is terminated by Parent or the Company pursuant to Section 10.01(b)(i) or Section 10.01(b)(iv), and (B)(1) with respect to termination under Section 10.01(b)(i), after the date of this Agreement and prior to such termination an Acquisition Proposal shall have been publicly announced and (2) with respect to termination under Section 10.01(b)(iv), after the date of this Agreement and prior to the Company Stockholder Meeting, an Acquisition Proposal shall have been publicly announced to the Company s stockholders and (C) within 12 months following the date of such termination, the Company shall have entered into a definitive agreement with respect to any Acquisition Proposal or any Acquisition Proposal shall have been consummated (*provided* that for purposes of this clause (C), each reference to 20% in the definition of Acquisition Proposal shall be deemed to be a reference to 50%), then the Company shall pay to Parent in immediately available funds, concurrently with the occurrence of the applicable event described in clause (C), the Company Termination Fee. All amounts paid pursuant to this Section 11.04(b) will be by wire transfer of immediately available funds to an account directed by Parent.

(c) Parent Termination Fee

If:

(i) This Agreement is terminated by the Company or Parent pursuant to Section 10.01(b)(i), and at the End Date all conditions to Parent s obligations to consummate the Merger set forth in Article 9, other than the conditions set forth in Section 9.01(b) (solely due to an Applicable Law that is an Antitrust Law or which relates to CFIUS), Section 9.01(c) or Section 9.01(d) have been satisfied (other than those of a nature to be satisfied at Closing, which shall be capable of being satisfied if the Closing Date were the date the notice of termination was delivered); then Parent shall pay, or cause to be paid, to the Company the Parent Termination Fee within two Business Days after such termination by wire transfer of immediately available funds to an account directed by the Company; or

(ii) This Agreement is terminated by the Company or Parent pursuant to Section 10.01(b)(ii) (solely due to an Applicable Law that is an Antitrust Law) or Section 10.01(b)(iii), and at the termination date all conditions to Parent s obligations to consummate the Merger set forth in Article 9, other than the conditions set forth in Section 9.01(b) (solely due to an Applicable Law that is an Antitrust Law or which relates to CFIUS), Section 9.01(c) or Section 9.01(d), would have been capable of being satisfied if the Closing Date were the date the notice of termination was delivered; then Parent shall pay, or cause to be paid, to the Company the Parent Termination Fee within two Business Days after such termination by wire transfer of immediately available funds to an account directed by the Company.

(d) Other Costs and Expenses. The parties acknowledge that the agreements contained in Section 11.04 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the parties would not enter into this Agreement. Accordingly, if (i) the Company fails promptly to pay any amount due to Parent pursuant to Section 11.04(b), it shall also pay any reasonable and documented

costs and expenses (including reasonable attorney fees) incurred by Parent or Merger Subsidiary in connection with a legal action to enforce this Agreement that results in a judgment against the Company for such amount, together with interest on the amount of any unpaid fee, cost or expense at the publicly announced prime rate as published in *The Wall Street Journal* in effect on the date such payment was required to be made and (ii) Parent fails promptly to pay any amount due to the Company pursuant to Section 11.04(c), it shall also pay any reasonable and documented out of pocket costs and expenses (including reasonable attorney fees) incurred by the Company in connection with a legal action to enforce this Agreement that results in a judgment against Parent or Merger Subsidiary for such amount, together with interest on the amount of any unpaid fee, cost or expense at the publicly announced prime rate as published in *The Wall Street Journal* in effect on the date such payment was required to be made.

(e) Parent s and Merger Subsidiary s Sole Remedy. Except in the case of fraud or a willful breach of the Company s representations, warranties, covenants or agreements set forth in this Agreement prior to termination of this Agreement, and subject to Parent s and Merger Subsidiary s rights set forth in Section 11.11, Parent s right to terminate this Agreement and receive the Company Termination Fee pursuant to Section 11.04(b), shall

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under the circumstances in which a Company Termination Fee becomes payable, be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of the Parent and Merger Subsidiary against the Company or any Company Subsidiary for any loss or damage suffered as a result of any breach of any representation, warranty, covenant or agreement or failure to perform hereunder or other failure of the Merger to be consummated, except that the Company shall remain obligated for, and Parent and its Affiliates may be entitled to remedies with respect to, the provisions and agreements surviving such termination pursuant to Section 10.02. The receipt of the Company Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Parent, Merger Subsidiary, each of their Affiliates and Representatives and any other Person in connection with this Agreement (and the termination hereof), the Merger (and the abandonment or termination thereof) or any matter forming the basis for such termination and such payment shall not be deemed a penalty.

