

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

**FORM 10-K**

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

For the Fiscal Year Ended December 31, 2019

OR

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

For the Transition Period from to

Commission File Number 001-35506

**PROOFPOINT, INC.**

(Exact name of Registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**892 Ross Drive**

**Sunnyvale, California**

(Address of principal executive offices)

**51-0414846**

(I.R.S. employer  
identification no.)

**94089**

(Zip Code)

**(408) 517-4710**

(Registrant's telephone number, including area code)

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

Trading Symbol(s)

PFPT

Name of each exchange on which registered

NASDAQ Global Select Market

Title of Each Class  
Common Stock, \$0.0001 par value per share

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based upon the closing price of a share of the registrant's common stock on June 30, 2019 as reported by the NASDAQ Global Select Market on that date, was approximately \$6,612 million. This calculation does not reflect a determination that certain persons are affiliates of the registrant for any other purpose.

The number of shares outstanding of the registrant's common stock as of February 7, 2020 was 57,003,654 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for its 2020 Annual Meeting of Stockholders (the "Proxy Statement"), to be filed with the Securities and Exchange Commission, are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2019.

**PROOFPOINT, INC.**  
**FORM 10-K**  
**For the Fiscal Year Ended December 31, 2019**  
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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this Annual Report on Form 10-K other than statements of historical fact, including statements regarding our future results of operations and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in Part I, Item 1A, “Risk Factors” in this Annual Report on Form 10-K. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Annual Report on Form 10-K may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

Unless expressly indicated or the context requires otherwise, the terms “Proofpoint,” “Company,” “Registrant,” “we,” “us,” and “our” mean Proofpoint, Inc. and its subsidiaries unless the context indicates otherwise.

ITEM 1. BUSINESS

Overview

Proofpoint is a leading next-generation cybersecurity company that enables large and mid-sized organizations worldwide to protect the way their people work from advanced threats and compliance risks. Our integrated suite of products works together to help organizations build people-centric security and compliance programs. We provide threat protection, information protection, user protection, business ecosystem protection, and compliance solutions to address today's rapidly changing threat and compliance landscape. Our solutions are built on a flexible, cloud-based platform and leverage proprietary technologies - including big data analytics, machine learning, deep content inspection, secure storage, advanced encryption, intelligent message routing, dynamic malware analysis, threat correlation, and virtual execution environments.

Every company's greatest asset and greatest security risk is its people. Cyberattacks have fundamentally shifted from targeting infrastructure to targeting people, relying on tricking users into running code, divulging their passwords, or even sending money or data. This transformation of the threat landscape manifests in nearly every form of cyber threat, from nation state advanced persistent threat (APT) actors relying on phishing, through to cybercriminals launching massive ransomware email campaigns, and more targeted campaigns designed to steal valuable data from both legacy and cloud-based systems. At the same time, the rapid adoption of cloud applications has increased organizations' attack surface by moving both threats and sensitive data away from the traditional network perimeter, reducing the effectiveness of many existing security products. These factors have contributed to an increasing number of severe data breaches and expanding regulatory mandates, notably the European Union's General Data Protection Regulation (GDPR), all of which have accelerated demand for effective threat protection and compliance solutions.

Our platform addresses this growing challenge by not only protecting data as it flows into and out of the enterprise via on-premises and cloud-based email, social media, and other cloud applications, but also by keeping track of this information as it is modified and distributed throughout the enterprise for compliance and data loss prevention, and securely archiving these communications for compliance and discovery. We help organizations reduce their critical risk in five major ways:

- Protecting users from the advanced attacks that target them via email, web, networks, social media, and cloud apps;
- Preventing the theft or inadvertent loss of sensitive information and, in turn, ensuring compliance with regulatory data protection mandates;
- Improving the resilience of end users to the threats that target them and training them to be better caretakers of their organizations' critical data;
- Collecting, retaining, supervising and discovering communications and sensitive data for compliance and litigation support; and
- Enabling organizations to respond quickly to security issues, providing both the intelligence and the context to prioritize incidents and orchestrate remediation actions.

Our platform and its associated solutions are sold to customers on a subscription basis and can be deployed through our unique cloud-based architecture that leverages both our global data centers as well as optional points-of-presence behind our customers' firewalls. Our flexible deployment model enables us to deliver superior security and compliance while maintaining the favorable economics afforded by cloud computing, creating a competitive advantage for us over legacy on-premises and cloud-only offerings.

We were founded in 2002 to provide a unified solution to help enterprises address their growing data security requirements. Our first solution was commercially released in 2003 to combat the burgeoning problem of spam and viruses and their impact on corporate email systems. To address the evolving threat landscape and the adoption of communication and collaboration systems beyond corporate email and networks, we have broadened our solutions to defend against a wide range of threats, including email, mobile apps and social media, to protect the information people create from both compromise and compliance risks, and to archive and govern corporate information. Today, our solutions are used worldwide to protect well over 100 million end users at enterprise customers, and millions more via service providers through our Cloudmark division. We market and sell our solutions worldwide both directly through our sales teams and indirectly through a hybrid model where our sales organization actively assists our network of distributors and resellers. We also distribute our solutions through strategic partners.

## Proofpoint Solutions

Our integrated suite of on-demand security-as-a-service solutions enables large and mid-sized organizations to protect people throughout the enterprise from advanced attacks and compliance risks. Our comprehensive platform provides a secure email gateway, advanced threat protection, security awareness training, threat intelligence, email authentication, email encryption, data loss prevention, digital risk protection, cloud application protection, web browser isolation, archiving, e-discovery, and threat response capabilities. These solutions are built on a cloud-based architecture, protecting enterprises and their customers from inbound threats via email, social media, and mobile apps, while identifying and protecting enterprise data not only where it is stored within the enterprise but also as it transits beyond the organization's borders such as via email or social media. We have pioneered the use of innovative technologies to deliver better ease-of-use, greater protection against the latest advanced threats, and lower total cost of ownership than traditional alternatives. The key elements of our solution include:

- *Superior protection against both advanced and targeted threats.* We use a combination of proprietary technologies for big data analytics, machine learning, deep content inspection, static and dynamic malware analysis, protocol analysis, threat correlation, threat intelligence extraction, and virtual execution environments to predictively and actively detect and stop targeted "spear phishing" and other sophisticated advanced threats, including malicious attachments, polymorphic threats, zero-day exploits, user-transparent "drive-by" downloads, malicious web links, hybrid threats (such as links inserted into attached files), malware free attacks like impostor threats and credential phishing, and other penetration tactics. By processing, analyzing and correlating billions of data points on a daily basis, we can recognize anomalies in order to predictively detect targeted attacks before users are exposed. Our deep content inspection technology enables us to identify malicious message attachments and distinguish between valid messages and "phishing" messages designed to look authentic and trick the end user into divulging sensitive data or clicking on a malicious web link. Our machine learning technology enables us to detect targeted "zero-hour" attacks in real-time, even if they have not been seen previously at other locations, and quarantine them appropriately. Our dynamic malware analysis and virtual execution environment technologies enable us to examine web site destinations and downloadable files to identify and block potentially hostile code that would otherwise compromise end user computers, even in cases where the web sites are considered reputable or the attachment's malicious payload is obfuscated or otherwise disguised. Our threat correlation technologies enable us to rapidly confirm and contain threats, providing rapid, automated protection. In addition, our threat intelligence and response capabilities enable our customers to both prioritize threats that may have compromised them and orchestrate or automate protective countermeasures.
- *Comprehensive, integrated email security, cloud security, advanced threat, information protection and archiving, and digital risk protection product families.* We offer a comprehensive solution for email security that we believe is unparalleled in the market. Our Threat Protection product family includes solutions to protect organizations across the predominant threat vectors, including email, web, social media, and cloud applications. To protect enterprise data from security and compliance risks, our Information Protection product family includes a suite of security and compliance solutions. Finally, we enable organizations to look beyond their borders for threats targeting their customers across email phishing, malicious web domains, compromised cloud accounts, and fraudulent social media accounts.
- *Designed to empower end users.* Unlike legacy offerings that simply block communication or report audit violations, our solutions actively enable secure business-to-business and business-to-consumer communications. Our easy-to-use policy-based email encryption service automatically encrypts sensitive emails and delivers them to any PC or mobile device. In addition, our secure file-transfer solution makes it easy for end users to securely share various forms of documents and other content that are typically too large to send through traditional e-mail systems. All our solutions provide mobile-optimized capabilities to empower the growing number of people who use mobile devices as their primary computing platform. We also provide solutions that train end users to be the last line of defense against cyber-attacks.
- *Security optimized cloud architecture.* Our multi-tenant security-as-a-service solution leverages a distributed, scalable architecture deployed in our global data centers for deep content inspection, global threat correlation and analytics, high-speed search, secure storage, encryption key management, software updates, intelligent message routing, and other core functions. Our architecture also enables us to look across hundreds of billions of data points gathered from across our product portfolio and intelligence feeds to better correlate and analyze both targeted and broad-based threat campaigns. Customers can choose to deploy optional physical or virtual points-of-presence behind their firewalls for those who prefer to deploy certain functionality inside their security perimeter. This architecture enables us to leverage the benefits of the cloud to cost-effectively deliver superior security and compliance, while optimizing each deployment for the customer's unique threat environment.
- *Extensible security-as-a-service platform.* The key components of our security-as-a-service platform, including services for secure storage, content inspection, reputation, big data analytics, encryption, key management, and identity and policy, can be exposed through application programming interfaces, or APIs, to integrate with internally developed applications as well as with those developed by third-parties. In addition, these APIs provide a means to integrate with the other security and compliance components deployed in our customers' infrastructures, including Proofpoint's ecosystem partners.

## Our Security-as-a-Service Platform

We provide a multi-tiered security-as-a-service platform consisting of solutions, platform technologies and infrastructure. Our platform currently includes product families and related bundles for the convenience of our customers, distributors and resellers. Each of these solutions is built as an aspect of our security-as-a-service platform, which includes both platform services and enabling technologies for both security and compliance. Our platform services provide the key functionality to enable our various solutions while our enabling technologies work in conjunction with our platform services to enable the efficient construction, scaling and maintenance of our customer-facing solutions.

Our suite is delivered by a cloud infrastructure and can be deployed as a secure cloud-only solution, or as a hybrid solution with optional physical or virtual points-of-presence behind our customers' firewalls for those who prefer to deploy certain functionality inside their security perimeter. In all deployment scenarios, our cloud-based architecture enables us to leverage the benefits of the cloud to cost-effectively deliver superior security and compliance while maintaining the flexibility to optimize deployments for customers' unique environments. The modularity of our solutions enables our existing customers to implement additional modules in a simple and efficient manner.

### Product Families

#### *Proofpoint Threat Protection*

Proofpoint Threat Protection products leverage a broad set of detection techniques that are constantly refined as the threat landscape evolves. The products detect and prevent threats across email, web, networks, and cloud applications, and deliver rich intelligence to enable enterprises to understand as much as possible about the attacks they are seeing and the adversaries behind them.

Key capabilities within the Threat Protection products include:

- *Email security and continuity.* Provides protection from unwanted and malicious email, with granular visibility and business continuity for organizations of all sizes. It provides IT and security teams with confidence in securing end users from email threats and maintain email communications during outages.
- *Email management essentials for small to medium organizations.* Our suite of security-as-a-service and compliance solutions specifically designed for distribution across managed service providers and dedicated security resellers. Key capabilities include inbound email filtering to block spam and malware, outbound filtering for compliance with company policies, email continuity to enable email service availability, targeted attack protection, and email archiving.
- *Protection from targeted attacks.* Enterprises are protected against both commodity and advanced threats such as phishing and other targeted email attacks using big data analysis, predictive, virtual execution, static analysis, protocol analysis, and dynamic malware analysis techniques to identify and apply additional security controls against suspicious messages, attachments and any associated links to the web. The same detection techniques are extended to look for malicious content in enterprise social media accounts, malicious links and files sent to users via cloud applications. It also detects suspicious login activity that could indicate signs of account compromise.
- *Detection of compromised cloud accounts and internal email threats.* We take a multi-layered approach to protect an organization's internal email by scanning all internal email for spam, malicious attachments, and malicious URLs. We also provide automated protection of account compromise in Office 365 and other cloud applications via a Cloud Access Security Broker solution ("CASB"). These threats typically start with phishing or other techniques, such as credential-stealing malware and brute-force credential stuffing. Compromised accounts are then used to launch lateral attacks, everything from business email compromise ("BEC") to internal phishing attacks, both inside and outside organizations.
- *Security orchestration to respond quickly to security alerts.* Provides threat information and indicators of compromise ("IoCs") correlation, aggregating across Proofpoint and other third-party security products, to confirm and contain system compromises. By taking advantage of this automated incident response, enterprises can minimize exfiltration windows and leverage staff for breach prevention and mitigation. In addition, it can be leveraged to automatically remove malicious emails that have been delivered to users' email inboxes, reducing the potential risk exposure.
- *Web browser isolation.* Allows end users to access websites and personal webmail from corporate devices while preventing malware or malicious content from impacting the user or device. In addition, it allows organizations to rewrite potentially malicious links in inbound emails to open in the protected isolation environment, eliminating the risk of the first click on a previously unseen threat.
- *Threat intelligence feed and ruleset.* Verified threat intelligence from one of the world's largest malware exchanges. Unlike other intelligence sources that report only domains or IP addresses, ET Intelligence includes a five-year history, proof of conviction, more than 40 threat categories and related IPs, domains, and samples. This also comes in the form of a timely and accurate rule set for detecting and blocking threats using existing network security appliances—including next generation firewalls (NGFW) and network IDS/IPS.

Key benefits of Proofpoint Threat Protection include:

- *Superior protection from advanced threats, spam and viruses.* Proofpoint's agility in deploying new detection measures and adjusting defenses in response to changes in the threat landscape results in high effectiveness in stopping threats before they reach enterprise users. Protects against advanced threats, spam and other malware such as remote access Trojans, banking Trojans, ransomware, viruses, and spyware.
- *Comprehensive outbound threat protection.* Analyzes all outbound email traffic to block spam, viruses and other malicious content from leaving the corporate network and pinpoint the responsible compromised systems.
- *Protection from internal threats, including compromised email or cloud accounts.* Security teams gain visibility into cloud accounts that sent malicious emails, weaponized files that are shared with colleagues and business partners or exhibited suspicious activity, so they can quickly track down and act upon potentially compromised accounts.
- *Curated threat intelligence.* Proofpoint's threat research team tracks campaigns and actors, providing detailed research in addition to curated IoCs. The high quality of this threat intelligence enables customers to better prioritize their responses to alerts generated by Proofpoint products, as well as leverage the intelligence to hunt for threats that may have compromised their enterprises via other channels.
- *Effective, flexible policy management and administration.* Provides a user-friendly, web-based administration interface and robust reporting capabilities that make it easy to define, enforce and manage an enterprise's messaging policies.
- *Easy-to-use end user controls.* Gives email users easy, self-service control over their individual email preferences within the parameters of corporate-defined messaging policies.
- *Superior protection from business email compromise.* Combining a dynamic classifier on the email gateway with a proactive authentication solution and a lookalike domain discovery service delivers protection from these attacks.
- *Business continuity.* Provides an always-on insurance policy for crucial business communications via email.
- *Automation of incident response to save time and optimize resources.* Automate the threat data enrichment, forensic verification, and response processes after a security alert is received. Automatically confirm malware infections, check for evidence of past infections, and enrich security alerts by automatically adding internal and external context and intelligence.
- *Secure, anonymous web browsing for employees.* Mitigates security, productivity, and privacy challenges associated with untrusted, high-risk web use by employees.

#### *Proofpoint Information Protection*

A comprehensive data protection strategy must address both security and compliance risks. Our data loss prevention, encryption and compliance solutions defend against leaks of confidential information, and helps ensure compliance with common U.S., international and industry-specific data protection regulations - including the Health Care Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act, Canada's Personal Information Protection and Electronic Documents Act, as well as acts such as CA SB 24, MA 201 CMR 17.00, ITAR, NERC-CIP, CFTC red flag rules, Basel II, EuroSOX (Directive 84/253/EEC), the European Union GDPR, and the Payment Card Industry Data Security Standard (PCI-DSS).

Key capabilities within Proofpoint Information Protection products include:

- *Advanced data loss prevention.* Our advanced data loss prevention solution identifies regulated private content, valuable corporate assets and confidential information before it leaves the organization via email, cloud applications, or our Secure Share solution. Pre-packaged smart identifiers and dictionaries automatically and accurately detect a wide range of regulated content such as social security numbers, health records, credit card numbers, and driver's license numbers. In addition to regulated content, our machine learning technology can identify confidential, organization-specific content and assets. Once identified and classified, sensitive data can be blocked, encrypted and transmitted or re-routed internally based on content and identity-aware policies.
- *Policy-based encryption.* Automatically encrypts regulated and other sensitive data before it leaves an organization's security perimeter without requiring cumbersome end user key management. This enables authorized external recipients, whether or not they are our customers, to quickly and easily decrypt and view content from most devices.
- *Encrypted message portal.* Organizations in regulated industries like financial services and healthcare frequently need to share highly confidential messages with outside parties. Proofpoint provides a "pull encryption" portal that enables these organizations to create branded portals that seamlessly integrate with their email systems to securely communicate with their customers, patients, or other third parties.

- *Secure file sharing.* Cloud-based security-focused solution designed to enable enterprise users to securely exchange large files with ease while staying compliant with enterprise data policies.
- *Discovery of sensitive data in on-premises and cloud-based file stores.* Automated discovery and remediation solution that identifies sensitive content across the enterprise and enables corrective action, while reducing risk of data breaches and compliance violations.
- *Zero Trust Network Access.* With organizations moving their infrastructure and applications to the cloud, Zero Trust Network Access helps organizations to limit employee or contractor access to only authorized resources, rather than the entire corporate network.
- *Insider Threat Management platform.* Lightweight endpoint agent technology and data risk analytics to provide enterprises visibility into user activity with their sensitive data and the ability to immediately remediate risk.

Key benefits of Proofpoint Information Protection include:

- *Regulatory compliance.* Data Loss Prevention and Encryption enable outbound messages to comply with national and state government and industry-specific privacy regulations, while Enterprise Archive helps organizations meet regulatory requirements by archiving all messages and content according to compliance retention policies and enabling staff to systematically review messages for compliance supervision. SaaS Protection extends the same compliance functionality to cloud applications like Office 365, Box, Salesforce, and G Suite.
- *Superior malicious and accidental data loss protection.* Protects against the loss of sensitive data, whether from a cybercriminal attempting to exfiltrate valuable data from a compromised system, or from an employee accidentally distributing a file to the wrong party through email, webmail, social media, file sharing, or other Internet-based mechanisms for publishing content.
- *Easy-to-use secure communication.* Allows corporate end users to easily share sensitive data without compromising security and privacy, and enables authorized external recipients to transparently decrypt and read the communications from any device. Our mobile-optimized interfaces provide an easy experience for the rapidly growing number of recipients on smartphones and tablets.
- *Reduction in “attack surface”.* Enables the automated protection of sensitive data, reducing the amount of critical information potentially exposed to an attacker in a breach scenario.

#### *Proofpoint User Protection*

Proofpoint User Protection combines simulation, assessments, education, reinforcement, and measurement to provide the ideal foundation for your security awareness and training program, utilizing hundreds of different phishing templates across dozens of languages and categories to simulate attacks and evaluate end users on various threats, including malicious attachments, embedded links, and requests for personal data. Users who are deceived by simulated attacks receive “just-in-time teaching” and administrators receive real-time reporting to focus awareness efforts and track progress.

Key capabilities within Proofpoint User Protection products include:

- *Simulating phishing attacks.* Create simulated attacks that include attachments, embedded links, and requests for personal data in different languages.
- *End user reporting of phishing.* End users can report a suspicious message with a single click using the email reporting button. Automatically analyze reported messages against multiple intelligence and reputation systems. The system can be configured with other Proofpoint solutions to delete or quarantine real threats with a single click.
- *Security awareness training and assessments.* Educate employees to improve awareness, change user behavior, and reduce security risk to the organization. Proofpoint provides a comprehensive and effective library of anti-phishing training.

Key benefits of Proofpoint User Protection include:

- *Understand organization’s security and compliance risk.* Track training, phishing simulation, and threat reporting results to build your security awareness program accordingly.
- *Change end user behavior to reduce risk to your organization.* Application of our continuous training methodology produces highly effective results for changing user behavior.



## *Proofpoint Business Ecosystem Protection*

Proofpoint Business Ecosystem Protection looks beyond the enterprise perimeter to deliver real-time, omnichannel digital risk discovery and protection from email fraud, brand fraud, data loss, physical threats, and cyber threats. With this solution, enterprises can engage with their customers across web, email, mobile, and social media with the confidence that their brands and customers are safe from all forms of digital risk.

Key capabilities within Proofpoint Business Ecosystem Protection products include:

- *Preventing email fraud.* Enables organizations to understand who is sending email from their domains and create a policy to both authenticate legitimate email and block fraudulent email.
- *Detecting brand fraud.* Fraudsters imitate companies' brands across digital channels to target customers with phishing scams, malware, phishing, and counterfeit products. Using a native cloud-based platform, customers can quickly find fraudulent social media accounts, web domains, and mobile apps that are affiliated with their brands.
- *Detecting external threats.* External threat management tools enable organizations to quickly identify leaked intellectual property, credentials, and customer data on the web or dark web. Additionally, detection measures can identify cyber criminals using digital tools to plan and execute cyber-attacks that target company's digital presence and/or physical attacks on its executives, employees, and physical locations.
- *Compliance monitoring and protection.* Leveraging social media APIs, the platform can monitor and apply content policies to the brand's owned social media accounts for security, compliance and acceptable use. Using proprietary Deep Social Linguistic Analysis technology, social media and brand managers can aggregate content from across their enterprise and review it for security, risk and compliance violations (including Financial Industry Regulatory Authority "FINRA", Federal Financial Institutions Examination Council, Food and Drug Administration, SEC, Financial Conduct Authority violations), allowing them to safely syndicate content distribution across their social media marketing platforms.

Key benefits of Proofpoint Business Ecosystem Protection include:

- *Reduction of fraud.* Enterprises can reduce both the direct and indirect costs relating to fraud by rapidly and proactively identifying fraudulent web domains, mobile apps, and social media accounts leveraged by cyber criminals in phishing and other forms of attacks.
- *Visibility into external threats.* Organizations benefit from early warnings of potentially harmful threats to physical sites, digital presences, and key executives, as well as well as unauthorized posting or resale of their private data.
- *Enhanced compliance.* Reduces potential liability from inadvertent posting of sensitive data and demonstrates compliance with more than 35 standards and industry regulations. Automates compliance review processes and social advocate programs through seamless integration with leading social media management suites.

## *Proofpoint Compliance Solutions*

Proofpoint Compliance Solutions are designed to ensure accurate enforcement of data governance, data retention and supervision policies and mandates; cost-effective litigation support through efficient discovery; and active legal-hold management. It can store, govern and discover a wide range of data including email, instant message conversations, social media interactions, and other files throughout the enterprise. With this solution, enterprises can engage with their customers across web, email, mobile, and social media with the confidence that their brands and customers are safe from all forms of digital risk.

The key features of the Compliance Solutions product family include:

- *Secure cloud storage.* With our proprietary double-blind encryption technology and the associated data storage architecture, all email messages, files and other content are encrypted with keys controlled by the customer before the data enters the Proofpoint Enterprise Archive. This ensures that even our employees and law-enforcement agencies cannot access a readable form of the customer data without authorized access by the customer to the encryption keys stored behind the customer's firewall.
- *Flexible remediation and supervision.* Content, identity and destination-aware policies enable effective remediation of potential data breaches or regulatory violations. Remediation options include stopping the transfer completely, automatically forcing data-encryption, or routing to a compliance supervisor or the end user for disposition. The solution also provides comprehensive reporting on potential violations and remediation using our analytics capabilities.
- *Search performance.* By employing parallel, big data search techniques, we can deliver search performance measured in seconds, even when searching hundreds of terabytes of archived data. Traditional on-premise solutions can take hours or even days to return search results to a complex query.

- *Flexible policy enforcement.* Enables organizations to easily define and automatically enforce data retention and destruction policies necessary to comply with regulatory mandates or internal policies that can vary by user, group, geography or domain.
- *Active legal-hold management.* Enables administrators or legal professionals to easily designate specific individuals or content as subject to legal-hold. Proofpoint Enterprise Archive then provides active management of these holds by suspending normal deletion policies and automatically archiving subsequent messages and files related to the designated matter.
- *End user supervision.* Leveraging our flexible workflow capabilities, Proofpoint Enterprise Archive analyzes all electronic communications, including email and communications from leading instant messaging and social networking sites, for potential violations of regulations, such as those imposed by FINRA and the SEC in the financial services industry.

Key benefits of Proofpoint Compliance Solutions include:

- *Proactive data governance.* Allows organizations to create, maintain and consistently enforce a clear corporate data retention policy, reducing the risk of data loss and the cost of e-discovery.
- *Efficient litigation support.* Provides advanced search features that reduce the cost of e-discovery and allow organizations to more effectively manage the litigation hold process.
- *Reduced storage and management costs.* Helps to simplify mailbox and file system management by automatically moving storage-intensive attachments and files into cost-effective cloud storage.

### **Platform Services**

Our platform services provide the key functionality to implement our various solutions, using our enabling technologies. Our platform services primarily consist of:

- *Threat detection.* Proofpoint deploys an ensemble approach to detect both malware and malware-free attacks. The approach combines multiple forms of detection, including composite reputation correlation, sandboxing for malicious attachments, URLs, and credential phishing, code analysis, network detection, and classifiers for phishing and impostor/BEC attacks.
- *Threat intel extraction.* Proofpoint leverages a dedicated environment to learn as much as possible about threats that are detected by any part of the ensemble approach. The extraction environment leverages virtual sandboxes, physical hardware, and human analysts to induce malware to detonate and gather as much forensic detail about it as possible.
- *Nexus threat graph.* Proofpoint synthesizes threat intelligence gathered from the vectors and threat feeds in a graph database known as Proofpoint Nexus, which is leveraged by threat researchers to correlate threats into campaigns, analyze new threats for links to known actors, and lend context (e.g. what vertical industries are seeing a given campaign) to all detected threats.
- *Real-time detection.* Proofpoint leverages platform services to be in the flow of the movement of potentially sensitive data, including our email gateways, API-based social media integrations, mobile applications store scanning tools, and SaaS application API/proxy connectivity.
- *Information classification.* For regulated or otherwise sensitive data, Proofpoint leverages smart identifiers to accurately recognize data types that are relevant from either a security or compliance perspective.
- *Intelligent policy.* Proofpoint's information protection and archive products leverage an intelligent policy framework that spans retention, legal hold, smart identifiers, and compliance frameworks, regardless of where the data may be stored or by which channel it is being sent.

### **Enabling Technologies**

Our enabling technologies are a proprietary set of building blocks that work in conjunction with our application services to enable the efficient construction, scaling and maintenance of our customer-facing solutions. These technologies primarily consist of:

- *Big data analytics.* Indexes and analyzes petabytes of information in real-time to discover threats, detect data leaks and enable end users to quickly and efficiently access information distributed across their organizations.
- *Machine learning.* Builds predictive data models using our proprietary Proofpoint MLX machine learning techniques to rapidly identify and classify threats and sensitive content in real-time.

- *Identity and policy.* Enables the definition and enforcement of sophisticated data protection policies based on a wide set of variables, including type of content, sender, recipient, pending legal matters, time and date, regulatory status and more.
- *Secure storage.* Stores petabytes of data in the cloud cost-effectively using proprietary encryption methods, keeping sensitive data tamper-proof and private, yet fully searchable in real-time.
- *Virtual execution environments.* Exposes suspected malware to a permuted set of instrumented virtual system environments, to assess maliciousness, exploit activity and compromise processes.
- *Intelligent message routing.* Policies can be established by administrators to automatically direct email communications differently through the email network, based on aspects of the messages, for security, compliance, supervisory, system performance, or other reasons.
- *Threat intelligence correlation.* Utilizes inputs from Proofpoint, cloud, and other third-party products to assess IoCs and confirm successful system compromises by malicious actors in near-real-time, then administers network controls to effectively contain the compromised systems.
- *Zero Trust Network Access.* Leverages pioneering network overlay technology to enable users to access only the resources that should be available to them, both in traditional data center and cloud environments.
- *Insider Threat management.* A lightweight endpoint agent paired with an investigation console that both alerts on risky actions and provides forensically sound logs and session recordings to assist in incident investigations.

## **Infrastructure**

We deliver our security-as-a-service solutions through our cloud architecture and international data center infrastructure. We operate thousands of physical and virtual servers across sixteen data centers located in the United States, Canada, the Netherlands, France, Germany, and Australia.

Our cloud architecture is optimized to meet the unique demands of delivering real-time security-as-a-service to global enterprises. Key design elements include:

- *Security.* Security is central to our cloud architecture and is designed into all levels of the system, including physical security, network security, application security, and security at our third-party data centers. Our security measures have met the rigorous standards of SSAE 16 certification. In addition to this commercial certification program, we have also successfully completed the FISMA certification for our cloud-based information protection and archiving solution, enabling us to serve the rigorous security requirements of U.S. federal agencies.
- *Scalability and performance.* By leveraging a distributed, scalable architecture we process billions of requests against our reputation systems and hundreds of millions of messages per day, all in near real-time. Massively-parallel query processing technology is designed to ensure rapid search results over this vast data volume. In addition to this aggregate scalability across all customers, our architecture also scales to effectively meet the needs of several of our largest individual customers, each of which has millions of users and processes tens of millions of messages per day.
- *Hybrid Deployment.* Our cloud architecture enables individual customers to deploy entirely in Proofpoint's global data centers or in hybrid configurations with optional points of presence located behind the customer's firewall. This deployment flexibility enables us to deliver security, compliance and performance tailored to the unique threat profile and operating environment of each customer.
- *High availability.* Our services employ a wide range of technologies including redundancy, geographic distribution, real-time data replication and end-to-end service monitoring to provide 24x7 system availability.
- *Network operations control.* We employ a team of skilled professionals who monitor, manage and maintain our global data center infrastructure and its interoperability with the distributed points of presence located behind our customers' firewalls to ensure 24x7 operations.

## **Customers**

As of December 31, 2019, we had customers of all sizes across a wide variety of industries. A number of our largest customers use our platform to protect more than a million users and handle over a billion messages per day. During the year ended December 31, 2019, two partners accounted for 12% and 11% of total revenue in each year. During the years ended December 31, 2018 and 2017, one partner accounted for 12% of total revenue, respectively. These partners sold to a number of end users, none of which accounted for more than 10% of our total revenue in 2019, 2018 and 2017. In each year since the launch of our first solution in 2003, we have maintained a renewal rate with our existing customers of over 90%.

We target large and mid-sized organizations across all major verticals including aerospace and defense, education, financial services, government, healthcare, manufacturing and retail. We have been particularly successful selling to the largest enterprises in the United States as ranked by Fortune Magazine. We have also had success penetrating the market leaders in a number of significant verticals including:

- 5 of the 5 largest U.S. retailers
- 3 of the 5 largest U.S. aerospace and defense contractors
- 5 of the 5 largest U.S. banks
- 3 of the 5 largest global pharmaceutical companies
- 4 of the 5 largest U.S. petroleum refining companies

## **Sales and Marketing**

### *Sales*

We primarily target large and mid-sized organizations across all industries. Our sales and marketing programs are organized by geographic regions, including Asia-Pacific, EMEA, Japan, North America, and South America, and we further segment and organize our sales force into teams that focus on large enterprises (4,000 employees and above), mid-sized organizations (1,000 - 4,000 employees) and existing customers. In addition, we create integrated sales and marketing programs targeting specific vertical-markets. This vertical-market approach enables us to provide a higher level of service and understanding of our customers' unique needs, including the industry-specific business and regulatory requirements in industries such as healthcare, financial services, retail and education.

We sell through both direct and indirect channels, including technology and channel partners:

- *Direct sales and reseller channel.* We market and sell our solutions to large and mid-sized customers directly through our field and inside sales teams as well as indirectly through a hybrid model, where our sales organization actively assists our network of distributors and resellers. Our sales personnel are primarily located in North America, with additional personnel located in Asia-Pacific, EMEA, Japan and South America. Our reseller partners maintain relationships with their customers throughout the territories in which they operate, providing them with services and third-party solutions to help meet their evolving security requirements. As such, these partners act as a direct conduit through which we can connect with these prospective customers to offer our solutions. Our channel partners include security centric resellers such as CDW, Optiv, and AT&T, as well as distributors such as Ingram Micro and Exclusive Networks.
- *Strategic relationships.* We also sell our solutions indirectly through key technology companies that offer our solutions in conjunction with one or more of their own products or services. These companies each have their own base of customers, and they distribute our products to augment their own branded products and solutions, sometimes under their own brand and sometimes under the Proofpoint brand. In addition, our Cloudmark division delivers email protection to many of the largest global internet service providers.

For sales involving a partner such as a distributor, reseller or strategic partner, the partner engages with the prospective customer directly and involves our sales team as needed to assist in developing and closing an order. At the conclusion of a successful sales cycle, we sell the associated subscription, hardware and services to the partner who in turn resells these items to the customer, with the partner earning a margin based on the amount paid to Proofpoint as compared to the amount charged to the customer. With the order completed, we provide these customers with direct access to our security-as-a-service platform and other associated services, enabling us to establish a direct relationship and provide them with support as part of ensuring that the customer has a good experience with our platform. At the end of the contract term, the partner engages with the customer to execute a renewal order, with our team providing assistance as required.

### *Marketing*

We have a number of marketing initiatives to build awareness about our solutions and encourage customer adoption of our solutions. Our marketing programs include a variety of digital marketing, advertising, conferences, events, white-papers, public relations activities and web-based seminar campaigns targeted at key decision makers within our prospective customers.

We offer free trials, competitive evaluations, and free security and compliance risk assessments to allow prospective customers to experience the quality of our solutions, to learn in detail about the features and functionality of our suite, and to quantify the potential benefits of our solutions.

## **Customer Service and Support**

We believe that our customer service and support provide a competitive advantage and are critical to retaining and expanding our customer base. We conduct regular third-party surveys to measure customer loyalty and satisfaction with our solutions.

### *Proofpoint Support Services*

We deliver 24x7x365 customer support from support centers located in North America, EMEA and Asia-Pacific regions. We offer a wide range of support offerings with varying levels of access to our support resources.

### *Proofpoint Professional Services and Training*

With our security-as-a-service model, our solutions are designed to be implemented, configured, and operated without the need for any training or professional services. For those customers that would like to develop deeper expertise in the use of our solutions or would like some assistance with complex configurations or the importing of data, we offer various training and professional services. Many implementation services can be completed in one day and are primarily provided remotely using web-based conferencing tools. If requested, our professional services organization also provides additional assistance with data importing, design, implementation, customization, or advanced reporting. We also offer a learning center for both in-person and online training and certification.

### **Research and Development**

We devote significant resources to improve and enhance our existing security solutions and maintain the effectiveness of our platform, monitoring the threat landscape in real-time and making constant adjustments to remain effective as the threat landscape shifts. We also work closely with our customers to gain valuable insights into their threat environments and security management practices to assist us in designing new solutions and features that extend the data protection, archiving and governance capabilities of our platform. Our technical staff monitors and tests our software on a regular basis, and we maintain a regular release process to update and enhance our existing solutions. Leveraging our on-demand platform model, we can deploy real-time upgrades with no downtime.

### **Competition**

Our markets are highly competitive, fragmented and subject to rapid changes in technology. We compete primarily with companies that offer a broad array of data protection and governance solutions. Providers of data protection solutions generally have product offerings that include threat protection, virus protection, data loss prevention, flexible remediation, data encryption, and in some cases secure file transfer. Providers of archiving solutions generally have product offerings that provide data storage, search, policy enforcement, legal-hold management, and in some cases supervision.

Key competitors include:

- *Email and Advanced Threat Protection:* Cisco Systems, Inc., Microsoft Corporation, FireEye, Inc., Symantec (whose enterprise security business was recently acquired by Broadcom Inc.), Mimecast Ltd, Barracuda Networks, Inc. and Google, Inc.
- *Archiving:* Micro Focus International plc and Veritas Technologies LLC.

We believe we compete favorably based on the following factors:

- effectiveness of our protection against advanced threats;
- comprehensiveness and integration of the solution;
- flexibility of delivery models;
- total cost of ownership;
- scalability and performance;
- customer support; and
- extensibility of platform.

Certain of our competitors have greater sales, marketing and financial resources, more extensive geographic presence and greater name recognition than we do. We may face future competition in our markets from other large, established companies, as well as from emerging companies. In addition, we expect that there is likely to be continued consolidation in our industry that could lead to increased price competition and other forms of competition.

### **Intellectual Property**

We rely on a combination of trade secrets, patents, copyrights and trademarks, as well as contractual protections, to establish and protect our intellectual property rights and protect our proprietary technology. As of December 31, 2019, we had 160 patents and 55 patent applications. We have a number of registered and unregistered trademarks. We require our employees, consultants and other third parties to enter into confidentiality and proprietary rights agreements and control access to software, documentation and other

proprietary information. Although we rely on intellectual property rights, including trade secrets, patents, copyrights and trademarks, as well as contractual protections to establish and protect our proprietary rights, we believe that factors such as the technological and creative skills of our personnel, creation of new modules, features and functionality, and frequent enhancements to our solutions are more essential to establishing and maintaining our technology leadership position.

Despite our efforts to protect our proprietary technology and our intellectual property rights, unauthorized parties may attempt to copy or obtain and use our technology to develop products with the same functionality as our solution. Policing unauthorized use of our technology and intellectual property rights is difficult.

We expect that software and other solutions in our industry may be subject to third-party infringement claims as the number of competitors grows and the functionality of products in different industry segments overlaps. Any of these third parties might make a claim of infringement against us at any time.

## **Employees**

As of December 31, 2019, we had 3,368 employees. We also engage a number of temporary employees and consultants. None of our employees is represented by a labor union with respect to his or her employment with us. We have not experienced any work stoppages and we consider our relations with our employees to be good. Our future success will depend upon our ability to attract and retain qualified personnel. Competition for qualified personnel remains intense and we may not be successful in retaining our key employees or attracting skilled personnel.

## **Corporate Information**

We were incorporated in Delaware in 2002. Our principal executive offices are located at 892 Ross Drive, Sunnyvale, California 94089, and our telephone number is +1 (408) 517-4710. Our website is [www.proofpoint.com](http://www.proofpoint.com).

Proofpoint, the Proofpoint logo, all of our product names and our other registered or common law trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are our property. Other trademarks appearing in this prospectus are the property of their respective holders.

## **Geographic Information**

For financial reporting purposes, net revenue and long-lived assets attributable to significant geographic areas are presented in Note 13, "Segment Reporting", to the consolidated financial statements, which is incorporated herein by reference.

## **Available Information**

We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements and amendments to reports filed or furnished pursuant to Sections 13(a), 14 and 15(d) of the Securities Exchange Act of 1934, as amended. The SEC also maintains a website at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding Proofpoint and other companies that file materials with the SEC electronically. The public may also obtain these filings at the Securities and Exchange Commission ("SEC")'s Public Reference Room at 100 F Street, NE, Washington, DC 20549 or by calling the SEC at 1-800-SEC-0330. Copies of Proofpoint's reports on Form 10-K, definitive Proxy Statements, Forms 10-Q and Forms 8-K, may be obtained, free of charge, electronically through our Internet website, <https://investors.proofpoint.com/investors>, or by sending an electronic message by visiting the Contact Us section within the investor relations portion of our website.

## **ITEM 1A. RISK FACTORS**

*Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as the other information in this Annual Report on Form 10-K, before deciding whether to invest in shares of our common stock. The occurrence of any of the events described below could adversely affect our business, financial condition, results of operation, cash flows and growth prospects. In such an event, the trading price of our common stock may decline and you may lose all or part of your investment.*

### **Risks Related to Our Business and Industry**

***We have a history of losses, and we are unable to predict the extent of any future losses or when, if ever, we will achieve profitability in the future.***

We have incurred net losses in every year since our inception, including net losses of \$130.3 million, \$103.7 million and \$69.8 million in 2019, 2018 and 2017, respectively. As a result, we had an accumulated deficit of \$725.6 million as of December 31, 2019. Achieving profitability will require us to increase revenue, manage our cost structure, and avoid unanticipated liabilities. We do not expect to be profitable in the near term. Revenue growth may slow, or revenue may decline for a number of possible reasons,

including slowing demand for our solutions, increasing competition, a decrease in the growth of our overall market, or if we fail for any reason to continue to capitalize on growth opportunities. Any failure by us to obtain and sustain profitability, or to continue our revenue growth, could cause the price of our common stock to decline significantly.

***Our quarterly operating results and other metrics are likely to vary significantly and be unpredictable, which could cause the trading price of our stock to decline.***

Our operating results and other metrics have historically varied from period to period, and we expect that they will continue to do so as a result of a number of factors, many of which are outside of our control and may be difficult to predict, including:

- the level of demand for our solutions, including our newly-introduced solutions, and the level of perceived urgency regarding security threats and compliance requirements;
- the timing of new subscriptions and renewals of existing subscriptions;
- the mix of solutions sold;
- the extent to which customers subscribe for additional solutions or increase the number of users;
- customer budgeting cycles and seasonal buying patterns;
- the extent to which we bring on new distributors;
- any changes in the competitive landscape of our industry, including consolidation among our competitors, customers, partners or resellers;
- timing of costs and expenses during a quarter;
- deferral of orders in anticipation of new solutions or enhancements announced by us;
- price competition;
- changes in renewal rates and terms in any quarter;
- the impact of acquisitions;
- litigation costs;
- any disruption in our sales channels or termination of our relationship with strategic channel partners;
- general economic conditions, both domestically and in our foreign markets, and related changes to currency exchange rates;
- insolvency or credit difficulties confronting our customers, affecting their ability to purchase or pay for our solutions; or
- future accounting pronouncements or changes in our accounting policies.