(f) Company s Sole Remedy. Except in the case of fraud or a willful breach of Parent s or Merger Subsidiary s representations, warranties, covenants or agreements set forth in this Agreement prior to termination of this Agreement, and subject to the Company s rights set forth in Section 11.11, the Company s right to terminate this Agreement and receive the Parent Termination Fee pursuant to Section 11.04(c), shall under the circumstances in which a Parent Termination Fee becomes payable, be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of the Company against Parent or Merger Subsidiary for any loss or damage suffered as a result of any breach of any representation, warranty, covenant or agreement or failure to perform hereunder or other failure of the Merger to be consummated, except that the Parent and Merger Subsidiary shall remain obligated for, and the Company and its Affiliates may be entitled to remedies with respect to, the provisions and agreements surviving such termination pursuant to Section 10.02. The receipt of the Parent Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by the Company and its Affiliates and Representatives and any other Person in connection with this Agreement (and the termination hereof), the Merger (and the abandonment or termination thereof) or any matter forming the basis for such termination and such payment shall not be deemed a penalty.

(g) Single Payment Only. The parties hereto acknowledge and hereby agree that in no event shall the Company be required to pay the Company Termination Fee on more than one occasion, whether or not such Company Termination Fee may be payable under more than one provision of this Agreement at the same or at different times and the occurrence of different events.

Section 11.05 Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and, except as provided in Section 7.02 and this Section 11.05, shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to or will confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement except for (i) each Indemnified Person as set forth in Section 7.02 of this Agreement, (ii) the Company

on behalf of the Company s stockholders to pursue damages (including claims for damages based on loss of the economic benefits of the transactions to the Company s stockholders) in the event of the breach of this Agreement prior to the Closing Date by Parent or Merger Subsidiary as provided in Section 10.02, which right is hereby expressly acknowledged and agreed by Parent and Merger Subsidiary, and (iii) as expressly set forth in this Agreement. The third-party beneficiary rights referenced in clause (ii) of the preceding sentence may be exercised only by the Company (on behalf of the Company s stockholders as their agent) through actions expressly approved by the Company s Board of Directors, and no Company stockholder whether purporting to act in its capacity as a Company stockholder or purporting to assert any right (derivatively or otherwise) on behalf of the Company, will have any right or ability to exercise or cause the exercise of any such right.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, except that Parent or Merger Subsidiary may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, (i) by written

notice to the Company, to a wholly-owned direct or indirect Subsidiary of Parent to participate in the Merger in lieu of Parent or Merger Subsidiary, in which event all references herein to Parent or Merger Subsidiary, as applicable, shall be deemed references to such other Subsidiary; *provided* that any such assignment shall not materially impede or delay the consummation of the Merger and the other transactions contemplated by this Agreement or otherwise materially impair the rights of the Company under this Agreement and (ii) after the Effective Time, to any Person; *provided* that such transfer or assignment shall not relieve Parent or Merger Subsidiary of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Parent or Merger Subsidiary.

Section 11.06 Governing Law; Jurisdiction. This Agreement and all actions (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement, the negotiation, validity or performance of this Agreement, the Merger shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. All Legal Proceedings (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement, the negotiation, validity or performance of this Agreement, the Merger shall be heard and determined in the Court of Chancery of the State of Delaware, and the parties irrevocably submit to the jurisdiction of such court (and, in the case of appeals, the appropriate appellate court therefrom), in any such Legal Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Legal Proceeding. The consents to jurisdiction set forth in this paragraph shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. The parties agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The parties hereto agree that a final judgment in any such Legal Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

Section 11.07 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.08 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 11.09 Entire Agreement. This Agreement and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 11.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

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Section 11.11 Specific Performance. The Company, Parent and Merger Subsidiary acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement required to be performed by any of the parties were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor. Accordingly, in the event of any breach or threatened breach by any party of any covenant or obligation contained in this Agreement, the Company or Parent shall be entitled to obtain, without proof of actual damages (and in addition to any other remedy to which such party may be entitled at law or in equity): (a) a decree or order from a court of competent jurisdiction of specific performance to enforce the observance and performance of such covenant or obligation; and (b) an injunction from a court of competent jurisdiction restraining such breach or threatened breach. Each party hereby waives any requirement for the securing or posting of any bond in connection with any such remedy.

[The remainder of this page has been intentionally left blank; the next page is the signature page.]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date set forth on the cover page of this Agreement.

INVENSENSE, INC.