Any one of the factors above or the cumulative effect of some of the factors referred to above may result in significant fluctuations in our financial and other operating results, including fluctuations in our key metrics. This variability and unpredictability could result in our failing to meet the expectations of securities analysts or investors for any period. If we fail to meet or exceed such expectations for these or any other reasons, the market price of our shares could fall substantially and we could face costly lawsuits, including securities class action suits. In addition, a significant percentage of our operating expenses are fixed in nature and based on forecasted revenue and cash flow trends. Accordingly, in the event of revenue shortfalls, we are generally unable to mitigate the negative impact on margins or other operating results in the short term.

We may fail to meet or exceed the expectations of securities analysts and investors, and the market price for our common stock could decline. If one or more of the securities analysts who cover us change their recommendation regarding our stock adversely, the market price for our common stock could decline. Additionally, our stock price may be based on expectations, estimates or forecasts of our future performance that may be unrealistic or may not be achieved. Further, our stock price may be affected by financial media, including press reports and blogs.

***If we are unable to maintain high subscription renewal rates, our future revenue and operating results will be harmed.***

Our customers have no obligation to renew their subscriptions for our solutions after the expiration of their initial subscription period, which typically ranges from one to three years. In addition, our customers may renew for fewer subscription services or users, renew for shorter contract lengths or renew at lower prices due to competitive or other pressures. We cannot accurately predict renewal rates and our renewal rates may decline or fluctuate as a result of a number of factors, including competition, customers' IT budgeting and spending priorities, and deteriorating general economic conditions. If our customers do not renew their subscriptions for our solutions, our revenue would decline and our business would suffer.

***If we are unable to sell additional solutions to our customers, our future revenue and operating results will be harmed.***

Our future success depends on our ability to sell additional solutions to our customers. This may require increasingly sophisticated and costly sales efforts and may not result in additional sales. In addition, the rate at which our customers purchase additional solutions depends on a number of factors, including the perceived need for additional solutions, growth in the number of end users, and general economic conditions. If our efforts to sell additional solutions to our customers are not successful, our business may suffer.

***If our solutions fail to protect our customers from security breaches, our brand and reputation could be harmed, which could have a material adverse effect on our business and results of operations.***

The threats facing our customers are constantly evolving and the techniques used by attackers to access or sabotage data change frequently. As a result, we must constantly update our solutions to respond to these threats. If we fail to update our solutions in a timely or effective manner to respond to these threats, our customers could experience security breaches. Many federal, state and foreign governments have enacted laws requiring companies to notify individuals of data security breaches involving their personal data. These mandatory disclosures regarding a security breach often lead to widespread negative publicity, and any association of us with such publicity may cause our customers to lose confidence in the effectiveness of our data security measures. Any security breach at one of our customers or even an unproven allegation of a security breach at one of our customers, could harm our reputation as a secure and trusted company and could cause the loss of customers. Similarly, if a well-publicized breach of data security at a customer of any other cloud-based data protection or archiving service provider or other major enterprise cloud services provider were to occur, there could be a loss of confidence in the cloud-based protection and storage of sensitive data and information generally.

In addition, our solutions work in conjunction with a variety of other elements in customers' IT and security infrastructure, and we may receive blame and negative publicity for a security breach that may have been the result of the failure of one of the other elements not provided by us. The occurrence of a breach, whether or not caused by our solutions, or allegations of a breach, even if such allegations turn out to be untrue, could delay or reduce market acceptance of our solutions and have an adverse effect on our business and financial performance. In addition, any revisions to our solutions that we believe may be necessary or appropriate in connection with any such breach may cause us to incur significant expenses. Any of these events could have material adverse effects on our brand and reputation, which could harm our business, financial condition, and operating results.

***If our customers experience data losses and breaches via our products or solutions, our brand, reputation and business could be harmed.***

Our customers rely on our archiving and other solutions to protect, transfer or store their corporate data, which may include financial records, credit card information, business information, health information, other personally identifiable information or other sensitive personal information. A breach of our network security and systems or other events that cause the loss or public disclosure of, or access by third parties to, our customers' stored files or data could have serious negative consequences for our business, including possible fines, penalties and damages, reduced demand for our solutions, an unwillingness of our customers to use our solutions, harm to our brand and reputation, and time-consuming and expensive litigation. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently, often are not recognized until launched against a target, and may originate from less regulated or remote areas around the world. As a result, we may be unable to proactively prevent these techniques, implement adequate preventative or reactionary measures, or enforce the laws and regulations that govern such activities. In addition, because of the large amount of data that we collect and manage, it is possible that hardware failures, insider errors or malfeasance or errors in our systems could result in data loss or corruption, or cause the information that we collect to be incomplete or contain inaccuracies that our customers regard as significant. If our customers experience any data loss, or any data corruption or inaccuracies, whether caused by security breaches or otherwise, our brand, reputation and business would be harmed.

Our insurance may be inadequate or may not be available in the future on acceptable terms, or at all. In addition, our policy may not cover any claim against us for loss of data or other indirect or consequential damages. Defending a suit based on any data loss or system disruption, regardless of its merit, could be costly and divert management's attention.

***Defects or vulnerabilities in our solutions could harm our reputation, reduce the sales of our solutions and expose us to liability for losses.***

Because our solutions are complex, undetected errors, failures or bugs may occur, especially when solutions are first introduced or when new versions or updates are released, or when we introduce an acquired company's products or services, despite our efforts to test those solutions and enhancements prior to release. This includes not only vulnerabilities that are specific to our solutions, but also vulnerabilities that impact the third-party or open source software or services that we use or the hardware that we rely on for our solutions. Additionally, we may be impacted by the evaluation of the security of our services by third party security scoring companies whether those evaluations are accurate or not. We may not be able to correct defects, errors, vulnerabilities or failures promptly, or at all or to correct inaccuracies in perceptions about these matters.



Any defects, errors, vulnerabilities or failures in our solutions could result in:

- expenditure of significant financial and development resources in efforts to analyze, correct, eliminate or work around errors or defects or to address and eliminate vulnerabilities;
- loss of existing or potential partners or customers or loss of customer confidence;
- loss or disclosure of our customers' confidential information, or the inability to access such information;
- loss of our proprietary technology;
- our solutions being susceptible to hacking or electronic break-ins or otherwise failing to secure data;
- delayed or lost revenue;
- delay or failure to attain market acceptance;
- lost market share;
- negative publicity, which could harm our reputation; or
- litigation, regulatory inquiries or investigations that would be costly and harm our reputation.

Limitation of liability provisions in our standard terms and conditions and our other agreements may not adequately or effectively protect us from any claims related to defects, errors, vulnerabilities or failures in our solutions, including as a result of federal, state or local laws or ordinances or unfavorable judicial decisions in the United States or other countries.

***Our software, website, hosted and internal systems may be subject to intentional disruption or penetration from external attackers or insiders that could adversely impact our reputation and future sales.***

We could be a target of attacks specifically designed to impede the performance of our solutions, redirect users to malicious sites, harm our reputation or misappropriate our or our customers' proprietary information. Similarly, experienced computer hackers may attempt to penetrate our network or other security or the security of our website or other hosted or internal systems or to trick our employees into taking actions that compromise our security (such as via phishing or business email compromise attacks) in order to misappropriate proprietary information and/or cause interruptions of our services and/or expose perceived security vulnerabilities. It is also possible that systems may be disrupted or our sensitive information or the information of our customers might be exposed due to malfeasance or errors by employees or contractors. Because the techniques used by attackers to access or sabotage networks and compromise our systems and information change frequently and may not be recognized until launched against a target, we may be unable to anticipate these techniques. If an actual or perceived breach of network security occurs as a result of third-party action, including cyber-attacks or other intentional misconduct by computer hackers, error or malfeasance by insiders, or otherwise, it could adversely affect the market perception of our company and our solutions, and may expose us to the loss of information, litigation and possible liability. In addition, such a security breach could impair our ability to operate our business, including our ability to provide support services to our customers.

***Our solutions may collect, filter and store customer data which may contain personal information, which raises privacy concerns and could result in us having liability or inhibit sales of our solutions.***

Many federal, state and foreign government bodies and agencies have adopted or are considering adopting laws and regulations regarding the collection, use, and disclosure of personal information. Because many of the features of our solutions use, store, and report on customer data which may contain personal information from our customers, any inability to adequately address privacy concerns, or comply with applicable privacy laws, regulations and policies could, even if unfounded, result in liability to us, damage to our reputation, loss of sales, and harm to our business. Furthermore, the costs of compliance with, and other burdens imposed by, such laws, regulations and policies that are applicable to the businesses of our customers may limit the use and adoption of our solutions and reduce overall demand for them. Privacy concerns, whether or not valid, may inhibit market adoption of our solutions. For example, in the United States regulations such as the Gramm-Leach-Bliley Act, which protects and restricts the use of consumer credit and financial information, and HIPAA which regulates the use and disclosure of personal health information, impose significant security and data protection requirements and obligations on businesses that may affect the use and adoption of our solutions. Similarly, we hold a FedRAMP authorization without which we would not be able to provide services and products to certain US federal entities.

In the past we have relied on U.S.-European Union Frameworks for transatlantic data flows such as the EU-US Privacy Shield, for which we self-certified under the EU-US Privacy Shield framework on October 5, 2016. However, Privacy Shield is currently being challenged in European Union ("EU") courts, so there is some uncertainty regarding its future validity and our ability to rely on it for EU to US data transfers. We also rely on Standard Contractual Clauses ("SCCs") authorized by the EU's Data Protection Directive of 1995 for transatlantic data flows, but the SCCs are also being challenged in EU courts, so there is some uncertainty regarding our ability to rely on SCCs in the future for EU to US data transfer. Additionally, the EU's General Data

Protection Regulation, began to be enforced on May 25, 2018, and carries with it significantly increased responsibilities and potential penalties for companies that process EU personal data. We have seen increased customer attention surrounding EU Data Privacy. Furthermore, outside of the EU, we continue to see increased regulation of data privacy and security, including the adoption of more stringent subject matter specific state laws (such as the New York Department of Financial Services' Cybersecurity Regulation and the new California Consumer Privacy Act of 2018 that became effective January 1, 2020), national laws regulating the collection and use of data, and security and data breach obligations. The uncertainty and changes in the requirements of multiple jurisdictions may increase the cost of compliance, delay or reduce demand for our services, restrict our ability to offer services in certain locations, impact our customers' ability to deploy our solutions in certain jurisdictions, or subject us to sanctions, by national data protection regulators, all of which could harm our business, financial condition and results of operations.

The regulatory framework for privacy issues is evolving worldwide, and various government and consumer agencies and public advocacy groups have called for new regulation and changes in industry practices. It is possible that new laws and regulations will be adopted in the United States and internationally, or existing laws and regulations may be interpreted in new ways, that would affect our business. Complying with any new regulatory requirements could force us to incur substantial costs or require us to change our business practices in a manner that could reduce our revenue or compromise our ability to effectively pursue our growth strategy.

Any failure or perceived failure to comply with laws and regulations or loss of certifications such as the FedRAMP authorization may result in proceedings or actions against us by government entities or others, or could cause us to lose users and customers, which could potentially have an adverse effect on our business.

***We operate in a highly competitive environment with large, established competitors, and our competitors may gain market share in the markets for our solutions that could adversely affect our business and cause our revenue to decline.***

Our traditional competitors include security-focused software vendors, such as Symantec Corporation (whose enterprise security business was recently acquired by Broadcom Inc.) and Cisco Systems, Inc., which offer software products that directly compete with our solutions. In addition to competing with these vendors directly for sales to customers, we compete with them for the opportunity to have our solutions bundled with the product offerings of our strategic partners. Our competitors could gain market share from us if any of these partners replace our solutions with the products of our competitors or if these partners more actively promote our competitors' products over our solutions. In addition, software vendors who have bundled our solutions with theirs may choose to bundle their software with their own or other vendors' software, or may limit our access to standard product interfaces and inhibit our ability to develop solutions for their platform.

We also face competition from large technology companies, such as Google Inc., Micro Focus International plc and Microsoft Corporation. These companies are increasingly developing and incorporating into their products features that compete on various levels with our solutions. Our competitive position could be adversely affected to the extent that our customers perceive that the functionality incorporated into these products would replace the need for our solutions or that buying from one vendor would provide them with increased leverage and purchasing power and a better customer experience. We also face competition from independent security vendors such as FireEye, Inc. that offer network security products and many smaller companies like Barracuda Networks, Inc. and Mimecast Ltd that specialize in particular segments of the markets in which we compete.

Many of our competitors have greater financial, technical, sales, marketing or other resources than we do and consequently may have the ability to influence our customers to purchase their products instead of ours. Further consolidation within our industry or other changes in the competitive environment could also result in larger competitors that compete with us on several levels. In addition, acquisitions of smaller companies by large technology companies that specialize in particular segments of the markets in which we compete would result in increased competition from these large technology companies. If we are unsuccessful in responding to our competitors or to changing technological and customer demands, our competitive position and financial results could be adversely affected.

***If we do not effectively expand and train our sales force, we may be unable to add new customers or increase sales to our existing customers and our business will be harmed.***

We continue to be substantially dependent on our sales force to obtain new customers and to sell additional solutions to our existing customers. We believe that there is significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve significant revenue growth will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of sales personnel. New hires require significant training and may take significant time before they achieve full productivity. Our recent hires and planned hires may not become as productive as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. If we are unable to hire and train sufficient numbers of effective sales personnel, or the sales personnel are not successful in obtaining new customers or increasing sales to our existing customer base, our business will be harmed.

***Our sales cycle is long and unpredictable, and our sales efforts require considerable time and expense. As a result, our results are difficult to predict and may vary substantially from quarter to quarter, which may cause our operating results to fluctuate.***

We sell our security and compliance offerings primarily to enterprise IT departments that are managing a growing set of user and compliance demands, which has increased the complexity of customer requirements to be met and confirmed in the sales cycle. Increasingly, we have found that security, legal and compliance departments are involved in testing, evaluating and finally approving purchases, which has also made the sales cycle longer and less predictable. We may not be able to accurately predict or forecast the timing of sales, which makes our future revenue difficult to predict and could cause our results to vary significantly. In addition, we might devote substantial time and effort to a particular unsuccessful sales effort, and as a result we could lose other sales opportunities or incur expenses that are not offset by an increase in revenue, which could harm our business.

***Because our long-term success depends, in part, on our ability to expand the sales of our platform to our customers located outside of the United States, our business will be increasingly susceptible to risks associated with international operations.***

One key element of our growth strategy is to develop a worldwide customer base and expand our operations worldwide, such as by adding employees, offices and customers internationally, particularly in Europe and Asia.

Operating in international markets requires significant resources and management attention and will subject us to regulatory, economic, political and competitive risks and competition that are different from those in the United States.

In addition, our international operations may fail to succeed due to other risks inherent in operating businesses internationally, including:

- fluctuations in currency exchange rates, which may cause our revenues and operating results to differ materially from expectations;
- our lack of familiarity with commercial and social norms and customs in other countries which may adversely affect our ability to recruit, retain and manage employees in these countries;
- difficulties and costs associated with staffing and managing foreign operations;
- the potential diversion of management's attention to oversee and direct operations that are geographically distant from our U.S. headquarters;
- compliance with multiple, conflicting and changing governmental laws and regulations, including employment, tax, privacy and data protection laws and regulations;
- legal systems in which our ability to enforce and protect our rights may be different or less effective than in the United States, including more limited protection for intellectual property rights in some countries;
- immaturity of compliance regulations in other jurisdictions, which may lower demand for our solutions;
- greater difficulty with payment collections and longer payment cycles;
- higher employee costs and difficulty terminating non-performing employees;
- differences in workplace cultures;
- the need to adapt our solutions for specific countries;
- our ability to comply with differing technical and certification requirements outside the United States;
- tariffs, export controls and other non-tariff barriers such as quotas and local content rules;
- uncertainties related to the United Kingdom's withdrawal from the European Union ("Brexit") and its impact on our customers, data protection regulations and our employees and their ability to emigrate and travel to and from the United Kingdom;
- adverse tax consequences;
- restrictions on the transfer of funds;
- anti-bribery compliance by us or our partners, including under the Foreign Corrupt Practices Act and similar laws of other jurisdictions; and
- new and different sources of competition.

In addition, the current U.S. administration has recently instituted or proposed changes to foreign trade policy including the negotiation or termination of trade agreements, the imposition of tariffs on products imported from certain countries, economic

sanctions on individuals, corporations or countries and other government regulations affecting trade between the United States and other countries in which we do business. New or increased tariffs and other changes in U.S. trade policy could trigger retaliatory actions by affected countries, and certain foreign governments have instituted or are considering imposing trade sanctions on certain U.S. manufactured goods. The escalation of protectionist or retaliatory trade measures in either the United States or any other countries in which we do business, such as a change in tariff structures, export compliance or other trade policies, may increase the cost of, or otherwise interfere with, conducting our business.

Our failure to manage any of these risks successfully could harm our existing and future international operations and seriously impair our overall business.

***If we are unable to enhance our existing solutions and develop new solutions, our growth will be harmed, and we may not be able to achieve profitability.***

Our ability to attract new customers and increase revenue from existing customers will depend in large part on our ability to enhance and improve our existing solutions and to introduce new solutions. The success of any enhancement or new solution depends on several factors, including the timely completion, introduction and market acceptance of the enhancement or solution. Any new enhancement or solution we develop or acquire may not be introduced in a timely or cost-effective manner and may not achieve the broad market acceptance necessary to generate significant revenue. If we are unable to successfully develop or acquire new solutions or enhance our existing solutions to meet customer requirements, we may not grow as expected and we may not achieve profitability.

We cannot be certain that our development activities will be successful or that we will not incur delays or cost overruns. Furthermore, we may not have sufficient financial resources to identify and develop new technologies and bring enhancements or new solutions to market in a timely and cost-effective manner. New technologies and enhancements could be delayed or cost more than we expect, and we cannot ensure that any of these solutions will be commercially successful if and when they are introduced.

***If we are unable to cost-effectively scale or adapt our existing architecture to accommodate increased traffic, technological advances or changing customer requirements, our operating results could be harmed.***

As our customer base grows, the number of users accessing our solutions over the Internet will correspondingly increase. Increased traffic could result in slow access speeds and response times. Since our customer agreements often include service availability commitments, slow speeds or our failure to accommodate increased traffic could result in breaches of our service level agreements or obligate us to issue service credits. In addition, the market for our solutions is characterized by rapid technological advances and changes in customer and regulatory requirements. In order to accommodate increased traffic and respond to technological advances and evolving customer and regulatory requirements, we expect that we will be required to make future investments in our network architecture. If we do not implement future upgrades to our network architecture cost-effectively, or if we experience prolonged delays or unforeseen difficulties in connection with upgrading our network architecture, our service quality may suffer, and our operating results could be harmed.

***If we fail to manage our sales and distribution channels effectively or if our partners choose not to market and sell our solutions to their customers, our operating results could be adversely affected.***

We have derived and anticipate that in the future we will continue to derive a substantial portion of the sales of our solutions through channel partners. In order to scale our channel program to support growth in our business, it is important that we continue to help our partners enhance their ability to independently sell and deploy our solutions. We may be unable to continue to successfully expand and improve the effectiveness of our channel sales program.

Our agreements with our channel partners are generally non-exclusive and some of our channel partners have entered, and may continue to enter, into strategic relationships with our competitors or are competitors themselves. Further, many of our channel partners have multiple strategic relationships and they may not regard us as significant for their businesses. Our channel partners may terminate their respective relationships with us with limited or no notice and with limited or no penalty, pursue other partnerships or relationships, or attempt to develop or acquire products or services that compete with our solutions. Our partners also may impair our ability to enter into other desirable strategic relationships. If our channel partners do not effectively market and sell our solutions, if they choose to place greater emphasis on products of their own or those offered by our competitors, or if they fail to meet the needs of our customers, our ability to grow our business and sell our solutions may be adversely affected. Similarly, the loss of a substantial number of our channel partners, and our possible inability to replace them, the failure to recruit additional channel partners, any reduction or delay in their sales of our solutions, or any conflicts between channel sales and our direct sales and marketing activities could materially and adversely affect our results of operations.