By: /s/ Behrooz Abdi
Name: Behrooz Abdi
Title: President & CEO

TDK CORPORATION

By: /s/ Shigenao Ishiguro
Name: Shigenao Ishiguro
Title: President & CEO

TDK SENSOR SOLUTIONS CORPORATION

By: /s/ Francis J. Sweeney
Name: Francis J. Sweeney
Title: President & Chief Executive Officer

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Appendix B Opinion of Qatalyst Partners LP

December 20, 2016

Board of Directors

InvenSense, Inc.

1745 Technology Dr.

San Jose, California 95110

Members of the Board:

We understand that InvenSense, Inc. (the Company), TDK Corporation (Parent), and TDK Sensor Solutions Corporation, a wholly owned subsidiary of Parent (Merger Sub), have entered into an Agreement and Plan of Merger, dated as of December 21, 2016 (Japan Standard Time) (the Merger Agreement), pursuant to which, among other things, Merger Sub will merge with and into the Company (the Merger). Pursuant to the Merger, the Company will be the surviving corporation, and each outstanding share of common stock, par value $0.001 per share, of the Company (Company Common Stock), other than shares held by the Company as treasury stock or owned by Parent or any subsidiary of Parent or the Company or any Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive $13.00 in cash (the Merger Consideration). The terms and conditions of the Merger are more fully set forth in the Merger Agreement.

You have asked for our opinion as to whether the Merger Consideration to be received by the holders of shares of Company Common Stock, other than Parent or any affiliate of Parent, (the Holders) pursuant to the Merger Agreement is fair, from a financial point of view, to such Holders.

For purposes of the opinion set forth herein, we have reviewed the Merger Agreement, certain related documents and certain publicly available financial statements and other business and financial information of the Company. We have also reviewed certain forward-looking information relating to the Company prepared by the management of the Company, including financial projections and operating data prepared by the management of the Company (the Company Projections). Additionally, we discussed the past and current operations and financial condition and the prospects of the Company with senior executives of the Company. We also reviewed the historical market prices and trading activity for Company Common Stock and compared the financial performance of the Company and the prices and trading activity of Company Common Stock with that of certain other selected publicly-traded companies and their

securities. In addition, we reviewed the financial terms, to the extent publicly available, of selected acquisition transactions and performed such other analyses, reviewed such other information and considered such other factors as we have deemed appropriate.

In arriving at our opinion, we have assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to, or discussed with, us by the Company. With respect to the Company Projections, we have been advised by the management of the Company, and have assumed, that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of the Company of the future financial performance of the Company and other matters covered thereby. We have assumed that the Merger will be consummated in accordance with the terms set forth in the Merger Agreement, without any modification, waiver

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or delay. In addition, we have assumed that in connection with the receipt of all the necessary approvals of the proposed Merger, no delays, limitations, conditions or restrictions will be imposed that could have an adverse effect on the Company or the contemplated benefits expected to be derived in the proposed Merger. We have not made any independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of the Company nor have we been furnished with any such evaluation or appraisal. In addition, we have relied, without independent verification, upon the assessment of the management of the Company as to the existing and future technology and products of the Company and the risks associated with such technology and products.

We have acted as financial advisor to the Board of Directors of the Company in connection with this transaction and will receive a fee for our services payable upon rendering of this opinion. We will also receive an additional, larger fee if the Merger is consummated. In addition, the Company has agreed to reimburse our expenses and indemnify us for certain liabilities arising out of our engagement. During the two year period prior to the date hereof, no material relationship existed between Qatalyst and its affiliates and the Company or Parent pursuant to which compensation was received by Qatalyst or its affiliates; however Qatalyst and/or its affiliates may in the future provide investment banking and other financial services to the Company and Parent and their respective affiliates for which we or they would expect to receive compensation.

Qatalyst provides investment banking and other services to a wide range of corporations and individuals, domestically and offshore, from which conflicting interests or duties may arise. In the ordinary course of these activities, affiliates of Qatalyst may at any time hold long or short positions, and may trade or otherwise effect transactions in debt or equity securities or loans of the Company, Parent or certain of their respective affiliates.

This opinion has been approved by our opinion committee in accordance with our customary practice. This opinion is for the information of the Board of Directors of the Company and may not be used for any other purpose without our prior written consent. This opinion does not constitute a recommendation as to how any holder of shares of Company Common Stock should vote with respect to the Merger or any other matter and does not in any manner address the prices at which Company Common Stock will trade at any time.

Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion. Our opinion does not address the underlying business decision of the Company to engage in the Merger, or the relative merits of the Merger as compared to any strategic alternatives that may be available to the Company. Our opinion is limited

to the fairness, from a financial point of view, of the Merger Consideration to be received by the Holders pursuant to the Merger Agreement, and we express no opinion with respect to the fairness of the amount or nature of the compensation to any of the Company s officers, directors or employees, or any class of such persons, relative to such Merger Consideration.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Merger Consideration to be received by the Holders pursuant to the Merger Agreement is fair, from a financial point of view, to such Holders.

Yours faithfully,

QATALYST PARTNERS LP

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Appendix C Section 262, Delaware General Corporation Law (Appraisal Rights)

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a corporation; the words stock and share mean and include what is ordinarily meant by those words; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title and, subject to paragraph (b)(3) of this section, § 251(h) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that, except as expressly provided in § 363(b) of this title, no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the Record Date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 251(h), § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) In the event of an amendment to a corporation s certificate of incorporation contemplated by § 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word amendment substituted for the words merger or consolidation, and the word corporation substituted for the words constituent corporation and/or surviving or resulting corporation.

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(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the Record Date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the tender or exchange offer contemplated by § 251(h) of this title and 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand

will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the tender or exchange offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given

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shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a Record Date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the Record Date shall be such effective date. If no Record Date is fixed and the notice is given prior to the effective date, the Record Date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail

and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment

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shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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Appendix D Form of Voting Agreement

VOTING AGREEMENT

VOTING AGREEMENT (this Voting Agreement), dated as of December [ ], 2016, by and among TDK Corporation, a company organized under the laws of Japan (Parent), and [_____] (Stockholder).

W I T N E S S E T H

WHEREAS, concurrently with the execution and delivery of this Voting Agreement, InvenSense, Inc., a Delaware corporation (the Company), Parent and TDK Sensor Solutions Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent (Merger Sub) are entering into an Agreement and Plan of Merger (as the same may be amended from time to time, the Merger Agreement), pursuant to which, among other things, Merger Sub will be merged with and into the Company, with the Company continuing as the surviving corporation and a wholly-owned subsidiary of Parent (the Merger);

WHEREAS, as of the date hereof, Stockholder is the record or beneficial owner of the number of shares of Company Stock set forth opposite his, her or its name on Exhibit A; and

WHEREAS, in order to induce Parent to enter into the Merger Agreement, Stockholder has agreed to enter into this Voting Agreement.

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

ARTICLE I

DEFINITIONS

1.1 Defined Terms. The following capitalized terms, as used in this Voting Agreement, shall have the meanings set forth below. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement.

(a) Beneficially Own , Beneficial Ownership or beneficial owner with respect to any shares of Company Stock means having beneficial ownership of such securities (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act)), including pursuant to any Contract, whether or not in writing. Without duplicative counting of the same securities by the same holder, securities Beneficially Owned by a Person shall include securities Beneficially Owned by all other Persons who are Affiliates of such Person and who together with such Person would constitute a group within the meaning of Section 13(d)(3) of the

Exchange Act.

(b) Stockholder Shares means all shares of Company Stock held of record or Beneficially Owned by Stockholder, whether currently issued and outstanding or hereinafter acquired, including, without limitation, including by exercising or the vesting of any Company Stock Option, or the vesting of any Company RSU or Company Restricted Stock held of record or Beneficially Owned by Stockholder.

ARTICLE II

TRANSFER AND VOTING OF SHARES

2.1 No Transfer of Stockholder Shares. Prior to the Expiration Time (as defined below), Stockholder shall not, directly or indirectly, (a) sell, pledge, encumber, assign, transfer or otherwise dispose of any or all of its