***Because we recognize revenue from subscriptions over the term of the relevant service period, decreases or increases in sales are not immediately reflected in full in our operating results.***

We recognize revenue from subscriptions over the term of the relevant service period, which typically range from one to three years, with some up to five years. As a result, most of our quarterly revenue from subscriptions results from agreements entered into

during previous quarters. Consequently, a shortfall in demand for our solutions in any quarter may not significantly reduce our subscription revenue for that quarter, but could negatively affect subscription revenue in future quarters. We may be unable to adjust our cost structure to compensate for this potential shortfall in subscription revenue. Accordingly, the effect of significant downturns in sales of subscriptions may not be fully reflected in our results of operations until future periods. Our subscription model also makes it difficult for us to rapidly increase our subscription revenue through additional sales in any period, as subscription revenue must be recognized over the term of the contract.

***Interruptions or delays in services provided by third parties could impair the delivery of our service and harm our business.***

We currently serve our customers from third-party data center facilities and resources located in the United States, Canada, Australia and Europe. We also rely on bandwidth providers, Internet service providers, mobile networks and other third-party IT service providers to operate our business and to deliver our solutions. Any damage to, or failure or disruption of, the systems of our third-party providers could result in interruptions to our service. If for any reason our arrangement with one or more of our data centers is terminated, we could experience additional expense in arranging for new facilities and support. Our data center facilities providers have no obligations to renew their agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements with the facilities providers on commercially reasonable terms or if in the future, we add additional data center facility providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new data center facilities. In addition, the failure of our data centers to meet our capacity requirements could result in interruptions in the availability of our solutions, impair the functionality of our solutions or impede our ability to scale our operations. As we continue to add data centers, restructure our data management plans, and increase capacity in existing and future data centers, we may move or transfer our data and our customers' data. Despite precautions taken during such processes and procedures, any unsuccessful data transfers may impair the delivery of our service, and we may experience costs or downtime in connection with the transfer of data to other facilities. Similarly, some of our solutions' features run or depend on IT services run by third parties, such as data feeds or public clouds, such as AWS and Google Cloud, and an extended failure of such services might materially and adversely impact our ability to provide our services to our customers. Furthermore, some of our sales and business operations, such as CRM and billing and invoicing depend in part on third-party IT service providers and if those services were to be unavailable for extended periods of time it might materially and adversely affect our ability to operate.

We also depend on access to the Internet through third-party bandwidth providers to operate our business. If we lose the services of one or more of our bandwidth providers, or if these providers experience outages, for any reason, we could experience disruption in delivering our solutions or we could be required to retain the services of a replacement bandwidth provider. Our business also depends on our customers having high-speed access to the Internet. Any Internet outages or delays could adversely affect our ability to provide our solutions to our customers.

Our operations rely heavily on the availability of electricity, which also comes from third-party providers. If we or the third-party data center facilities that we use to deliver our services were to experience a major power outage or if the cost of electricity were to increase significantly, our operations and financial results could be harmed. If we or our third-party data centers were to experience a major power outage, we or they would have to rely on back-up generators, which might not work properly or might not provide an adequate power supply during a major power outage. Such a power outage could result in a significant disruption of our business.

The occurrence of an extended interruption of our or third-party services for any reason could result in lengthy interruptions in our services or in the delivery of customers' email and require us to provide service credits, refunds, indemnification payments or other payments to our customers, and could also result in the loss of customers. While we have business continuity and disaster recovery plans and contingencies in place, there can be no assurance that they will be adequate in the event of an extended or severe disruption.

***Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and harm our financial results.***

Once our solutions are deployed, our customers depend on our support organization to resolve any technical issues relating to our solutions. In addition, our sales process is highly dependent on our solutions and business reputation and on strong recommendations from our existing customers. Any failure to maintain high-quality technical support, or a market perception that we do not maintain high-quality support, could harm our reputation, adversely affect our ability to sell our solutions to existing and prospective customers, and harm our business, operating results and financial condition.

We offer technical support services with many of our solutions. We may be unable to respond quickly enough to accommodate short-term increases in customer demand for support services. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. Increased customer demand for these services, without corresponding revenue, could increase costs and adversely affect our operating results.

We have outsourced a substantial portion of our worldwide customer support functions to third-party service providers. If these companies experience financial difficulties, do not maintain sufficiently skilled workers and resources to satisfy our contracts, or otherwise fail to perform at a sufficient level, the level of support services to our customers may be significantly disrupted, which could materially harm our reputation and our relationships with these customers.

***If we fail to develop or protect our brand, our business may be harmed.***

We believe that developing and maintaining awareness and integrity of our company and our brand are important to achieving widespread acceptance of our existing and future offerings and are important elements in attracting new customers. We believe that the importance of brand recognition will increase as competition in our market further intensifies. Successful promotion of our brand will depend on the effectiveness of our marketing efforts and on our ability to provide reliable and useful solutions at competitive prices. We plan to continue investing substantial resources to promote our brand, both domestically and internationally, but there is no guarantee that our brand development strategies will enhance the recognition of our brand. Some of our existing and potential competitors have well-established brands with greater recognition than we have. If our efforts to promote and maintain our brand are not successful, our operating results and our ability to attract and retain customers may be adversely affected. In addition, even if our brand recognition and loyalty increase, this may not result in increased use of our solutions or higher revenue.

In addition, independent industry analysts often provide reviews of our solutions, as well as those of our competitors, and perception of our solutions in the marketplace may be significantly influenced by these reviews. We have no control over what these industry analysts report, and because industry analysts may influence current and potential customers, our brand could be harmed if they do not provide a positive review of our solutions or view us as a market leader.

***The steps we have taken to protect our intellectual property rights may not be adequate.***

We rely on a combination of contractual rights, trademarks, trade secrets, patents and copyrights to establish and protect our intellectual property rights. These offer only limited protection, however, and the steps we have taken to protect our proprietary technology may not deter its misuse, theft or misappropriation. Any of our patents, copyrights, trademarks or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. Competitors may independently develop technologies or products that are substantially equivalent or superior to our solutions or that inappropriately incorporate our proprietary technology into their products. Competitors may hire our former employees who may misappropriate our proprietary technology or misuse our confidential information. Although we rely in part upon confidentiality agreements with our employees, consultants and other third parties to protect our trade secrets and other confidential information, those agreements may not effectively prevent disclosure of trade secrets and other confidential information and may not provide an adequate remedy in the event of misappropriation of trade secrets or unauthorized disclosure of confidential information. In addition, others may independently discover our trade secrets and confidential information, and in such cases, we could not assert any trade secret rights against such parties.

We might be required to spend significant resources to monitor and protect our intellectual property rights. We may initiate claims or litigation against third parties for infringement of our intellectual property rights or misappropriation of our trade secrets, or to establish the validity of our intellectual property rights. Any litigation, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which may adversely affect our business, operating results and financial condition. Certain jurisdictions may not provide adequate legal infrastructure for effective protection of our intellectual property rights. Changing legal interpretations of liability for unauthorized use of our solutions or lessened sensitivity by corporate, government or institutional users to refraining from intellectual property piracy or other infringements of intellectual property could also harm our business.

Our issued patents may not provide us with any competitive advantages or may be challenged by third parties, and our patent applications may never be granted at all. It is possible that innovations for which we seek patent protection may not be protectable. Additionally, the process of obtaining patent protection is expensive and time consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Given the cost, effort, risks and downside of obtaining patent protection, including the requirement to ultimately disclose the invention to the public, we may not choose to seek patent protection for certain innovations. However, such patent protection could later prove to be important to our business. Even if issued, there can be no assurance that any patents will have the coverage originally sought or adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. Any patents that are issued may be invalidated or otherwise limited, or may lapse or may be abandoned, enabling other companies to better develop products that compete with our solutions, which could adversely affect our competitive business position, business prospects and financial condition.

We cannot assure you that the measures we have taken to protect our intellectual property will adequately protect us, and any failure to protect our intellectual property could harm our business.

***Third parties claiming that we infringe their intellectual property rights could cause us to incur significant legal expenses and prevent us from selling our solutions.***

Companies and individuals in the software and technology industries, including some of our current and potential competitors, own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement, misappropriation or other violations of intellectual property rights. In addition, many of these third parties have the capability to dedicate substantially greater resources to enforce their intellectual property rights and to defend claims that may be brought against them. The litigation may involve patent holding companies or other adverse patent owners who have no

relevant product revenue and against whom our potential patents may provide little or no deterrence. We have received, and may in the future receive, notices that claim we have infringed, misappropriated or otherwise violated other parties' intellectual property rights. We have been involved in litigation involving such allegations of infringement. To the extent we gain greater visibility, we could face a higher risk of being the subject of intellectual property infringement claims, which is not uncommon with respect to software technologies in general and information security technology in particular. There may be third-party intellectual property rights, including issued or pending patents that cover significant aspects of our technologies or business methods. Any intellectual property claims, with or without merit, could be very time consuming, could be expensive to settle or litigate and could divert our management's attention and other resources. These claims could also subject us to significant liability for damages, potentially including treble damages if we are found to have willfully infringed patents or copyrights. These claims could also result in our having to stop using technology found to be in violation of a third-party's rights. We might be required to seek a license for the intellectual property, which may not be available on reasonable terms or at all. Even if a license were available, we could be required to pay significant royalties, which would increase our operating expenses. As a result, we may be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for any infringing aspect of our business, we would be forced to limit or stop sales of one or more of our solutions or features of our solutions and may be unable to compete effectively. Any of these results would harm our business, operating results and financial condition.

In addition, our agreements with customers and channel partners include indemnification provisions under which we agree to indemnify them for losses suffered or incurred as a result of claims of intellectual property infringement and, in some cases, for damages caused by us to property or persons. Large indemnity payments could harm our business, operating results and financial condition.

***We rely on technology and intellectual property licensed from other parties, the failure or loss of which could increase our costs and delay or prevent the delivery of our solutions.***

We utilize various types of software and other technology, as well as intellectual property rights, licensed from unaffiliated third parties in order to provide certain elements of our solutions. Any errors or defects in any third-party technology could result in errors in our solutions that could harm our business. In addition, licensed technology and intellectual property rights may not continue to be available on commercially reasonable terms, or at all. While we believe that there are currently adequate replacements for the third-party technology we use, any loss of the right to use any of this technology on commercially reasonable terms, or at all, could result in delays in producing or delivering our solutions until equivalent technology is identified and integrated, which delays could harm our business. In this situation we would be required to either redesign our solutions to function with software available from other parties or to develop these components ourselves, which would result in increased costs. Furthermore, we might be forced to limit the features available in our current or future solutions. If we fail to maintain or renegotiate any of these technology or intellectual property licenses, we could face significant delays and diversion of resources in attempting to develop similar or replacement technology, or to license and integrate a functional equivalent of the technology.

***Some of our solutions contain "open source" software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.***

Some of our solutions are distributed with software licensed by its authors or other third parties under so-called "open source" licenses, which may include, by way of example, the GNU General Public License, or GPL, and the Apache License. Some of these licenses contain requirements that we make available source code for modifications or derivative works we create based upon the open source software, and that we license such modifications or derivative works under the terms of a particular open source license or other license granting third parties certain rights of further use. By the terms of certain open source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available under open source licenses, if we combine our proprietary software with open source software in a certain manner. In the event that portions of our proprietary software are determined to be subject to an open source license, we could be required to publicly release the affected portions of our source code, re-engineer all or a portion of our technologies, or otherwise be limited in the licensing of our technologies, each of which could reduce or eliminate the value of our technologies and solutions. In addition to risks related to license requirements, usage of open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of the software. We have established processes to help alleviate these risks, including a review process for screening requests from our development organizations for the use of open source software, but we cannot be sure that all open source software is submitted for approval prior to use in our solutions, that our programmers have not incorporated open source software into our proprietary solutions and technologies or that they will not do so in the future. In addition, many of the risks associated with usage of open source software cannot be eliminated, and could, if not properly addressed, negatively affect our business.

***Governmental regulations affecting the export of certain of our solutions could negatively affect our business.***

Some of our products are subject to U.S. export controls, and we incorporate encryption technology into certain of our products. These encryption products and the underlying technology may be exported outside the United States only with the required export authorizations, including by license, a license exception or other appropriate government authorizations, including the filing of an encryption registration. Governmental regulation of encryption technology and regulation of imports or exports, or our failure to obtain required import or export approval for our products, could harm our international sales and adversely affect our revenue.

Failure to comply with such regulations, whether by us or companies that we have acquired, in the future could result in penalties, costs, and restrictions on export privileges, which could also harm our operating results.

***We have, and may further, expand through acquisitions of, or investments in, other companies, which may divert our management's attention, dilute our stockholders' ownership interests and consume corporate resources that otherwise would be necessary to sustain and grow our business.***

We have made multiple acquisitions in the past, and our business strategy may, from time to time, continue to include acquiring complementary products, technologies or businesses. We also may enter into relationships with other businesses in order to expand our solutions, which could involve preferred or exclusive licenses, additional channels of distribution, or investments by or between the two parties. Negotiating these transactions can be time consuming, difficult and expensive, and our ability to close these transactions may be subject to third-party approvals, such as government regulation, which are beyond our control. Consequently, we can make no assurance that these transactions, once undertaken and announced, will close.

These transactions may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products, personnel or operations of acquired companies, particularly if the key personnel of the acquired business choose not to work for us, and we may have difficulty retaining the customers of any acquired business. Acquisitions may also disrupt our ongoing business, divert our resources and require significant management attention that would otherwise be available for development of our business. Any acquisition or investment could expose us to unknown liabilities.

In addition, as of December 31, 2019, we had \$873.5 million in goodwill and intangible assets, net of accumulated amortization, recorded on our balance sheet. We will incur expenses related to the amortization of intangible assets and we may in the future need to incur charges with respect to the impairment of goodwill or intangible assets, which could adversely affect our operating results. Moreover, we cannot assure you that the anticipated benefits of any acquisition or investment would be realized or that we would not be exposed to unknown liabilities. In connection with these types of transactions, we may issue additional equity securities that would dilute our stockholders' ownership interests, use cash that we may need in the future to operate our business, incur debt on terms unfavorable to us or that we are unable to repay, incur large charges or substantial liabilities, encounter difficulties integrating diverse business cultures, and become subject to adverse tax consequences, substantial depreciation or deferred compensation charges. These challenges related to acquisitions or investments could adversely affect our business, operating results and financial condition.

***If we are unable to attract and retain qualified employees, lose key personnel, fail to integrate replacement personnel successfully, or fail to manage our employee base effectively, we may be unable to develop new and enhanced solutions, effectively manage or expand our business, or increase our revenue.***

Our future success depends upon our ability to recruit and retain key management, technical, sales, marketing, finance, and other critical personnel. Competition for qualified management, technical and other personnel is intense, and we may not be successful in attracting and retaining such personnel. If we fail to attract and retain qualified employees, our ability to grow our business could be harmed. Our officers and other key personnel are employees-at-will, and we cannot assure you that we will be able to retain them. Competition for people with the specific skills that we require is significant. In order to attract and retain personnel in a competitive marketplace, we believe that we must provide a competitive compensation package, including cash and equity-based compensation. Volatility in our stock price may from time to time adversely affect our ability to recruit or retain employees. If we are unable to hire and retain qualified employees, or conversely, if we fail to manage employee performance or reduce staffing levels when required by market conditions, our business and operating results could be adversely affected.

In addition, hiring, training, and successfully integrating replacement personnel could be time consuming, may cause additional disruptions to our operations, and may be unsuccessful, which could negatively impact future revenue.



***Changes in laws and/or regulations related to the Internet or changes in the Internet infrastructure itself may diminish the demand for our solutions, and could have a negative impact on our business.***

The future success of our business depends upon the continued use of the Internet as a primary medium for commerce, communication and business applications. Federal, state or foreign government bodies or agencies have in the past adopted, and may in the future adopt, laws or regulations affecting data privacy and the use of the Internet as a commercial medium. Changes in these laws or regulations could require us to modify our solutions in order to comply with these changes. In addition, government agencies or private organizations may begin to impose taxes, fees or other charges for accessing the Internet or commerce conducted via the Internet. These laws or charges could limit the growth of Internet-related commerce or communications generally, result in a decline in the use of the Internet and the viability of Internet-based applications such as ours and reduce the demand for our solutions.

The legal and regulatory framework also drives demand for our solutions. Our customers are subject to laws, regulations and internal policies that mandate how they process, handle, store, use and transmit a variety of sensitive data and communications. These laws and regulations are subject to revision, change and interpretation at any time, and any such change could either help or hurt the demand for our solutions. We cannot be sure that the legal and regulatory framework in any given jurisdiction will be favorable to our business or that we will be able to sustain or grow our business if there are any adverse changes to these laws and regulations.

***If we are required to collect sales and use taxes on the solutions we sell, we may be subject to liability for past sales and our future sales may decrease.***

State and local taxing jurisdictions have differing rules and regulations governing sales and use taxes, and these rules and regulations are subject to varying interpretations that may change over time. In particular, the applicability of sales taxes to our subscription services in various jurisdictions is unclear. It is possible that we could face sales tax audits and that our liability for these taxes could exceed our estimates as state tax authorities could still assert that we are obligated to collect additional amounts as taxes from our customers and remit those taxes to those authorities. We could also be subject to audits with respect to state and international jurisdictions for which we have not accrued tax liabilities. A successful assertion that we should be collecting additional sales or other taxes on our services in jurisdictions where we have not historically done so and do not accrue for sales taxes could result in substantial tax liabilities for past sales, discourage customers from purchasing our application or otherwise harm our business and operating results.

***Adverse conditions in the national and global economies and financial markets may adversely affect our business and financial results.***

Adverse macroeconomic conditions could negatively affect our customers, thereby impacting our business, operating results or financial condition. Challenging economic conditions worldwide have from time to time contributed, and may continue to contribute, to slowdowns in the information technology industry, resulting in reduced demand for our solutions as a result of continued constraints on IT-related capital spending by our customers and increased price competition for our solutions. Moreover, we target some of our solutions to the financial services industry and therefore if there is consolidation in that industry, or layoffs, or lack of funding for IT purchases, our business may suffer. If economic conditions deteriorate, our business, financial condition and operating results could be materially and adversely affected.

***Our business is subject to the risks of earthquakes, fire, power outages, floods and other catastrophic events, and to interruption by manmade problems such as terrorism.***

Natural disasters or other catastrophic events may cause damage or disruption to our operations, international commerce and the global economy, and thus could have a strong negative effect on us. We have significant operations in the Silicon Valley area of Northern California, a region known for seismic activity. A major earthquake or other natural disaster, fire, act of terrorism or other catastrophic event that results in the destruction or disruption of any of our critical business operations or information technology systems could severely affect our ability to conduct normal business operations and, as a result, our future operating results could be harmed. These negative events could make it difficult or impossible for us to deliver our services to our customers, and could decrease demand for our services. Because we do not carry earthquake insurance for direct quake-related losses, and significant recovery time could be required to resume operations, our financial condition and operating results could be materially adversely affected in the event of a major earthquake or catastrophic event.

*A portion of our revenue is generated by sales to government entities, which are subject to a number of challenges and risks.*

Sales to U.S. and foreign federal, state and local governmental agency customers have accounted for a portion of our revenue in past periods, and we may in the future increase sales to government entities. Sales into government entities are subject to a number of risks. Selling to government entities can be highly competitive, expensive and time consuming, often requiring significant upfront time and expense without any assurance that we will win a sale. We have invested in the creation of a cloud offering that has been certified under both the Federal Information Security Management Act and the Federal Risk and Authorization Management Program for government usage but we cannot be sure that we will continue to sustain or renew this certification, that the government will continue to mandate such certification or that other government agencies or entities will use this cloud offering. Government demand and payment for our solutions may be impacted by public sector budgetary cycles and funding authorizations, with funding reductions or delays adversely affecting public sector demand for our solutions. Government entities may have contractual or other legal rights to terminate contracts with our distributors and resellers for convenience or due to a default, and any such termination may adversely impact our future results of operations. For example, if the distributor receives a significant portion of its revenue from sales to such governmental entity, the financial health of the distributor could be substantially harmed, which could negatively affect our future sales to such distributor. Governments routinely investigate and audit government contractors' administrative processes, and any unfavorable audit could result in the government refusing to continue buying our solutions, a reduction of revenue or fines or civil or criminal liability if the audit uncovers improper or illegal activities. Any such penalties could adversely impact our results of operations in a material way.

***If we fail to maintain an effective system of internal controls, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.***

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), and the rules and regulations of the NASDAQ Global Market. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time consuming and costly, and place significant strain on our personnel, systems and resources.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. In addition, because we have acquired companies in the past and may continue to do so in the future, we will also need to expend resources to integrate the controls of these acquired entities with ours. Further, weaknesses in our internal controls may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal controls also could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm report regarding the effectiveness of our internal control over financial reporting that we are required to include in our Annual Report on Form 10-K under Section 404 of the Sarbanes-Oxley Act. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our common stock.

In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting-related costs, and provide significant management oversight. Any failure to maintain the adequacy of our internal controls, or consequent inability to produce accurate financial statements on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. In the event that we or our independent registered public accounting firm are not able to complete the work required under Section 404 of the Sarbanes-Oxley Act on a timely basis, or we are not able to demonstrate compliance with Section 404, we could be subject to late filings of our annual and quarterly reports, restatements of consolidated financial statements or other corrective disclosure, and, investors may lose confidence in our operating results and our stock price could decline. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the NASDAQ Global Market.

***We may not be able to utilize a significant portion of our net operating loss or research tax credit carryforwards, which could adversely affect our profitability.***

As of December 31, 2019, we had federal and state net operating loss carryforwards due to prior period losses, some of which if not utilized will continue to expire in 2020 for federal and state purposes. We also have federal research tax credit carryforwards, which will continue to expire in 2020. These net operating loss and research tax credit carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our profitability.

In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, our ability to utilize net operating loss carryforwards or other tax attributes, such as research tax credits, in any taxable year may be limited if we experience an “ownership change.” An “ownership change” generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws.

Future issuances of our stock could cause an “ownership change.” It is possible that any future ownership change could have a material effect on the use of our net operating loss carryforwards or other tax attributes, which could adversely affect our profitability.

#### **Risks Related to Our Convertible Senior Notes**

***We have indebtedness in the form of convertible senior notes.***

In August 2019, we completed an offering of \$920.0 million aggregate principal amount of 0.25% Convertible Senior Notes due 2024 (the “2024 Notes”). As a result of this convertible notes offering, we incurred \$920.0 million principal amount of indebtedness, the principal amount of which we may be required to pay at maturity in 2024, upon an event of default (as defined in the indenture governing the 2024 Notes (the “indenture”)), or upon the occurrence of a make-whole fundamental change (as defined in the indenture). There can be no assurance that we will be able to repay this indebtedness when due, or that we will be able to refinance this indebtedness on acceptable terms or at all. In addition, this indebtedness could, among other things:

- make it difficult for us to pay other obligations;
- make it difficult to obtain favorable terms for any necessary future financing for working capital, capital expenditures, debt service requirements or other purposes;
- require us to dedicate a substantial portion of our cash flow from operations to service the indebtedness, reducing the amount of cash flow available for other purposes; and
- limit our flexibility in planning for and reacting to changes in our business.

***Conversion of our 2024 Notes may affect the price of our common stock and the value of the 2024 Notes.***

The conversion of some or all of our 2024 Notes may dilute the ownership interest of existing stockholders to the extent we deliver shares of common stock upon conversion. Holders of the 2024 Notes will be able to convert them only upon the satisfaction of certain conditions prior to April 15, 2024. Upon conversion, holders of the 2024 Notes will receive cash, shares of common stock or a combination of cash and shares of common stock, at our election. Any sales in the public market of shares of common stock issued upon conversion of the 2024 Notes could adversely affect the trading price of our common stock and the value of the 2024 Notes.

***Servicing our debt will require a significant amount of cash. We may not have sufficient cash flow from our business to pay our substantial debt, and we may not have the ability to raise the funds necessary to settle conversions of the 2024 Notes in cash or to repurchase the 2024 Notes upon a fundamental change, which could adversely affect our business and results of operations.***

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our indebtedness, including the amounts payable under the 2024 Notes, depends on our future performance, which is subject to economic, financial, competitive, and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our indebtedness and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt, or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Further, holders of the 2024 Notes have the right to require us to repurchase all or a portion of their 2024 Notes upon the occurrence of a “fundamental change” (as defined in the indenture) before the maturity date at a repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion of the 2024 Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect to the 2024 Notes being converted. However,

we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of 2024 Notes surrendered therefor, or pay cash with respect to 2024 Notes being converted.

***The conditional conversion feature of the 2024 Notes, when triggered, may adversely affect our financial condition and operating results.***

In the event the conditional conversion feature of the 2024 Notes is triggered, holders of the 2024 Notes will be entitled to convert their 2024 Notes at any time during specified periods at their option. If one or more holders elect to convert their 2024 Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity. In addition, even if holders of 2024 Notes do not elect to convert their 2024 Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 2024 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting for convertible debt securities that may be settled in cash, such as the 2024 Notes, could have a material effect on our reported financial results.***

Under Accounting Standards Codification 470-20, Debt with Conversion and Other Options (“ASC 470-20”), an entity must separately account for the liability and equity components of the convertible debt instruments (such as the 2024 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer’s economic interest cost. The effect of ASC 470-20 on the accounting for the 2024 Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders’ equity on our consolidated balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the 2024 Notes. As a result, we will be required to record a greater amount of noncash interest expense as a result of the amortization of the discounted carrying value of the 2024 Notes to their face amount over the term of the 2024 Notes. We will report larger net losses (or lower net income) in our financial results because ASC 470-20 will require interest to include both the amortization of the debt discount and the instrument’s non-convertible coupon interest rate, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the 2024 Notes.

***The capped call transactions may affect the value of the 2024 Notes and our common stock.***

In connection with the pricing of the 2024 Notes, we entered into capped call transactions with certain financial institutions. The capped call transactions are expected generally to reduce or offset the potential dilution upon conversion of the 2024 Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted 2024 Notes, as the case may be, with such reduction and/or offset subject to a cap.

In connection with establishing their initial hedges of the capped call transactions, these financial institutions or their respective affiliates likely purchased shares of our common stock and/or entered into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the 2024 Notes. These financial institutions or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the 2024 Notes and prior to the maturity of the 2024 Notes (and are likely to do so during any observation period related to a conversion of 2024 Notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the 2024 Notes.

The potential effect, if any, of these transactions and activities on the price of our common stock or the 2024 Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

***We are subject to counterparty risk with respect to the capped call transactions.***

The counterparties to the capped call transactions we entered into in connection with our 2024 Notes are financial institutions, and we will be subject to the risk that one or more of these counterparties may default or otherwise fail to perform, or may exercise certain rights to terminate, their obligations under the capped call agreements. Our exposure to the credit risk of these counterparties will not be secured by any collateral.

If any of these counterparties to one or more of the capped call transactions becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at the time under such transaction. Our exposure will depend on many factors but, generally, our exposure will increase if the market price or the volatility of our common stock increases. In addition, upon a default or other failure to perform, or a termination of obligations, by a counterparty, we may suffer less relief from dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of these counterparties.

## Risks Related to the Ownership of Our Common Stock

*Our stock price has been volatile in the past and may be subject to volatility in the future.*

The trading price of our common stock has been volatile historically, and is likely to continue to be subject to wide fluctuations in response to various factors described below. Factors affecting the market price of our securities include:

- variations in our revenue, billings, gross margin, operating results, free cash flow, loss per share and how these results compare to analyst expectations;
- forward looking guidance that we may provide regarding financial metrics such as billings, revenue, gross margin, operating results, free cash flow, and loss per share;
- announcements of technological innovations, new products or services, strategic alliances, acquisitions or significant agreements by us or by our competitors;
- disruptions in our cloud-based operations or services or disruptions of other prominent cloud-based operations or services;
- the economy as a whole, market conditions in our industry, and the industries of our customers;
- trading activity by directors, executive officers and significant stockholders, or the perception in the market that the holders of a large number of shares intend to sell their shares;
- the size of our market float and significant option exercises;
- any future issuances of securities; and
- any other factors discussed herein.

In addition, the stock markets in general and the NASDAQ Global Market in particular, have experienced substantial price and volume volatility that is often seemingly unrelated to the operating results of any particular companies. Moreover, if the market for technology stocks, especially security and cloud computing-related stocks, or the stock market in general experiences uneven investor confidence, the market price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The market price for our stock might also decline in reaction to events that affect other companies within, or outside, our industry, even if these events do not directly affect us. Some companies that have experienced volatility in the trading price of their stock have been subject of securities litigation. If we are the subject of such litigation, it could result in substantial costs and a diversion of management's attention and resources.

*Anti-takeover provisions contained in our certificate of incorporation and bylaws, as well as provisions of Delaware law, and provisions in the indenture for our 2024 Notes, could impair a takeover attempt.*

Our certificate of incorporation and bylaws contain provisions that could have the effect of rendering more difficult, delaying or preventing an acquisition of our company deemed undesirable by our board of directors. These provisions could also reduce the price that investors might be willing to pay in the future for shares of our common stock and result in the market price of our common stock being lower than it would be without these provisions. Our corporate governance documents include provisions:

- creating a classified board of directors whose members serve staggered three-year terms;
- authorizing "blank check" preferred stock, which could be issued by our board without stockholder approval which may contain voting, liquidation, dividend and other rights which are superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings by providing that any stockholder action must be effected at a duly called meeting of the stockholders and not by a consent in writing, and providing that only our board of directors, the chairman of our board of directors, our Chief Executive Officer or President may call a special meeting of the stockholders; and
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors.

In addition, if a fundamental change occurs prior to the maturity date of the 2024 Notes, holders of the 2024 Notes will have the right, at their option, to require us to repurchase all or a portion of their 2024 Notes. If a "make-whole fundamental change" (as defined in the indenture) occurs prior to the maturity date, we will in some cases be required to increase the conversion rate of the 2024 Notes for a holder that elects to convert its 2024 Notes in connection with such make-whole fundamental change. Furthermore, the indenture prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the 2024 Notes.

These provisions, alone or together, could frustrate, delay or prevent hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations merging or combining with us without approval of the holders of a substantial majority of all of our outstanding common stock.

***Our failure to raise additional capital or generate the significant capital necessary to expand our operations and invest in new solutions could reduce our ability to compete and could harm our business.***

We may need to raise additional funds, and we may not be able to obtain additional debt or equity financing on favorable terms, if at all. If we raise additional equity financing, our stockholders may experience significant dilution of their ownership interests and the per share value of our common stock could decline. If we issue equity securities in any additional financing, the new securities may have rights and preferences senior to our common stock. If we engage in debt financing, we may be required to accept terms that restrict our ability to incur additional indebtedness and force us to maintain specified liquidity or other ratios. If we need additional capital and cannot raise it on acceptable terms, we may not be able to, among other things:

- develop or enhance our application and services;
- continue to expand our product development, sales and marketing organizations;
- acquire complementary technologies, products or businesses;
- expand operations, in the United States or internationally;
- hire, train and retain employees; or
- respond to competitive pressures or unanticipated working capital requirements.

***Future sales of our common stock in the public market could lower the market price for our common stock and adversely impact the trading price of our common stock.***

In the future, we may sell additional shares of our common stock to raise capital. In addition, a substantial number of shares of our common stock is reserved for issuance upon the conversion of the 2024 Notes, exercise of stock options, the vesting of restricted stock units and restricted stock pursuant to our employee benefit plans, and for purchase by employees under our employee stock purchase plan. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our common stock. The issuance and sale of substantial amounts of common stock, or the perception that such issuances and sales may occur, could adversely affect the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

***We do not anticipate paying cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.***

We do not anticipate paying cash dividends on our common stock in the future. As a result, only appreciation of the price of our common stock will provide a return to our stockholders. Investors seeking cash dividends should not invest in our common stock.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our corporate headquarters, which includes our operations and research and development facilities, is located in Sunnyvale, California, and currently consists of 95,557 square feet of space under a lease that expires in 2020, with a five-year extension option, and 43,925 square feet space under a lease that expires in 2024, with a five-year extension option.

In October 2018, we entered into a lease agreement to lease approximately 242,400 square feet of corporate office space in Sunnyvale, California, which is expected to become our new corporate headquarters beginning in 2020. The property will be constructed by the landlord, with the completion date expected to occur between August and November 2020. The lease has a term of 127 months and a five-year extension option.

We lease additional U.S. offices in California, Utah, Pennsylvania, Texas, Massachusetts, Indiana and Colorado. We also lease offices in Canada, France, Japan, Germany, the United Kingdom, Ireland, Australia, Dubai and Israel. We believe our facilities are adequate for our current needs and for the foreseeable future.

We operate sixteen data centers at third-party facilities throughout the world: ten in the United States, two in Canada, one in the Netherlands, one in France, one in Germany and one in Australia.

**ITEM 3. LEGAL PROCEEDINGS**

From time to time, we may be involved in legal proceedings and subject to claims in the ordinary course of business.

Although the results of these proceedings and claims cannot be predicted with certainty, we do not believe the ultimate cost to resolve these matters would individually, or taken together, have a material adverse effect on our business, operating results, cash flows or financial condition. Regardless of the outcome, such proceedings can have an adverse impact on us because of defense and settlement costs, diversion of resources and other factors, and there can be no assurances that favorable outcomes will be obtained.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**PART II.**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our common stock is traded on the NASDAQ Global Market, under the symbol PFPT.

As of February 7, 2020, there were 31 stockholders of record, although we believe that there are a larger number of beneficial owners as many of our shares of our common stock are held by brokers and other institutions on behalf of stockholders.

**Dividend Policy**

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings and do not expect to pay any cash dividends on our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will be dependent on a number of factors, including our earnings, capital requirements and overall financial conditions.

**Unregistered Sales of Equity Securities**

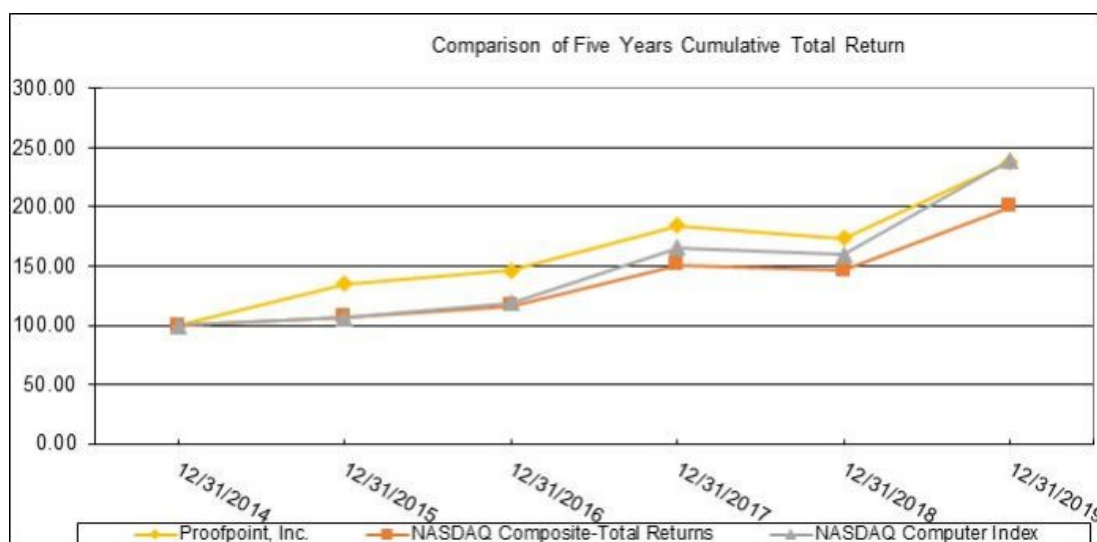
Not applicable.

**Use of Proceeds from Public Offering of Common Stock**

None.

**Stock Performance Graph**

The following graph shows a comparison of the five years ended December 31, 2019, of the cumulative total return for our common stock, the NASDAQ Composite Index, and the NASDAQ Computer Index. The graph assumes an investment of \$100 on December 31, 2014 and reinvestment of any dividends. The comparisons in the graph below are required by the Securities and Exchange Commission and are not intended to forecast or be indicative of possible future performance of our common shares.



	December 31, 2014	December 31, 2015	December 31, 2016	December 31, 2017	December 31, 2018	December 31, 2019
Proofpoint, Inc.	\$ 100.00	\$ 134.79	\$ 146.49	\$ 184.14	\$ 173.77	\$ 237.98
NASDAQ Composite - Total Returns	\$ 100.00	\$ 106.96	\$ 116.45	\$ 150.96	\$ 146.67	\$ 200.49
NASDAQ Computer Index	\$ 100.00	\$ 106.24	\$ 119.28	\$ 165.52	\$ 159.43	\$ 239.67



The above stock Performance Graph and related information shall not be deemed “filed” with the SEC and is not to be incorporated by reference into any filing of Proofpoint, Inc. made under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

## ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following tables present selected historical financial data for our business. You should read this information together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements, related notes and other financial information included elsewhere in this Annual Report on Form 10-K. The selected consolidated financial data in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

We derived the consolidated statements of operations data for the years ended December 31, 2019, 2018 and 2017, and the consolidated balance sheet data as of December 31, 2019 and 2018 from our audited consolidated financial statements included elsewhere in this report. We derived the consolidated statements of operations data for the years ended December 31, 2016 and 2015 and the consolidated balance sheet data as of December 31, 2017, 2016 and 2015 from our consolidated financial statements not included in this report. Our historical results are not necessarily indicative of the results to be expected in the future.

	Years Ended December 31,				
	2019	2018	2017 (a)	2016 (a)	2015
(in thousands, except per share data)					
<b>Consolidated Statements of Operations Data:</b>					
Revenue:					
Subscription	\$ 875,006	\$ 704,400	\$ 506,355	\$ 367,494	\$ 257,329
Hardware and services	13,184	12,594	13,326	10,843	8,068
Total revenue	888,190	716,994	519,681	378,337	265,397
Cost of revenue:(1)					
Subscription	206,997	180,253	125,832	94,716	71,746
Hardware and services	29,217	21,508	17,546	13,877	12,312
Total cost of revenue	236,214	201,761	143,378	108,593	84,058
Gross profit	651,976	515,233	376,303	269,744	181,339
Operating expense:(1)					
Research and development	230,463	185,391	129,803	98,506	74,459
Sales and marketing	416,717	345,368	248,694	189,324	148,414
General and administrative	109,727	86,185	52,735	52,774	36,616
Total operating expense	756,907	616,944	431,232	340,604	259,489
Operating loss	(104,931)	(101,711)	(54,929)	(70,860)	(78,150)
Interest expense (b)	(12,526)	(16,761)	(28,608)	(25,082)	(18,374)
Other income (expense), net	7,109	1,491	3,785	441	(1,553)
Loss before income taxes	(110,348)	(116,981)	(79,752)	(95,501)	(98,077)
(Provision for) benefit from income taxes	(19,917)	13,232	9,950	(986)	(635)
Net loss	\$ (130,265)	\$ (103,749)	\$ (69,802)	\$ (96,487)	\$ (98,712)
Net loss per share, basic and diluted	\$ (2.33)	\$ (1.99)	\$ (1.58)	\$ (2.31)	\$ (2.48)
Weighted average shares outstanding, basic and diluted	55,902	52,111	44,258	41,859	39,787

(1) Includes stock-based compensation and amortization of intangible assets as follows:

	Years Ended December 31,				
	2019	2018	2017	2016	2015
	(in thousands)				
<b>Stock-based compensation:</b>					
Cost of subscription revenue	\$ 16,966	\$ 14,012	\$ 10,635	\$ 7,427	\$ 5,028
Cost of hardware and services revenue	\$ 4,001	\$ 2,287	\$ 1,893	\$ 1,494	\$ 1,098
Research and development	\$ 50,739	\$ 40,204	\$ 30,588	\$ 24,342	\$ 20,672
Sales and marketing	\$ 61,858	\$ 50,320	\$ 33,962	\$ 28,607	\$ 21,511
General and administrative	\$ 42,761	\$ 35,885	\$ 20,382	\$ 16,826	\$ 11,785
<b>Amortization of intangible assets:</b>					
Cost of subscription revenue	\$ 30,760	\$ 26,971	\$ 14,512	\$ 9,423	\$ 7,079
Research and development	\$ —	\$ 45	\$ 60	\$ 60	\$ 91
Sales and marketing	\$ 14,888	\$ 14,141	\$ 3,934	\$ 4,938	\$ 5,074
General and administrative	\$ —	\$ —	\$ —	\$ —	\$ 12

	As of December 31,				
	2019	2018	2017 (a)	2016 (a)	2015
	(in thousands)				
<b>Consolidated Balance Sheet Data:</b>					
Cash, cash equivalents and short-term investments	\$ 890,940	\$ 231,699	\$ 331,598	\$ 396,751	\$ 406,237
Deferred commissions, current and long-term	\$ 137,555	\$ 107,380	\$ 78,203	\$ 60,768	\$ 22,802
Property and equipment, net	\$ 73,512	\$ 70,627	\$ 73,617	\$ 52,523	\$ 34,501
Total assets	\$ 2,337,511	\$ 1,233,018	\$ 1,018,432	\$ 836,929	\$ 705,616
Convertible senior notes	\$ 749,620	\$ —	\$ 197,858	\$ 366,541	\$ 345,699
Other debt, current and long-term	\$ —	\$ —	\$ 89	\$ 123	\$ 155
Deferred revenue, current and long-term	\$ 784,063	\$ 598,130	\$ 427,829	\$ 295,015	\$ 223,726
Total stockholders' equity	\$ 592,497	\$ 512,534	\$ 299,115	\$ 96,379	\$ 83,185

(a) Reflects the impact of the retrospective adoption of new revenue recognition standards in fiscal year 2018.