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Stockholder Shares or any interest in its Stockholder Shares (other than any pledge or encumbrance currently in existence), (b) deposit its Stockholder Shares or any interest in its Stockholder Shares into a voting trust or enter into a voting agreement or arrangement with respect to any of its Stockholder Shares or grant any proxy or power of attorney with respect thereto (other than as contemplated herein) or (c) enter into any Contract with respect to or otherwise agree to the direct or indirect acquisition or sale, pledge, encumbrance, assignment, transfer or other disposition (whether by actual disposition or effective economic disposition due to hedging, cash settlement or otherwise) of any of its Stockholder Shares (any such action in clause (a), (b) or (c) above, a transfer). Notwithstanding anything to the contrary in the foregoing sentence, this Section 2.1 shall not prohibit a transfer of Stockholder Shares by Stockholder (i) if Stockholder is an individual, (A) to any member of Stockholder s immediate family or to a trust solely for the benefit of Stockholder or any member of Stockholder s immediate family, (B) upon the death of Stockholder to Stockholder s heirs or (C) to a charitable entity qualified as a 501(c)(3) organization under the Code or (ii) if Stockholder is not a natural person, to an Affiliate controlled by Stockholder or under common control with Stockholder, as applicable; provided, however, that in each case a transfer shall be permitted only if, and as a condition precedent to the effectiveness of such transfer, the transferee agrees in a writing, satisfactory in form and substance to Parent, to be bound by all of the terms of this Voting Agreement as though such transferee were the Stockholder hereunder. Stockholder shall and hereby does authorize Parent or its counsel to notify the Company s transfer agent that there is a stop transfer order with respect to all of the Stockholder Shares (and that this Voting Agreement places limits on the voting and transfer of the Stockholder Shares); provided that if Parent or its counsel gives such notification, it shall following the Expiration Time (as defined below) further notify the Company s transfer agent that the stop transfer order (and all other restrictions contained in this Voting Agreement) have terminated as of such date.

2.2 Vote in Favor of the Merger and Related Matters. Stockholder, solely in Stockholder s capacity as a stockholder of the Company (and not, if applicable, in Stockholder s capacity as an officer or director of the Company), irrevocably and unconditionally agrees that, from and after the date hereof and until the Expiration Time (as defined below), at any meeting of the stockholders of the Company or any adjournment thereof, or in connection with any action by written consent of the stockholders of the Company, Stockholder shall:

(a) appear at each such meeting or otherwise cause all of its Stockholder Shares to be counted as present thereat for purposes of calculating a quorum; and

(b) vote (or cause to be voted), in person or by proxy, or deliver a written consent (or cause a consent to be delivered) covering, all of its Stockholder Shares: (i) in favor of the adoption of the Merger Agreement and approval of the Merger and the other transactions contemplated by the Merger Agreement, (ii) in favor of any proposal to adjourn or postpone any meeting of the Company s stockholders to a later date if there are not sufficient votes to adopt the Merger Agreement, (ii) in favor of any other matter reasonably relating to the consummation or facilitation of, or otherwise in furtherance of, the Merger and the other transactions contemplated by the Merger

Agreement, (iii) against any Acquisition Proposal and (iv) against any other action, proposal, agreement, transaction or arrangement submitted for approval of the Company s stockholders that is intended, or could reasonably be expected, to impede, interfere or be inconsistent with, delay, postpone, discourage or adversely affect the consummation of the Merger, including, without limitation, any extraordinary transaction, merger, consolidation, sale of assets, recapitalization or other business combination involving the Company or any other action, agreement or arrangement that could reasonably be expected to result in a material breach of any covenant, representation or warranty or any other obligation or agreement of the Company under the Merger Agreement or that could reasonably be expected to result in any of the conditions to the obligations under the Merger Agreement not being fulfilled or satisfied.

2.3 Termination. This Voting Agreement and the obligations of the parties hereunder shall automatically terminate upon the earliest to occur of (a) such time as the Merger Agreement shall have been validly terminated pursuant to its terms, (b) the Effective Time, (c) the End Date and (d) such time as the Merger Agreement is amended to change the form or reduce the amount of Merger Consideration to be paid pursuant thereto (such earliest time, the Expiration Time); provided, however, that the provisions of Article V shall survive any termination of this Voting Agreement.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES

OF THE STOCKHOLDERS

Stockholder hereby represents and warrants to Parent, as of the date of this Voting Agreement, as follows:

3.1 Authorization; Binding Agreement. Stockholder has all legal right, power, authority and capacity to execute and deliver this Voting Agreement, to perform his, her or its obligations hereunder, and to consummate the transactions contemplated hereby. This Voting Agreement has been duly and validly executed and delivered by or on behalf of Stockholder and, assuming the due authorization, execution and delivery of this Voting Agreement by Parent, constitutes a legal, valid and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms (except as enforcement may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws of general applicability affecting creditors rights generally and by general principles of equity).

3.2 No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Voting Agreement to Parent by Stockholder does not, and the performance of this Voting Agreement will not, (i) conflict with or violate any Applicable Law by which Stockholder is bound or affected, (ii) violate or conflict with the articles of incorporation or bylaws or other equivalent organizational documents of Stockholder, if applicable, result in or constitute (with or without notice or lapse of time or both) any breach of or default under, or give to another party any right of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the property or assets of Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Stockholder is a party or by which Stockholder or any of Stockholder s properties or assets is bound or affected. There is no beneficiary or holder of a voting trust certificate or other interest of any trust of which Stockholder is a trustee whose consent is required for the execution and delivery of this Voting Agreement or the consummation by Stockholder of the transactions contemplated by this Voting Agreement.