(b) "Interest income" has been reclassified from "Interest income (expense)" to "Other income (expense), net" to conform to the current period presentation in the consolidated statements of operations. The reclassifications had no impact on previously reported net loss or accumulated deficit.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our "Selected Consolidated Financial Data" and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those forward-looking statements below. Factors that could cause or contribute to those differences include, but are not limited to, those identified below and those discussed in the section entitled "Risk Factors" included elsewhere in this Annual Report on Form 10-K. This Annual Report on Form 10-K contains "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These statements are often identified by the use of words such as "may," "will," "expect," "believe," "anticipate," "intend," "could," "estimate," or "continue," and similar expressions or variations. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified herein, and those discussed in the section titled "Risk Factors", set forth in Part I, Item 1A of this Form 10-K. Except as required by law, we disclaim any obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.*

### Overview

Proofpoint is a leading next generation cybersecurity company that enables large and mid-sized organizations worldwide to protect their employees from advanced threats and compliance risks. Our security and compliance platform is comprised of an integrated suite of advanced threat protection, information protection, and brand protection solutions. These capabilities include email protection and authentication, advanced threat protection, data loss prevention, email encryption, SaaS application protection, response orchestration and automation, digital risk, security training, web browser isolation, archiving, eDiscovery, supervision, and secure communication. Our solutions are built on a flexible, cloud-based platform and leverage a number of proprietary technologies - including big data analytics, machine learning, deep content inspection, secure storage, advanced encryption, intelligent message routing, dynamic malware analysis, threat correlation, and virtual execution environments to address today's rapidly changing threat and compliance landscape.

Our platform addresses this growing challenge by not only protecting data as it flows into and out of the enterprise via on-premises and cloud-based email, social media and other cloud applications, but also by keeping track of this information as it is modified and distributed throughout the enterprise for compliance and data loss prevention, and securely archiving these communications for compliance and discovery. We help organizations reduce their critical risk in five major ways:

- Protecting users from the advanced attacks that target them via email, web, networks, social media, and cloud apps;
- Preventing the theft or inadvertent loss of sensitive information and, in turn, ensuring compliance with regulatory data protection mandates;
- Improving the resilience of end users to the threats that target them and training them to be better caretakers of their organizations' critical data;
- Collecting, retaining, supervising and discovering communications and sensitive data for compliance and litigation support; and
- Enabling organizations to respond quickly to security issues, providing both the intelligence and the context to prioritize incidents and orchestrate remediation actions.

Our platform and its associated solutions are sold to customers on a subscription basis and can be deployed through our unique cloud-based architecture that leverages both our global data centers as well as optional points-of-presence behind our customers' firewalls. Our flexible deployment model enables us to deliver superior security and compliance while maintaining the favorable economics afforded by cloud computing, creating a competitive advantage for us over legacy on-premises and cloud-only offerings.

We were founded in 2002 to provide a unified solution to help enterprises address their growing data security requirements. Our first solution was commercially released in 2003 to combat the burgeoning problem of spam and viruses and their impact on corporate email systems. To address the evolving threat landscape and the adoption of communication and collaboration systems beyond corporate email and networks, we have broadened our solutions to defend against a wide range of threats, including email, mobile apps and social media, to protect the information people create from both compromise and compliance risks, and to archive and govern corporate information. Today, our solutions are used worldwide to protect well over 100 million end users at enterprise customers, and millions more via service providers through our Cloudmark division. As the threat environment has continued to evolve, we have dedicated significant resources to meet the ongoing challenges that this highly dynamic environment creates for our customers such as investing significantly to expand the breadth of our data protection platform as these expenditures are primarily in connection with the replacement and upgrade of equipment to lower the cost of deployment as well as to improve the efficiency for our cloud-based architecture.

Our business is based on a recurring revenue model. Our customers pay a subscription fee to license the various components of our SaaS platform for a contract term that is typically one to three years. At the end of the license term, customers may renew their subscription and in each year since the launch of our first solution in 2003, we have maintained a renewal rate with our existing customers of over 90%. We derive this retention rate by calculating the total annually recurring subscription revenue from customers currently using our SaaS platform and dividing it by the total annually recurring subscription revenue from both these current customers as well as all business lost through non-renewal.

We market and sell our solutions worldwide both directly through our sales teams and indirectly through a hybrid model where our sales organization actively assists our network of distributors and resellers. We also derive a lesser portion of our total revenue from the license of our solutions to strategic partners who offer our solutions in conjunction with one or more of their own products or services.

Our solutions are designed to be implemented, configured and operated without the need for any training or professional services. We offer various training and professional services for those customers that seek to develop deeper expertise in the use of our solutions or would like assistance with complex configurations or the importing of data. In some cases, we provide a hardware appliance to those customers that elect to host elements of our solution behind their firewall. Increasing adoption of virtualization in the data center has led to a decline in the sales of our hardware appliances and a shift towards our software-based virtual appliances, which are delivered as a download via the Internet. Our hardware and services offerings carry lower margins and are provided as a courtesy to our customers. We expect the overall proportion of revenue derived from the hardware and services offerings to generally remain below 5% of our total revenue.

Historically, the majority of our revenue was derived from our customers in the United States. We believe the markets outside of the United States offer an opportunity for growth and we intend to make additional investments in sales and marketing to expand in these markets. Revenue from customers outside of the United States grew 32% for the year ended December 31, 2019 as compared to the prior year. In terms of customer concentration, there were two partners who accounted for 12% and 11%, respectively, of our total revenue in 2019. In 2018 and 2017, one partner accounted for 12% of our total revenue in each year. These partners sold to a number of end users, none of which accounted for more than 10% of our total revenue in 2019, 2018 and 2017.

We have not been profitable to date and will need to grow revenue at a rate faster than our investments in cost of revenue and operating expenses in order to achieve profitability, as discussed in more detail below.

#### **Key Opportunities and Challenges**

The total costs associated with the teams tasked with closing business with new customers and additional business with our existing customers have represented more than 90% of our total sales and marketing costs since 2008. Although we expect customers to be profitable over the duration of the customer relationship, the upfront costs typically exceed related revenue during the earlier periods of a contract. As a result, while our practice of invoicing our customers for the entire amount of the contract at the start of the term provides us with a relatively immediate contribution to cash flow, the revenue is recognized ratably over the term of the contract, and hence contributions toward operating income are limited in the period where the sales and marketing costs are incurred. Accordingly, an increase in the mix of new customers as a percentage of total customers would likely negatively impact our near-term operating results. On the other hand, we expect that an increase in the mix of existing customers as a percentage of total customers would positively impact our operating results over time. As we accumulate customers that continue to renew their contracts, we anticipate that our mix of existing customers will increase, contributing to a decrease in our sales and marketing costs as a percentage of total revenue and a commensurate improvement in our operating income.

As part of maintaining our SaaS platform, we provide ongoing updates and enhancements to the platform services both in terms of the software as well as the underlying hardware and data center infrastructure. These updates and enhancements are provided to our customers at no additional charge as part of the subscription fees paid for the use of our platform. While more traditional products eventually become obsolete and require replacement, we are constantly updating and maintaining our cloud-based services and as such they operate with a continuous product life cycle. Much of this work is designed to both maintain and enhance the

customers' experience over time while also lowering our costs to deliver the service. Our SaaS platform is a shared infrastructure that is used by all of our customers. Accordingly, the costs of the platform are spread in a relatively uniform manner across the entire customer base and no specific infrastructure elements are directly attached to any particular customer. As such, in the event that a customer chooses to not renew its subscription, the underlying resources are reallocated either to new customers or to accommodate the expanding needs of our existing customers and, as a result, we do not believe that the loss of any particular customer has a meaningful impact on our gross profit as long as we continue to grow our customer base.

To date, our customers have primarily used our solutions in conjunction with email messaging content. We have developed solutions to address new and evolving messaging solutions such as social media and file sharing applications, but these solutions are relatively nascent. If customers increase their use of these new messaging solutions in the future, we anticipate that our growth in revenue associated with older email messaging solutions may slow over time. Although revenue associated with our social media and file sharing applications has not been material to date, we believe that our ability to provide security, archiving, governance and discovery for these new solutions will be viewed as valuable by our existing customers, enabling us to derive revenue from these new forms of messaging and communication.

With the majority of our business, we invoice our customers for the entire contract amount at the start of the term and these amounts are recorded as deferred revenue on our balance sheet, with the dollar weighted average duration of these contracts for any given period over the past three years typically ranging from 14 to 20 months. As a result, while our practice of invoicing customers for the entire amount of the contract at the start of the term provides us with a relatively immediate contribution to cash flow, the revenue is recognized ratably over the term of the contract, and hence contributions toward operating income are realized over an extended period. As such, our efforts to improve our profitability require us to invest far less in operating expenses than the cash flow generated by our business might otherwise allow. As we strive to invest in an effort to continue to increase the size and scale of our business, we expect that the level of investment afforded by our growth in revenue should be sufficient to fund the investments needed to drive revenue growth and broaden our product line.

Considering all of these factors, we do not expect to be profitable on a GAAP basis in the near term and in order to achieve profitability we will need to grow revenue at a rate faster than our investments in operating expenses and cost of revenue.

We intend to grow our revenue through acquiring new customers by investing in our sales and marketing activities. We believe that an increase in new customers in the near term will result in a larger base of renewal customers, which, over time, we expect to be more profitable for us.

Sales and marketing is our largest expense and hence a significant contributing factor to our operating losses. We believe that our opportunity to improve our return on investment on sales and marketing costs relies primarily on our ongoing ability to cost-effectively renew our business with existing customers, thereby lowering our overall sales and marketing costs as a percentage of revenue as the mix of revenue derived from this more profitable renewal activity increases over time. Therefore, we anticipate that our initial significant investments in sales and marketing activities will, over time, generate a larger base of more profitable customers. Cost of subscription revenue is also a significant expense for us, and we expect to continue to build on the improvements over the past years, such as in replacing third-party technology with our proprietary technology and improving the utilization of our fixed investments in equipment and infrastructure, in order to provide the opportunity for improved subscription gross margins over time. Although we plan to continue enhancing our solutions, we intend to lower our rate of investment in research and development as a percentage of revenue over time by deriving additional revenue from our existing solutions rather than by adding entirely new categories of solutions. In addition, as personnel costs are one of the primary drivers of the increases in our operating expenses, we plan to reduce our historical rate of headcount growth over time.

## Key Metrics

We regularly review a number of metrics, including the following key metrics presented in the table below, to evaluate our business, measure our performance, identify trends in our business, prepare financial projections and make strategic decisions. Many of these key metrics, such as non-GAAP gross margin, billings and free cash flow, are non-GAAP measures. This non-GAAP information is not necessarily comparable to non-GAAP information of other companies. Users of this financial information should consider the types of events and transactions for which adjustments have been made.

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Total revenue	\$ 888,190	\$ 716,994	\$ 519,681
Growth	24%	38%	37%
Gross margin percentage	73%	72%	72%
Non-GAAP gross margin	79%	78%	78%
Billings (non-GAAP)	\$ 1,072,159	\$ 875,323	\$ 638,839
Growth	22%	37%	38%
Free cash flows (non-GAAP)	\$ 207,315	\$ 155,222	\$ 106,728

### Non-GAAP gross margin

We define non-GAAP gross margin as non-GAAP gross profit divided by GAAP revenue. We define non-GAAP gross profit as GAAP gross profit, adjusted to exclude stock-based compensation expense and the amortization of intangibles associated with acquisitions. We consider this non-GAAP financial measure to be a useful metric for management and investors because it excludes the effect of stock-based compensation expense and the amortization of intangibles associated with acquisitions so that our management and investors can compare our business operating results over multiple periods, and compare our financial results with other companies in its industry, many of which present similar non-GAAP financial measure. However, there are a number of limitations related to the use of non-GAAP gross margin versus gross margin calculated in accordance with GAAP. For example, stock-based compensation has been and will continue to be for the foreseeable future a significant recurring expense in our business. Stock-based compensation is an important part of our employees' compensation and impacts their performance. In addition, the components of the costs that we exclude in our calculation of non-GAAP gross margin may differ from the components that our peer companies exclude when they report their non-GAAP results. Management compensates for these limitations by providing specific information regarding the GAAP amounts excluded from non-GAAP gross margin and evaluating non-GAAP gross margin together with gross margin calculated in accordance with GAAP.

The following table presents the reconciliation of gross margin to Non-GAAP gross margin for the years ended December 31, 2019, 2018 and 2017:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
GAAP gross profit	\$ 651,976	\$ 515,233	\$ 376,303
GAAP gross margin	73%	72%	72%
Plus:			
Stock-based compensation expense	20,967	16,299	12,528
Amortization of intangible assets	30,760	26,971	14,512
Non-GAAP gross profit	\$ 703,703	\$ 558,503	\$ 403,343
Non-GAAP gross margin	79%	78%	78%

### Billings

We have included billings, a non-GAAP financial measure, in this report because it is a key measure used by our management and board of directors to manage our business and monitor our near term cash flows. We define billings as revenue recognized plus the change in deferred revenue and customer prepayments less unbilled accounts receivable from the beginning to the end of the period, but excluding additions to deferred revenue and customer prepayments from acquisitions. We have provided reconciliation between total revenue, the most directly comparable GAAP financial measure, and billings. Accordingly, we believe that billings provide useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of billings as a non-GAAP measure has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for revenue or an analysis of our results as reported under GAAP. Some of these limitations are:

- Billings is not a substitute for revenue, as trends in billings are not necessarily directly correlated to trends in revenue;
- Billings is affected by a combination of factors including the timing of renewals, the sales of our solutions to both new and existing customers, the relative duration of contracts sold, and the relative amount of business derived from strategic partners. As each of these elements has unique characteristics in the relationship between billings and revenue, our billings activity is not necessarily closely correlated to revenue; and
- Other companies, including companies in our industry, may not use billings, may calculate billings differently, or may use other financial measures to evaluate their performance - all of which reduce the usefulness of billings as a comparative measure.

Our deferred revenue consists of amounts that have been invoiced but have not been recognized as revenue as of the period end. Customer prepayments represent billed amounts for which the contract can be terminated and the customer has a right of refund. Unbilled accounts receivable represent amounts for which we have recognized revenue, pursuant to our revenue recognition policy, for subscription software already delivered and professional services already performed, but billed in arrears and for which we believe we have an unconditional right to payment.

The following table presents the reconciliation of total revenue to billings for the years ended December 31, 2019, 2018 and 2017:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Total revenue	\$ 888,190	\$ 716,994	\$ 519,681
Deferred revenue and customer prepayments			
Ending	797,173	605,073	431,371
Beginning	605,073	431,371	295,996
Net change	192,100	173,702	135,375
Unbilled accounts receivable			
Ending	2,255	1,276	603
Beginning	1,276	603	486
Net change	(979)	(673)	(117)
Less: deferred revenue and customer prepayments contributed by acquisitions	(7,152)	(14,700)	(16,100)
Billings	<u>\$ 1,072,159</u>	<u>\$ 875,323</u>	<u>\$ 638,839</u>

#### Free cash flows

We define free cash flow as net cash provided by operating activities minus capital expenditures. We consider free cash flow to be a liquidity measure that provides useful information to management and investors about the amount of cash generated by the business that, after the acquisition of property and equipment, can be used for strategic opportunities, including investing in our business, making strategic acquisitions, and strengthening the balance sheet. Analysis of free cash flow facilitates management's comparisons of our operating results to competitors' operating results. A limitation of using free cash flow versus the GAAP measure of net cash provided by operating activities as a means for evaluating our company is that free cash flow does not represent the total increase or decrease in the cash balance from operations for the period because it excludes cash used for capital expenditures during the period. Management compensates for this limitation by providing information about our capital expenditures on the face of the cash flow statement and in the "Liquidity and Capital Resources" section below.

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
GAAP cash flows provided by operating activities:	\$ 242,508	\$ 184,744	\$ 153,686
Less:			
Purchase of property and equipment	(35,193)	(29,522)	(46,958)
Non-GAAP free cash flows	<u>\$ 207,315</u>	<u>\$ 155,222</u>	<u>\$ 106,728</u>

## Components of Our Results of Operations

### Revenue

We derive our revenue primarily through the license of various solutions and services on our security-as-a-service platform on a subscription basis, supplemented by the sales of training, professional services and hardware depending upon our customers' requirements.

*Subscription.* We license our platform and its associated solutions and services on a subscription basis. The fees are charged on a per user, per year basis. Subscriptions are typically one to three years in duration. We invoice our customers upon signing for the entire term of the contract. The invoiced non-cancellable amounts billed in advance are treated as deferred revenue on the balance sheet and are recognized ratably, in accordance with the appropriate revenue recognition guidelines, over the term of the contract. We also derive a portion of our subscription revenue from the license of our solutions to strategic partners. We bill these strategic partners monthly. We expect our subscription revenue will continue to grow and remain above 95% of our total revenue.

*Hardware and services.* We provide hardware appliances as a convenience to our customers and as such it represents a small part of our business. Our solutions are designed to be implemented, configured and operated without the need for any training or professional services. For those customers that seek to develop deeper expertise in the use of our solutions or would like assistance with complex configurations or the importing of data, we offer various training and professional services. We typically invoice the customer for hardware at the time of shipment. We typically invoice customers for services at the time the order is placed and recognize this revenue as the services are performed. On occasion, customers may retain us for special projects such as archiving import and export services; these types of services are recognized upon completion of the project. We expect the overall proportion of revenue derived from hardware and service offerings to generally remain below 5% of our total revenue.

### Cost of Revenue

Our cost of revenues consists of cost of subscription revenue and cost of hardware and services revenue. Personnel costs, which consist of salaries, benefits, bonuses, stock-based compensation, data center costs and hardware costs, are the most significant components of our cost of revenues. We expect personnel costs to continue to increase in absolute dollars as we hire new employees to continue to grow our business.

*Cost of Subscription Revenue.* Cost of subscription revenue primarily includes personnel costs, consisting of salaries, benefits, bonuses, and stock-based compensation, for employees who provide support services to our customers and operate our data centers. Other costs include fees paid to contractors who supplement our support and data center personnel; expenses related to the use of third-party data centers in both the United States and internationally; depreciation of data center equipment; amortization of licensing fees and royalties paid for the use of third-party technology; amortization of internally developed intangible assets; and the amortization of intangible assets acquired through business combinations. Growth in subscription revenue generally consumes production resources, requiring us to gradually increase our cost of subscription revenue in absolute dollars as we expand our investment in data center equipment, the third-party data center space required to house this equipment, and the personnel needed to manage this higher level of activity.

*Cost of Hardware and Services Revenue.* Cost of hardware and services revenue includes personnel costs for employees who provide training and professional services to our customers as well as the cost of server hardware shipped to our customers that we procure from third parties and configure with our software solutions.

### Operating Expenses

Our operating expenses consist of research and development, sales and marketing, and general and administrative expenses. Personnel costs, which consist of salaries, benefits, bonuses, and stock-based compensation, are the most significant component of our operating expenses. Our headcount has increased from 2,047 employees as of December 31, 2017 to 3,368 employees as of December 31, 2019. As a result of this growth in headcount, operating expenses have increased significantly over these periods. We expect personnel costs to continue to increase in absolute dollars as we hire new employees to continue to grow our business.



*Research and Development.* Research and development expenses include personnel costs, consulting services and depreciation. We believe that these investments have played an important role in broadening the capabilities of our platform over the course of our operating history, enhancing the relevance of our solutions in the market in general and helping us to retain our customers over time. We expect to continue to devote substantial resources to research and development in an effort to continuously improve our existing solutions as well as to develop new offerings. We believe that these investments are necessary to maintain and improve our competitive position. However, over the longer term, we intend to monitor these costs so as to decrease this spending as a percentage of total revenue. Our research efforts include both software developed for our internal use on behalf of our customers as well as software elements to be used by our customers in their own facilities. To date, our capitalized costs on software developed for internal use on behalf of our customers were not material. For the software developed for use on our customers' premises, the costs associated with the development work between technological feasibility and the general availability has not been material and as such we have not capitalized any of these development costs to date.

*Sales and Marketing.* Sales and marketing expenses include personnel costs, sales commissions, and other costs including travel and entertainment, marketing and promotional events, public relations and marketing activities. These costs also include amortization of intangible assets as a result of our past acquisitions. Due to our continued investment in growing our sales and marketing operations, both domestically and internationally, headcount increases were reflected in higher compensation expense consistent with our revenue growth. Our sales personnel are typically not immediately productive, and therefore the increase in sales and marketing expenses we incur when we add new sales representatives is not immediately offset by increased revenue and may not result in increased revenue over the long-term if these new sales people fail to become productive. The timing of our hiring of new sales personnel and the rate at which they generate incremental revenue will affect our future financial performance. We expect that sales and marketing expenses will continue to increase in absolute dollars and be among the most significant components of our operating expenses.