(b) The execution and delivery of this Voting Agreement to Parent by Stockholder does not, and the performance of this Voting Agreement will not, require any consent, approval, authorization, waiver, order or permit of, or filing with or notification to, any third party or any Governmental Authority, except where the failure to obtain such consents, approvals, authorizations, waivers, orders or permits, or to make such filings or notifications, would not interfere with Stockholder s ability to perform Stockholder s obligations hereunder.

3.3 Litigation. There is no Legal Proceeding pending or, to the knowledge of Stockholder, threatened, against Stockholder or any of Stockholder s Affiliates or any

of their respective properties or assets or any of their respective officers, directors, partners, managers or members (in their capacities as such), as applicable, that would interfere with Stockholder s ability to perform his, her or its obligations hereunder or that would prevent, enjoin, alter or delay any of the transactions contemplated by this Voting Agreement.

3.4 Title to Stockholder Shares. As of the date of this Voting Agreement, Stockholder is the record or beneficial owner of the shares of Company Stock set forth opposite its name on Exhibit A. Stockholder has good title to Stockholder s Stockholder Shares free and clear of all Liens other than pursuant to this Voting Agreement and applicable securities Laws. As of the date of this Voting Agreement, Stockholder s Stockholder Shares constitute all of the shares of Company Stock Beneficially Owned or owned of record by Stockholder. Except as otherwise set forth in this Voting Agreement, Stockholder has and will have at all times through the Closing Date sole voting power (including the right to control such vote as contemplated herein), sole power of disposition and sole power to agree to all of the matters set forth in this Voting Agreement, in each case with respect to all of its Stockholder Shares.

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3.5 Acknowledgement of the Merger Agreement. Stockholder hereby acknowledges and agrees that Stockholder has received a draft of the Merger Agreement presented to Stockholder as in substantially final form and has reviewed and understood the terms thereof.

ARTICLE IV

COVENANTS OF THE STOCKHOLDERS

4.1 Further Assurances. From time to time and without additional consideration, Stockholder shall execute and deliver, or cause to be executed and delivered, such additional transfers, assignments, endorsements, proxies, consents and other instruments, and shall take such further actions, as Parent may reasonably request for the purpose of carrying out and furthering the intent of this Voting Agreement.

4.2 Waiver of Appraisal Rights. Stockholder hereby irrevocably and unconditionally waives any rights of appraisal or rights to dissent from the Merger that Stockholder may have (including under Section 262 of the DGCL).

4.3 No Inconsistent Agreements. Except for this Voting Agreement, during the term of this Voting Agreement Stockholder shall not: (a) enter into any voting agreement, voting trust or similar agreement with respect to any of the Stockholder Shares, (b) grant any proxy, consent, power of attorney or other authorization or consent with respect to any of the Stockholder Shares or (c) knowingly take any action that would constitute a breach hereof, make any representation or warranty of Stockholder set forth in Article III untrue or incorrect or have the effect of preventing or disabling Stockholder from performing any of its obligations under this Voting Agreement.

4.4 Public Announcements. Stockholder shall not, shall cause its officers, directors, managers, partners or members to not, and shall instruct and use commercially reasonable efforts to cause its Affiliates and each of their respective officers, directors, managers, partners or members (in their capacity as such), as applicable, to not issue any press release with respect to the Merger Agreement, this Voting Agreement, the Merger or any other transactions contemplated by the Merger Agreement without the prior written consent of Parent, except as may be required by applicable Law. Stockholder further agrees to permit the Company and Parent to publish and disclose, including in filings with the SEC and in the press release announcing the transactions contemplated by the Merger Agreement (the Announcement Release), this Voting Agreement and the Stockholder s identity and ownership of the Stockholder Shares and the nature of the Stockholder s commitments, arrangements and understandings under this Voting Agreement, in each case, to the extent the Company or Parent reasonably determines that such information is required to be disclosed by applicable Law (or in the case of the Announcement Release, to the extent the information contained therein is consistent with other disclosures being made by the Company and Parent).