*General and Administrative.* General and administrative expenses consist of personnel costs, consulting services, audit fees, tax services, legal expenses and other general corporate items. As a result of our operational growth, we expect our general and administrative expenses to increase in absolute dollars in future periods as we continue to expand our operations and hire additional personnel.

#### ***Interest Expense***

Interest expense consists of interest expense and loss on conversion related to our convertible senior notes.

#### ***Other Income, Net***

Other income, net, consists primarily of interest income earned on our cash, cash equivalents and short-term investments, and the net effect of foreign currency transaction gains and losses.

#### ***(Provision for) Benefit from Income Taxes***

For most of the prior years, our income tax expense or benefit were primarily related to state and foreign income taxes. As we have incurred operating losses in all periods to date and recorded a full valuation allowance against our deferred tax assets, we had not historically recorded a provision for federal income taxes. However, in the year ended December 31, 2017, we recognized \$0.2 million of deferred tax benefit in the U.S. related to amortization of tax goodwill on business acquisitions and \$12.3 million of deferred tax benefit in the U.S. related to changes in the Company's valuation allowance resulting from the Cloudmark, Inc. and WebLife Balance, Inc. business acquisitions. For the year ended December 31, 2018, we recognized \$14.7 million of deferred tax benefit in the U.S. related to changes in the Company's valuation allowance resulting from the Wombat Security Technologies, Inc. acquisition. For the year ended December 31, 2019, we recognized \$0.3 million of deferred tax benefit in the U.S. related to amortization of tax goodwill on certain business acquisitions. Realization of any of our deferred tax assets depends upon future earnings, the timing and amount of which are uncertain. Utilization of our net operating losses and research and development credits may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Analyses have been conducted to determine whether an ownership change had occurred since inception. The analyses have indicated that although ownership changes have occurred in prior years, the net operating losses and research and development credits would not expire before utilization as a result of the ownership change. In the event we have subsequent changes in ownership, net operating losses and research and development credit carryovers could be limited and may expire unutilized as a result of the subsequent ownership change.

## Results of Operations

The following table is a summary of our consolidated statements of operations.

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Revenue:			
Subscription	\$ 875,006	\$ 704,400	\$ 506,355
Hardware and services	13,184	12,594	13,326
Total revenue	888,190	716,994	519,681
Cost of revenue:(1)			
Subscription	206,997	180,253	125,832
Hardware and services	29,217	21,508	17,546
Total cost of revenue	236,214	201,761	143,378
Gross profit	651,976	515,233	376,303
Operating expense:(1)			
Research and development	230,463	185,391	129,803
Sales and marketing	416,717	345,368	248,694
General and administrative	109,727	86,185	52,735
Total operating expense	756,907	616,944	431,232
Operating loss	(104,931)	(101,711)	(54,929)
Interest expense	(12,526)	(16,761)	(28,608)
Other income, net	7,109	1,491	3,785
Loss before income taxes	(110,348)	(116,981)	(79,752)
(Provision for) benefit from, income taxes	(19,917)	13,232	9,950
Net loss	\$ (130,265)	\$ (103,749)	\$ (69,802)

The following table sets forth our consolidated results of operations for the specified periods as a percentage of our total revenue for those periods.

	Year Ended December 31,		
	2019	2018	2017
Revenue:			
Subscription	99%	98%	97%
Hardware and services	1	2	3
Total revenue	100	100	100
Cost of revenue:(1)			
Subscription	24	25	24
Hardware and services	3	3	4
Total cost of revenue	27	28	28
Gross profit	73	72	72
Operating expense:(1)			
Research and development	26	26	25
Sales and marketing	47	48	47
General and administrative	12	12	10
Total operating expense	85	86	82
Operating loss	(12)	(14)	(10)
Interest expense	(1)	(2)	(5)
Other income, net	—	—	—
Loss before income taxes	(13)	(16)	(15)
(Provision for) benefit from income taxes	(2)	2	2
Net loss	(15)%	(14)%	(13)%

(1) Includes stock-based compensation and amortization of intangible assets as follows:

	Year Ended December 31,				
	2019		2018		2017
	(in thousands)				
<b>Stock-based compensation:</b>					
Cost of subscription revenue	\$	16,966	\$	14,012	\$ 10,635
Cost of hardware and services revenue	\$	4,001	\$	2,287	\$ 1,893
Research and development	\$	50,739	\$	40,204	\$ 30,588
Sales and marketing	\$	61,858	\$	50,320	\$ 33,962
General and administrative	\$	42,761	\$	35,885	\$ 20,382
<b>Amortization of intangible assets:</b>					
Cost of subscription revenue	\$	30,760	\$	26,971	\$ 14,512
Research and development	\$	—	\$	45	\$ 60
Sales and marketing	\$	14,888	\$	14,141	\$ 3,934

## Revenue

	Year Ended December 31,				Year Ended December 31,				
	2019		2018		2018		2017		Change
	(in thousands)				(in thousands)				
	\$	%	\$	%	\$	%	\$	%	
Subscription	\$ 875,006		\$ 704,400	24%	\$ 704,400		\$ 506,355	39%	
Hardware and services	13,184		12,594	5%	12,594		13,326	(5)%	
Total revenue	\$ 888,190		\$ 716,994	24%	\$ 716,994		\$ 519,681	38%	

Subscription revenue increased \$170.6 million and \$198.0 million, or 24% and 39%, respectively, for 2019 and 2018. These increases were due to a \$128.6 million and \$153.1 million increase in revenue from the United States and a \$42.0 million and \$44.9 million increase from international customers for 2019 and 2018, respectively.

The increases in subscription revenue for 2019 and 2018 were due to the ongoing demand for our solutions, increase in add-on activity and renewal rate being higher than 90%. Our enterprise customer count, which consists of customers that generate more than \$10,000 in annual recurring revenue, increased from approximately 6,100 at the end of 2018 to approximately 7,100, or 16%, at the end of 2019. In addition, the number of customers with three or more products increased 38% in 2019 as compared to 2018. Our enterprise customer count increased from approximately 4,400 at the end of 2017 to approximately 6,100, or 39%, at the end of 2018. The revenue recognized from acquired deferred revenue related to the acquisitions we made was \$5.8 million, \$20.8 million and \$3.2 million in 2019, 2018 and 2017, respectively. The change in subscription revenue due to pricing was not significant for either period.

Hardware and services revenue for 2019 increased \$0.6 million or 5%, as compared to 2018, primarily due to higher professional service revenue. The decrease in hardware and services revenue in 2018 as compared to 2017 was \$0.7 million or 5%, primarily due to lower professional service revenue.

## Cost of Revenue

	Year Ended December 31,				Year Ended December 31,				
	2019		2018		2018		2017		Change
	(in thousands)				(in thousands)				
	\$	%	\$	%	\$	%	\$	%	
Subscription	\$ 206,997		\$ 180,253	15%	\$ 180,253		\$ 125,832	43%	
Hardware and services	29,217		21,508	36%	21,508		17,546	23%	
Total cost of revenue	\$ 236,214		\$ 201,761	17%	\$ 201,761		\$ 143,378	41%	

Cost of subscription revenue increased \$26.7 million, or 15%, in 2019 as compared to 2018, and \$54.4 million, or 43%, in 2018 as compared to 2017. The increases were primarily due to increases in operations-related expense of \$13.9 million and \$35.4 million, respectively, due to increased headcount, network expense due to an increase in usage, depreciation expense as a result of higher capital expenditures to support our growth, and larger amortization of intangible assets expense of developed technology from recent acquisitions. Additionally, support-related expenses increased \$10.9 million and \$13.3 million, respectively, primarily due to higher headcount and consulting costs. Data center costs increased \$5.3 million in 2018 as compared to 2017 due to the expansion.

Cost of hardware and services revenue for 2019 and 2018 increased \$7.7 million and \$4.0 million, or 36% and 23%, respectively, as compared to the year before, primarily due to an increase in professional service costs as our headcount increased.

## Operating Expenses

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
Research and development	\$ 230,463	\$ 185,391	\$ 45,072	24%	\$ 185,391	\$ 129,803	\$ 55,588	43%
Percent of total revenue	26%	26%			26%	25%		

Research and development expenses increased \$45.1 million and \$55.6 million, or 24% and 43%, for 2019 and 2018, respectively. The increases were primarily due to increases in personnel-related costs of \$40.3 million and \$46.1 million for 2019 and 2018, respectively, from higher headcount, including those from the integration of the acquisitions in 2019 and 2018. Additionally, corporate expense allocated to research and development increased \$4.7 million and \$7.9 million for 2019 and 2018, respectively, primarily due to higher costs from expanded operations, higher allocated costs from facilities, human resources and IT-related expense as we grew year-over-year. Outside service expenses increased \$1.0 million and travel related expenses increased \$0.4 million in 2018 as compared to 2017.

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
Sales and marketing	\$ 416,717	\$ 345,368	\$ 71,349	21%	\$ 345,368	\$ 248,694	\$ 96,674	39%
Percent of total revenue	47%	48%			48%	47%		

Sales and marketing expenses increased \$71.3 million and \$96.7 million, or 21% and 39%, for 2019 and 2018, respectively. The increase in headcount on a worldwide basis and increase in revenue resulted in increased personnel-related and commissions costs of \$59.7 million and \$65.8 million, for 2019 and 2018, respectively. Travel expenses increased \$4.2 million and \$4.5 million in 2019 and 2018, respectively. Corporate and facilities expenses allocated to sales and marketing increased \$2.6 million in 2019 and \$6.1 million in 2018 due to costs related to our acquisitions and higher allocated costs as the company expanded. Marketing expenses related to lead generation, trade shows, advertising and other initiatives increased \$6.1 million in 2019 and \$8.0 million in 2018. Amortization expense of acquired intangible assets increased \$0.7 million and \$10.2 million in 2019 and 2018, respectively.

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
General and administrative	\$ 109,727	\$ 86,185	\$ 23,542	27%	\$ 86,185	\$ 52,735	\$ 33,450	63%
Percent of total revenue	12%	12%			12%	10%		

General and administrative expenses increased \$23.5 million, or 27%, in 2019 as compared to 2018, and \$33.5 million, or 63%, in 2018 as compared to 2017. Personnel-related costs increased \$14.3 million and \$25.6 million for 2019 and 2018, respectively, due to an increase in headcount to support our continued growth as a public company. Corporate and facilities expense increased \$2.2 million and \$2.1 million for 2019 and 2018, respectively, primarily due to an increase in headcount. Outside consulting and audit costs increased \$3.6 million and \$1.8 million for 2019 and 2018, respectively, primarily due to investments in business applications, and other accounting related costs. Acquisition related costs increased \$1.9 million and \$1.8 million in 2019 and 2018 primarily due to the business acquisitions made. Legal expense increased \$0.9 million and \$1.4 million in 2019 and 2018.

## Interest Expense

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
Interest expense	\$ (12,526)	\$ (16,761)	\$ 4,235	(25)%	\$ (16,761)	\$ (28,608)	\$ 11,847	(41)%

Interest expense for 2019 was due to the 2024 Notes issued on August 23, 2019 and consisted of accretion of \$11.7 million and cash interest expense of \$0.8 million. Interest expense for 2018 consisted of the 2020 Notes accretion expense of \$8.4 million, loss on conversion of the 2020 Notes of \$7.2 million and cash interest expense of \$1.2 million (see Note 10 "Convertible Senior Notes" to the Consolidated Financial Statements).

Interest expense decreased \$11.4 million in 2018, primarily due to decreases in accretion expense and cash interest expense of \$13.4 million and \$3.0 million, respectively, because of conversions of the 2018 Notes in 2017 and the 2020 Notes in the third

quarter of 2018, offset by a \$4.5 million increase in loss on conversion of the 2018 Notes and 2020 Notes (see Note 10 “Convertible Senior Notes” to the Consolidated Financial Statements).

**Other Income, Net**

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
Other income, net	\$ 7,109	\$ 1,491	\$ 5,618	377%	\$ 1,491	\$ 3,785	\$ (2,294)	(61)%

Other income, net increased \$5.6 million in 2019 as compared to 2018 because of an increase in interest income of \$6.3 million due to higher cash and investment balances, partially offset by a \$0.9 million increase in foreign currency translation losses.

Other income, net decreased \$2.3 million in 2018 as compared to 2017, primarily due to a \$1.5 million increase in foreign currency translation losses and \$0.4 million reduction in interest income.

**Benefit From (Provision For) Income Taxes**

	Year Ended December 31,		Change		Year Ended December 31,		Change	
	2019	2018	\$	%	2018	2017	\$	%
	(in thousands)				(in thousands)			
(Provision for) benefit from income taxes	\$ (19,917)	\$ 13,232	\$ (33,149)	(251)%	\$ 13,232	\$ 9,950	\$ 3,282	33%

Total provision for income taxes increased \$33.1 million in 2019 as compared to 2018. The increase was primarily due to a transfer of intellectual property from Israel to the U.S., which occurred in 2019 and resulted in \$17.7 million of tax expense, combined with a \$14.7 million deferred tax benefit, which occurred in 2018 related to changes in the U.S. valuation allowance resulting from the Wombat business acquisition.

Total benefit from income taxes increased \$3.3 million in 2018 as compared to 2017. The increase was primarily due to a \$14.7 million deferred tax benefit from the Wombat business acquisition in 2018 as compared to a \$12.3 million benefit from the businesses acquired in 2017 and a \$1.1 million benefit for U.K. research and development credits recorded in 2018.

## Quarterly Results of Operations

The following table sets forth our unaudited quarterly consolidated statements of operations data for each of the eight quarters in the period ended December 31, 2019. We have prepared the quarterly data on a basis consistent with our audited annual financial statements, including, in the opinion of management, all normal recurring adjustments necessary for the fair statement of the financial information contained in these statements. The historical results are not necessarily indicative of future results and should be read in conjunction with our consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K.

	Three Months Ended							
	Dec. 31, 2019	Sept. 30, 2019	June 30, 2019	Mar. 31, 2019	Dec. 31, 2018	Sept. 30, 2018	June 30, 2018	Mar. 31, 2018
(in thousands, except per share amounts)								
<b>Consolidated Statements of Operations Data:</b>								
Revenue:								
Subscription	\$ 240,367	\$ 224,275	\$ 210,780	\$ 199,584	\$ 195,089	\$ 181,505	\$ 169,019	\$ 158,787
Hardware and services	3,062	3,110	3,659	3,353	3,390	2,674	2,856	3,674
Total revenue	<u>243,429</u>	<u>227,385</u>	<u>214,439</u>	<u>202,937</u>	<u>198,479</u>	<u>184,179</u>	<u>171,875</u>	<u>162,461</u>
Cost of revenue:(1)								
Subscription	55,789	52,308	50,648	48,252	46,758	45,679	45,618	42,198
Hardware and services	7,473	7,573	7,180	6,991	6,237	5,258	5,154	4,859
Total cost of revenue	<u>63,262</u>	<u>59,881</u>	<u>57,828</u>	<u>55,243</u>	<u>52,995</u>	<u>50,937</u>	<u>50,772</u>	<u>47,057</u>
Gross profit	180,167	167,504	156,611	147,694	145,484	133,242	121,103	115,404
Operating expense:(1)								
Research and development	61,969	60,060	55,185	53,249	48,215	45,917	47,527	43,732
Sales and marketing	111,374	105,502	102,837	97,004	92,554	90,006	84,911	77,897
General and administrative	29,633	26,388	27,881	25,825	25,754	23,877	19,029	17,525
Total operating expense	<u>202,976</u>	<u>191,950</u>	<u>185,903</u>	<u>176,078</u>	<u>166,523</u>	<u>159,800</u>	<u>151,467</u>	<u>139,154</u>
Operating loss	(22,809)	(24,446)	(29,292)	(28,384)	(21,039)	(26,558)	(30,364)	(23,750)
Interest expense	(8,828)	(3,698)	—	—	—	(9,746)	(3,531)	(3,484)
Other income (expense), net	3,544	2,180	659	726	550	224	(289)	1,006
Loss before income taxes	(28,093)	(25,964)	(28,633)	(27,658)	(20,489)	(36,080)	(34,184)	(26,228)
(Provision for) benefit from income taxes	(641)	(18,376)	(280)	(620)	(746)	20	(114)	14,072
Net loss	<u>\$ (28,734)</u>	<u>\$ (44,340)</u>	<u>\$ (28,913)</u>	<u>\$ (28,278)</u>	<u>\$ (21,235)</u>	<u>\$ (36,060)</u>	<u>\$ (34,298)</u>	<u>\$ (12,156)</u>
Net loss per share, basic and diluted	\$ (0.51)	\$ (0.79)	\$ (0.52)	\$ (0.51)	\$ (0.39)	\$ (0.69)	\$ (0.67)	\$ (0.24)
Weighted average shares outstanding, basic and diluted	56,474	56,014	55,768	55,335	54,805	52,184	50,935	50,504

(1) Includes stock-based compensation expense and amortization of intangible assets as follows:

	Three Months Ended							
	Dec. 31, 2019	Sept. 30, 2019	June 30, 2019	Mar. 31, 2019	Dec. 31, 2018	Sept. 30, 2018	June 30, 2018	Mar. 31, 2018
(in thousands)								
<b>Stock-based compensation:</b>								
Cost of subscription revenue	\$ 4,303	\$ 4,519	\$ 4,269	\$ 3,875	\$ 3,610	\$ 3,503	\$ 3,448	\$ 3,451
Cost of hardware and services revenue	998	1,043	1,054	906	651	474	571	591
Research and development	12,983	13,735	12,522	11,499	10,505	9,678	9,986	10,035
Sales and marketing	15,790	16,515	15,799	13,754	13,245	13,191	12,382	11,502
General and administrative	9,897	9,871	12,006	10,987	11,732	11,250	7,410	5,493
Total stock-based compensation expenses	<u>\$ 43,971</u>	<u>\$ 45,683</u>	<u>\$ 45,650</u>	<u>\$ 41,021</u>	<u>\$ 39,743</u>	<u>\$ 38,096</u>	<u>\$ 33,797</u>	<u>\$ 31,072</u>
<b>Amortization of intangible assets:</b>								
Cost of subscription revenue	\$ 8,607	\$ 7,886	\$ 7,505	\$ 6,762	\$ 6,830	\$ 7,121	\$ 7,244	\$ 5,776
Research and development	—	—	—	—	—	15	15	15
Sales and marketing	4,085	3,632	3,634	3,537	3,762	3,982	3,982	2,415
Total amortization of intangible assets	<u>\$ 12,692</u>	<u>\$ 11,518</u>	<u>\$ 11,139</u>	<u>\$ 10,299</u>	<u>\$ 10,592</u>	<u>\$ 11,118</u>	<u>\$ 11,241</u>	<u>\$ 8,206</u>

The following unaudited table sets forth our consolidated results of operations data as a percentage of total revenue.

	Three Months Ended							
	Dec. 31, 2019	Sept. 30, 2019	June 30, 2019	Mar. 31, 2019	Dec. 31, 2018	Sept. 30, 2018	June 30, 2018	Mar. 31, 2018
<b>Consolidated Statements of Operations Data:</b>								
Revenue:								
Subscription	99%	99%	98%	98%	98%	99%	98%	98%
Hardware and services	1	1	2	2	2	1	2	2
Total revenue	100	100	100	100	100	100	100	100
Cost of revenue:								
Subscription	23	23	24	24	24	25	27	26
Hardware and services	3	3	3	3	3	3	3	3
Total cost of revenue	26	26	27	27	27	28	30	29
Gross profit	74	74	73	73	73	72	70	71
Operating expense:								
Research and development	25	26	26	26	24	25	28	27
Sales and marketing	46	46	48	48	47	49	49	48
General and administrative	12	12	13	13	13	13	11	11
Total operating expense	83	84	87	87	84	87	88	86
Operating loss	(9)	(10)	(14)	(14)	(11)	(15)	(18)	(15)
Interest expense	(4)	(2)	—	—	—	(5)	(2)	(2)
Other income (expense), net	1	1	1	—	—	—	—	1
Loss before income taxes	(12)	(11)	(13)	(14)	(11)	(20)	(20)	(16)
(Provision for) benefit from income taxes	—	(8)	—	—	—	—	—	9
Net loss	(12)%	(19)%	(13)%	(14)%	(11)%	(20)%	(20)%	(7)%

### Liquidity and Capital Resources

As of December 31, 2019, we had \$847.6 million in cash and cash equivalents and \$43.4 million in short-term investments, for a total of \$890.9 million. Also refer to Note 10 “Convertible Senior Notes” to the consolidated financial statements for discussion of the 2024 Notes.