4.5 No Solicitation of Acquisition Proposals. Except as permitted by the Merger Agreement, neither Stockholder nor any of Stockholder s officers, directors, managers, partners or members, as applicable, shall, and such Stockholder shall cause his, her or

its employees, agents, consultants and representatives not to, directly or indirectly, (a) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the making, submission or announcement of any inquiry, proposal or offer (including any inquiry, proposal or offer to the Company s stockholders) which constitutes or would be reasonably expected to lead to any Acquisition Proposal, or (b) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of the Company Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of the Company Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by any Third Party that is reasonably expected to make, or is otherwise seeking to make, or has made, an Acquisition Proposal (other than, solely in response to an unsolicited inquiry, to refer the inquiring Third Party to this Section 4.5 and to limit its conversation or other communication exclusively to such referral).

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4.6 Fiduciary Duties. Notwithstanding anything in this Agreement to the contrary: (i) Stockholder makes no agreement or understanding herein in any capacity other than in Stockholder s capacity as a record holder and beneficial owner of the Stockholder Shares, and not in Stockholder s capacity as a director or officer of the Company or any of the Company Subsidiaries, and (ii) nothing herein will be construed to limit or affect any action or inaction by Stockholder or any representative of Stockholder, as applicable, serving on the board of directors of the Company or any Company Subsidiary or as an officer of the Company or any Company Subsidiary, acting in such person s capacity as a director or officer of the Company or any Company Subsidiary.

4.7 Additional Purchases. Stockholder agrees that any Company Stock (or any Company Securities related thereto) acquired or purchased by him, her or it after the execution of this Voting Agreement shall be subject to the terms of this Voting Agreement to the same extent as if they constituted Stockholder Shares as of the date of this Voting Agreement.

ARTICLE V

GENERAL PROVISIONS

5.1 Entire Agreement; Amendments. This Voting Agreement, and to the extent referenced herein, the Merger Agreement, constitute the entire agreement of the parties hereto and supersede all prior agreements and undertakings, both written and oral, between the parties hereto with respect to the subject matter hereof. This Voting Agreement may not be amended or modified except in an instrument in writing signed by, or on behalf of, the parties hereto.

5.2 Assignment. No party to this Voting Agreement may assign any of its rights or obligations under this Voting Agreement without the prior written consent of the other parties hereto, except that Parent may assign, in its sole discretion, all or any of its rights, interests and obligations hereunder to any assignee of Parent s rights under the Merger Agreement. Any assignment contrary to the provisions of this Section 5.2 shall be null and void.

5.3 Severability. The provisions of this Voting Agreement shall be deemed severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability or the other provisions hereof. If any provision of this Voting Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

5.4 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Voting Agreement are not performed in accordance with their specific terms or were otherwise breached and that money damages or other legal remedies would not be an adequate remedy for any such damage. Stockholder agrees that, in the event of any breach or threatened breach by Stockholder of any covenant or obligation contained in this Voting Agreement, Parent shall be entitled to seek (a) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, with Stockholder agreeing that it shall waive the defense of adequacy of a remedy at law in any such Legal Proceeding, and/or (b) an injunction restraining such breach or threatened breach, this being in addition to any other remedy to which Parent is entitled at law or in equity. Stockholder further agrees that neither Parent nor any other party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.4, and Stockholder irrevocably waives any right he, she or it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

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5.5 Governing Law; Jurisdiction; Jury Trial.

(a) This Voting Agreement and all actions (whether at law, in contract, in tort or otherwise) arising out of or relating to this Voting Agreement or the negotiation, validity or performance of this Voting Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. All Legal Proceedings (whether at law, in contract, in tort or otherwise) arising out of or relating to this Voting Agreement or the negotiation, validity or performance of this Voting Agreement shall be heard and determined in the Court of Chancery of the State of Delaware, and the parties hereto irrevocably submit to the jurisdiction of such court (and, in the case of appeals, the appropriate appellate court therefrom), in any such Legal Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Legal Proceeding. The consents to jurisdiction set forth in this paragraph shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. The parties hereto agree that service of any court paper may be made in any manner as may be provided under the applicable Laws or court rules governing service of process in such court. The parties hereto agree that a final judgment in any such Legal Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS VOTING AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS VOTING AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS VOTING AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.5(C).

5.6 No Waiver. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Neither party shall be deemed to have waived any claim available to it arising out of this Voting Agreement, or any right, power or privilege hereunder, unless the waiver is expressly set forth in writing duly executed

and delivered on behalf of such party. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

5.7 Expenses. Each party shall bear their respective expenses, costs and fees (including attorneys fees, if any) in connection with the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the Merger is effected.

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

if to Parent:

TDK Corporation

Attention:

Facsimile:

Email:

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with a copy to (for information purposes only):

Pillsbury Winthrop Shaw Pittman LLP

2550 Hanover Street

Palo Alto, CA 94304-1115

Attention: Jorge del Calvo
Allison Leopold Tilley
Facsimile: 650.233.4545
E-mail:

and

Jones Day

3161 Michelson Drive, Suite 800

Irvine, California 92648

Attention: Jonn Beeson and Kevin Espinola
Facsimile: 1-949-553-7539
E-mail:

if to Stockholder, to the address or facsimile number set forth on the signature page hereof or, if not set forth thereon, to the address reflected in the stock books of the Company, or to such other address, or facsimile number or electronic mail address as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. In order to be deemed valid notice under this 5.8, e-mail notice must state that it constitutes notice under this Voting Agreement and must be followed by written notice delivered by overnight courier or hand-delivered via valid delivery pursuant to such method within two Business Days from the date of the original e-mail notice.

5.9 No Third-Party Beneficiaries. This Voting Agreement is for the sole benefit of, shall be binding upon, and may be enforced solely by, Parent and Stockholder and nothing in this Voting Agreement, express or implied, is intended to or shall confer upon any Person (other than Parent and Stockholder) any legal or equitable right, benefit or remedy of any nature whatsoever; provided, that the Company shall be a third party beneficiary of this Voting Agreement and shall be entitled to enforce any power, right, privilege or remedy of Parent hereunder.

5.10 Headings. The heading references herein are for convenience of reference only and do not form part of this Voting Agreement, and no construction or reference shall

be derived therefrom.

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

[remainder of page left intentionally blank]

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IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the date first written above.

TDK CORPORATION

By:
Name:
Title:

STOCKHOLDER

If other than a natural person:

Name of Stockholder*

By:
Name:
Title:
Date:
Address:

Facsimile:

***If a natural person*:**

Name:*
Date:
Address:

Facsimile:

* Complete exactly as name appears on stock certificates

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Exhibit A

Stockholder Name	*Company Common Stock*

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INVENSENSE, INC.

1745 TECHNOLGY DRIVE

SUITE 200

SAN JOSE, CA 95110

VOTE BY INTERNET - www.proxyvote.com

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

ELECTRONIC DELIVERY OF FUTURE PROXY MATERIALS

If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

VOTE BY PHONE - 1-800-690-6903

Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS: ***KEEP THIS PORTION FOR YOUR RECORDS***

DETACH AND RETURN
THIS PORTION ONLY

THIS PROXY CARD IS ONLY VALID WHEN SIGNED AND DATED.

The Board of Directors recommends you vote FOR each of Proposals 1, 2 and 3.

	For	***Against***	***Abstain***
1. To adopt the Agreement and Plan of Merger, dated as of December 21, 2016, entered into by and among InvenSense, TDK Corporation and TDK Sensor Solutions Corporation, pursuant to which InvenSense would be acquired by TDK Corporation through a merger of InvenSense with TDK Sensor Solutions Corporation (the Merger), and each share of InvenSense common stock issued and outstanding immediately prior to the completion of the Merger, other than shares owned by InvenSense, TDK Corporation and their respective subsidiaries (which shares will be cancelled) and shares held by stockholders who have validly exercised their appraisal rights under Delaware law, will automatically be cancelled and converted into the right to receive $13.00 in cash, without interest.			
2. To approve, on a non-binding, advisory basis, the compensation that may be paid or become payable to InvenSense s named executive officers in connection with the Merger.			
3. To approve the postponement or adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies in favor of the Proposal 1 if there are insufficient votes at the time of the special meeting to approve Proposal 1.			

NOTE: In his or her discretion, the proxies are authorized to vote upon such other business as may properly come before the meeting or any postponements or adjournments thereof.

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name, by authorized officer.

Signature [PLEASE SIGN WITHIN BOX]	***Date***	***Signature [(Joint Owners)***	***Date***

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INVENSENSE, INC.

Special Meeting of Stockholders

[Date ,] 2017 [:00] [A/PM]

This proxy is solicited by the Board of Directors

The undersigned hereby appoints Behrooz Abdi and David Young, or either of them, as proxies, each with the power to appoint his substitute, and hereby authorizes them to represent and to vote, as designated on the reverse side of this ballot, all of the shares of common stock of InvenSense, Inc. that the stockholder(s) is/are entitled to vote at the Special Meeting of Stockholders to be held at 1745 Technology Drive, San Jose, California 95110, at [:00] [A/PM] on [Day], [Date, 2017], and any adjournment or postponement thereof.

This proxy, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors recommendations.

Continued and to be signed on reverse side