We plan to grow our customer base by continuing to emphasize investments in sales and marketing to add new customers, expand our customers’ use of our platform, and maintain high renewal rates. We also expect to incur additional cost of subscription revenue in accordance with the resulting growth in our customer base. We believe that the combination of our ongoing improvements in gross margins, the benefits of lower sales and marketing costs associated with our renewal activity, and the fact that our contracts are structured to bill our customers in advance should enable us to improve our cash flow from operations as we grow. Based on our current level of operations and anticipated growth, both of which are expected to be consistent with recent quarters, we believe that our existing sources of liquidity will be sufficient to fund our operations for at least the next 12 months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the expansion of our sales and marketing activities, and the timing and extent of spending to support product development efforts and expansion into new territories, and the timing of introductions of new features and enhancements to our solutions. To the extent that existing cash and cash equivalents and cash from operations are insufficient to fund our future activities, we may need to raise additional funds through public or private equity or debt financing. We have invested, and plan to continue investing in acquiring complementary businesses, applications and technologies, and may continue to make such investments in the future, any of which could also require us to seek equity or debt financing. Additional funds may not be available on terms favorable to us or at all.

As of December 31, 2019, the amount of cash and cash equivalents held by our foreign subsidiaries was \$51.3 million, including intercompany receivable balances. If these funds were needed for our operations in the United States, we would be required to withhold foreign taxes on the funds repatriated of approximately \$0.7 million. We have not recorded a liability for these taxes, as it is our intention that the majority of these funds are indefinitely reinvested outside the United States and our current plans do not demonstrate a need to repatriate these funds to our United States operations.

Due to negative earnings and profits in our foreign subsidiaries, we have not recorded a provisional tax liability relating to the one-time mandatory transition tax imposed by the Tax Act on our accumulated foreign earnings. As the Tax Act also eliminates U.S. taxes on foreign subsidiary distributions, future earnings in foreign jurisdictions will be available for distribution to the U.S. without incremental U.S. taxes.

## Cash Flows

The following table sets forth a summary of our consolidated cash flows for the periods indicated:

	Years Ended December 31,		
	2019	2018	2017
	(in thousands)		
Net cash provided by operating activities	\$ 242,508	\$ 184,744	\$ 153,686
Net cash used in investing activities	\$ (349,465)	\$ (250,664)	\$ (190,427)
Net cash provided by (used in) financing activities	\$ 778,738	\$ (33,861)	\$ (23,212)

### Net Cash Flows Provided by Operating Activities

Our net loss and cash flows from operating activities are significantly influenced by our investments in headcount and data center operations to support anticipated growth. Our cash flows are also influenced by cash payments from customers. We invoice customers for the entire contract amount at the start of the term, and as such our cash flow from operations is also affected by the length of a customer contract.

Net cash provided by operating activities was \$242.5 million in 2019 as compared to \$184.7 million in 2018. The increase of \$57.8 million was primarily due to:

- An increase in amortization of intangible assets of \$4.5 million due to acquired businesses, and an increase in depreciation of fixed assets of \$2.3 million due to an increase in capital expenditures;
- An increase in stock-based compensation expense of \$33.6 million due to the increase in headcount and grants made;
- An increase in amortization of debt issuance costs and accretion of debt discount of \$3.3 million due to the issuance of the 2024 Notes (see Note 10 “Convertible Senior Notes” to the Consolidated Financial Statements);
- An increase in amortization of deferred commissions of \$13.3 million due to an increase in revenue;
- A \$23.3 million increase in noncash lease costs primarily due to the adoption of ASC 842 effective January 1, 2019;
- A decrease in benefit from deferred income taxes of \$12.9 million primarily due to a decrease in valuation allowance due to the business acquisition made in 2018;
- A decrease in accounts receivable change of \$19.7 million due to the timing of payments;
- An increase in accounts payable and accrued liabilities changes of \$4.0 million primarily due to the timing of compensation and other payments; and
- An increase in deferred revenue change of \$23.6 million due to higher billings.

The increase was offset by a \$26.5 million increase in net loss, \$7.2 million decrease in loss on conversion due to the 2020 Notes converted into common shares in the third quarter of 2018 (see Note 10 “Convertible Senior Notes” to the Consolidated Financial Statements), \$24.5 million decrease in operating lease liabilities change primarily due to the adoption of ASC 842 effective January 1, 2019, an increase in deferred commissions change of \$14.3 million due to higher billings, and an increase in prepaid expense change of \$6.0 million due to the timing of payments.

Net cash provided by operating activities was \$184.7 million in 2018 as compared to \$153.7 million in 2017. The increase of \$31.0 million was primarily due to:

- An increase in amortization of intangible assets of \$22.7 million due to acquired businesses, and an increase in depreciation of fixed assets of \$8.8 million due to an increase in capital expenditures;
- An increase in stock-based compensation expense of \$45.2 million due to the increase in headcount and grants made;
- An increase in amortization of deferred commissions of \$8.6 million due to an increase in revenue;
- An increase in loss on conversion of convertible notes of \$4.5 million due to their conversion (see Note 10 “Convertible Senior Notes” to the Consolidated Financial Statements);
- An increase in accounts payable and accrued liabilities changes of \$10.0 million and \$2.6 million, respectively, due to the timing of compensation and other payments; and
- An increase in deferred revenue change of \$38.9 million due to higher billings.

The increase was offset by a \$33.9 million increase in net loss, \$13.4 million decrease in amortization of debt issuance costs and accretion of debt discount due to the conversion of the convertible notes in 2017 and 2018 (see Note 10 “Convertible Senior



Notes” to the Consolidated Financial Statements), an increase in accounts receivable change of \$50.1 million, and an increase in deferred commissions change of \$20.3 million due to higher billings.

#### *Net Cash Flows Used in Investing Activities*

Our primary investing activities consisted of acquisitions of businesses, capital expenditures in support of expanding our infrastructure and workforce and the purchase and sale of short-term investments. As our business grows, we expect our capital expenditures and our investment activity to continue to increase. We may also target other companies for acquisition.

Net cash used in investing activities was \$349.5 million in 2019 as compared to \$250.7 million in 2018. The increase in cash used of \$98.8 million was due to an increase in cash paid for business acquisitions of \$93.4 million, a decrease in proceeds from sales of short-term investments of \$11.9 million, an increase in purchase of short-term investments of \$12.3 million, an increase in capital expenditure of \$5.7 million, and a decrease in receipts from escrow account of \$3.3 million, partially offset by an increase in maturities of short-term investments of \$27.8 million.

Net cash used in investing activities was \$250.7 million in 2018 as compared to \$190.4 million in 2017. The increase in cash used of \$60.3 million was due to an increase in cash paid for business acquisitions of \$68.4 million, a \$36.5 million decrease in maturities of short-term investments, and a decrease in receipts from escrow account of \$2.7 million, offset by an increase in proceeds from sales of short-term investments of \$11.9 million, a decrease in purchase of short-term investments of \$18.1 million, and a decrease in capital expenditures of \$17.4 million.

#### *Net Cash Flows Provided in Financing Activities*

Net cash provided in financing activities was \$778.7 million in 2019 as compared to \$33.9 million used in 2018. The increase in cash provided of \$812.6 million was primarily due to \$901.3 million in proceeds from issuance of the 2024 Notes, net of costs, partially offset by \$84.6 million used to purchase capped calls in connection with the issuance of the 2024 Notes, and a \$5.3 million increase in withholding taxes paid related to restricted stock net share settlement.

Net cash used in financing activities was \$33.9 million in 2018 as compared to \$23.2 million in 2017. The increase in cash used of \$10.7 million was primarily due to a \$17.9 million increase in withholding taxes paid related to restricted stock unit net share settlement, offset by a \$1.9 million increase in proceeds from common stock issuance related to employee stock plans, and \$5.5 million decrease in contingent consideration payment.

#### **Contractual Obligations and Commitments**

The following table summarizes our contractual obligations as of December 31, 2019 (in thousands):

	Payment Due by Period				
	Total	Less Than 1 Year	1-3 Years	3-5 Years	More than 5 years
0.25% Convertible Senior Notes due 2024	\$ 920,000	\$ —	\$ —	\$ 920,000	\$ —
Operating lease obligations(1)	228,992	20,858	47,791	41,543	118,800
Purchase obligations(2)	100,215	42,078	58,058	79	—
Total(3)	<u>\$ 1,249,207</u>	<u>\$ 62,936</u>	<u>\$ 105,849</u>	<u>\$ 961,622</u>	<u>\$ 118,800</u>

(1) Consists of contractual obligations under operating leases for office space and data centers. It includes the lease for the new corporate headquarters entered in October 2018 with the expected commencement date between August and November 2020.

(2) Consists of minimum purchase commitment of products and services. Obligations under contracts that we can cancel without a significant penalty were not included in the table above.

(3) As we are unable to reasonably predict the timing of settlement of liabilities related to unrecognized tax benefits, net, the table does not include \$15.8 million of such non-current liabilities included in Other long-term liabilities recorded on our consolidated balance sheet as of December 31, 2019.

#### **Off-Balance Sheet Arrangements**

During the periods presented, we did not have, nor do we currently have, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We are therefore not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in those types of relationships.

Under the indemnification provisions of our standard customer agreements, we agree to indemnify, defend and hold harmless our customers against, among other things, infringement of any patents, trademarks or copyrights under any country’s laws or the misappropriation of any trade secrets arising from the customer’s legal use of our solutions. Certain indemnification provisions potentially expose us to losses in excess of the aggregate amount paid to us by the customer under the applicable customer agreement. No material claims have been made against us pursuant to these indemnification provisions to date.

## Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with GAAP. GAAP requires us to make certain estimates and judgments that can affect the reported amounts of assets and liabilities, the disclosure of contingencies, and the reported amounts of revenue and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. If actual results or events differ materially from those contemplated by us in making these estimates, our reported financial condition and results of operations for future periods could be materially affected. See "Risk Factors" for certain matters that may affect our future financial condition or results of operations. An accounting policy is deemed to be critical if it requires an accounting estimate to be made based on assumptions about matters that are uncertain at the time the estimate is made, if different estimates reasonably could have been used, or if the changes in estimate that are reasonably likely to occur could materially impact the financial statements.

Our significant accounting policies, including those considered to be critical accounting policies, are summarized in Note 1 "The Company and Summary of Significant Accounting Policies" to the accompanying consolidated financial statements in this report. The following critical accounting policies reflect significant judgments and estimates used in the preparation of our consolidated financial statements:

- Revenue recognition;
- Deferred commissions;
- Fair value of assets acquired and liabilities assumed in business combinations;
- Impairment assessment of goodwill, intangible assets and other long-lived assets
- Loss contingencies; and
- Recognition and measurement of current and deferred income taxes.

### *Revenue Recognition*

The Company derives its revenue primarily from: (1) subscription service revenue; (2) subscription software revenue, and (3) hardware and services, which include professional service and training revenue provided to customers related to their use of the platform. Subscription service revenue is derived from a subscription-based enterprise licensing model with contract terms typically ranging from one to three years, and consists of (1) subscription fees from the licensing of the Company's security-as-a-service platform and its various components, (2) subscription fees for software with support and related future updates where the software updates are critical to the customers' ability to derive benefit from the software due to the fast changing nature of the technology. These function together as one performance obligation, and (3) subscription fees for the right to access the Company's customer support services for software with significant standalone functionality and support services for hardware. Subscription software revenue is primarily derived from term-based software that is deployed on the customers' own servers and has significant standalone functionality, is recognized upon transfer of control to the customer.

We apply significant judgment in identifying and evaluating any terms and conditions in contracts which may impact revenue recognition. Most of the Company's contracts with customers contain multiple performance obligations. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require judgment. For these contracts, we account for individual performance obligations separately if they are distinct. The transaction price is allocated to individual performance obligation on a relative standalone selling price basis. The transaction price allocated to subscription services and subscription software that does not have significant standalone functionality is determined by considering factors such as historical pricing practices, and the selling price of hardware and professional services is estimated using a cost plus model. The selling price for support of a functional subscription software license is calculated as a percentage of functional subscription software license value which is derived by analyzing internal pricing practice, customer expectations, and industry practice.

### *Deferred Commissions*

We capitalize sales commissions and associated payroll taxes paid to internal sales personnel, and referral fees paid to independent third-parties, that are incremental to the acquisition of customer contracts. These costs are recorded as deferred commissions on the consolidated balance sheets. We determine whether costs should be deferred based on sales compensation plans, if the commissions are incremental and would not have occurred absent the customer contract. Sales commissions for renewal of a subscription contract are not considered commensurate with the commissions paid for the acquisition of the initial subscription contract given the substantive difference in commission rate between new and renewal contracts. Commissions paid upon the initial acquisition of a contract are amortized over an estimated period of benefit of five years while commissions paid related to renewal contracts are amortized over a contractual renewal period. Amortization is recognized based on the expected future revenue streams under the customer contracts. Amortization of deferred sales commissions is included in sales and marketing expense in the

accompanying consolidated statements of operations. We determine the period of benefit for commissions paid for the acquisition of the initial subscription contract by taking into consideration its initial estimated customer life and the technological life of the Company's software and related significant features.

#### ***Fair Value of Assets Acquired and Liabilities Assumed in Business Combinations***

In each of our acquisitions, we used the purchase method of accounting which requires us to allocate the fair value of the total consideration transferred to tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values on the date of the acquisition, with the difference between the net assets acquired and the total consideration transferred recorded as goodwill. The fair values assigned, defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between willing market participants, are based on significant estimates and assumptions determined by management. These estimates and assumptions are inherently uncertain and subject to refinement, as a result, during the adjustment period, which may be up to one year from the acquisition date, we may record adjustments to the assets acquired or liabilities assumed with any corresponding offset to goodwill. Upon conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded within our consolidated statements of operations.

We used either the Discounted Cash Flow Method, the Cost to Recreate Method or the Relief from Royalty Method to assign fair values to acquired identifiable intangible assets. Management applies significant judgment in estimating the fair value of these intangible assets, which involved the use of significant assumptions with respect to forecasted future revenue, forecasted operating results, cost and time to build the acquired technology, developer's profit, rate of return, royalty rates and discount rates. These models are based on reasonable estimates and assumptions given available facts and circumstances, including industry estimates and averages, as of the acquisition dates and are consistent with the plans and estimates that we use to manage our business. If the subsequent actual results and updated projections of the underlying business activity change compared with the estimates and assumptions used to develop these values, we could experience impairment charges. In addition, we have estimated the economic lives of certain acquired assets and these lives are used to calculate depreciation and amortization expense. If our estimates of the economic lives change, depreciation or amortization expenses could be accelerated or slowed.

Accounting for business combinations requires our management to make significant estimates and assumptions, especially at the acquisition date including our estimates for intangible assets as described above, contractual obligations assumed, restructuring liabilities, pre-acquisition contingencies and contingent consideration, where applicable. Although we believe the assumptions and estimates we have made in the past have been reasonable and appropriate, they are based in part on historical experience and information obtained from the management of the acquired companies and are inherently uncertain.

Unanticipated events and circumstances may occur that may affect the accuracy or validity of such assumptions, estimates or actual results.

For a given acquisition, we may identify certain pre-acquisition contingencies as of the acquisition date and may extend our review and evaluation of these pre-acquisition contingencies throughout the measurement period in order to obtain sufficient information to assess whether we include these contingencies as a part of the fair value estimates of assets acquired and liabilities assumed and, if so, to determine their estimated amounts.

If we cannot reasonably determine the fair value of a pre-acquisition contingency (non-income tax related) by the end of the measurement period, which is generally the case given the nature of such matters, we will recognize an asset or a liability for such pre-acquisition contingency if: (i) it is probable that an asset existed or a liability had been incurred at the acquisition date and (ii) the amount of the asset or liability can be reasonably estimated. Subsequent to the measurement period, changes in our estimates of such contingencies will affect earnings and could have a material effect on our results of operations and financial position.

In addition, uncertain tax positions and tax related valuation allowances assumed in connection with a business combination are initially estimated as of the acquisition date. We reevaluate these items quarterly based upon facts and circumstances that existed as of the acquisition date with any adjustments to our preliminary estimates being recorded to goodwill if identified within the measurement period. Subsequent to the measurement period or our final determination of the tax allowance's or contingency's estimated value, whichever comes first, changes to these uncertain tax positions and tax related valuation allowances will affect our provision for income taxes in our consolidated statements of operations and could have a material impact on our results of operations and financial position.

#### ***Goodwill, Intangible Assets and Other Long-Lived Assets - Impairment Assessments***

We review goodwill for impairment annually and whenever events or changes in circumstances indicate its carrying value may not be recoverable. For the purposes of impairment testing, we have determined that we have one reporting unit. We perform the two-step impairment test, whereby we compare the fair value of the reporting unit to its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not considered impaired and we are not required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then we must perform the second step of the impairment test in order to determine the implied fair value of the

reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then we would record impairment loss equal to the difference. No impairment has been noted to date.

We periodically review the carrying amounts of intangible assets and other long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. We measure the recoverability of these assets by comparing the carrying amount of such assets (or asset group) to the future undiscounted cash flow we expect the assets (or asset group) to generate. If we consider any of these assets to be impaired, the impairment to be recognized equals the amount by which the carrying value of the assets exceeds its fair value. We make judgments about the recoverability of purchased intangible assets whenever events or changes in circumstances indicate that impairment may exist.

Each period we evaluate the estimated remaining useful lives of intangible assets and other long-lived assets to assess whether a revision to the remaining periods of amortization is required. Assumptions and estimates about remaining useful lives of our intangible and other long-lived assets are subjective. They can be affected by a variety of factors, including external factors such as industry and economic trends and internal factors such as changes in our business strategy. Although we believe the historical assumptions and estimates we have made are reasonable and appropriate, different assumptions and estimates could materially impact our reported financial results. We did not recognize any intangible asset impairment charges to date.

#### ***Loss contingencies***

We evaluate contingent liabilities including threatened or pending litigation in accordance with the authoritative guidance on contingencies. We assess the likelihood of any adverse judgments or outcomes from potential claims or legal proceedings, as well as potential ranges of probable losses, when the outcomes of the claims or proceedings are probable and reasonably estimable. A determination of the amount of accrued liabilities required, if any, for these contingencies is made after the analysis of each separate matter. Because of uncertainties related to these matters, we base our estimates on the information available at the time of our assessment. As additional information becomes available, we reassess the potential liability related to our pending claims and litigation and may revise our estimates. Any revisions in the estimates of potential liabilities could have a material impact on our operating results and financial position.

#### ***Income Taxes***

We determine our current and deferred tax provisions based on estimates and assumptions that could differ from the actual results reflected in our income tax returns filed during the subsequent year. We record adjustments based on filed returns when we have identified and finalized them, which is generally in the fourth quarters of the subsequent year for U.S. federal and state provisions, respectively. We have placed a full valuation allowance on all net U.S. deferred tax assets because realization of these tax benefits through future taxable income cannot be reasonably assured. We intend to maintain the valuation allowance until sufficient positive evidence exists to support the reversal of the valuation allowance. Any decision to reverse part or all of the valuation allowance would be based on our estimate of future profitability. If our estimate were to be wrong, we could be required to charge potentially significant amounts to income tax expense to establish a new valuation allowance.

Our effective tax rate includes the impact of certain undistributed foreign earnings for which we partially provided taxes because we plan to reinvest the majority of such earnings indefinitely outside the United States. We plan foreign earnings remittance amounts based on projected cash flow needs as well as the working capital and long-term investment requirements of our foreign subsidiaries and our domestic operations. Material changes in our estimates of cash, working capital and long-term investment requirements in the various jurisdictions in which we do business could impact our effective tax rate. We are subject to income taxes in the United States and certain foreign countries, and we are subject to corporate income tax audits in some of these jurisdictions. We believe that our tax return positions are fully supported, but tax authorities are likely to challenge certain positions, which may not be fully sustained. However, our income tax expense includes amounts intended to satisfy income tax assessments that result from these challenges. Determining the income tax expense for these potential assessments and recording the related assets and liabilities requires management judgments and estimates. We evaluate our uncertain tax positions in accordance with the guidance for accounting for uncertainty in income taxes. We believe that our liability for uncertain tax positions is adequate. We review our liability for uncertain tax positions quarterly, and we may adjust such liability because of proposed assessments by tax authorities, changes in facts and circumstances, issuance of new regulations or new case law, previously unavailable information obtained during the course of an examination, negotiations between tax authorities of different countries concerning our transfer prices, or the expiration of statutes of limitations.

#### ***Recent Accounting Pronouncements***

Refer to Note 1 of the notes to our consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for a full description of recent accounting pronouncements.

## **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate, foreign exchange and inflation risks, as well as risks relating to changes in the general economic conditions in the countries where we conduct business. To reduce certain of these risks, we monitor the financial condition of our large clients and limit credit exposure by collecting in advance and setting credit limits as we deem appropriate. In addition, our investment strategy has been to invest in financial instruments that are highly liquid and readily convertible into cash. To date, we have not used derivative instruments to mitigate the impact of our market risk exposures. We have also not used, nor do we intend to use, derivatives for trading or speculative purposes.

### **Interest Rate Risk**

We are exposed to market risk related to changes in interest rates. Our investments primarily consist of money market funds, corporate debt securities, commercial papers, U.S. agency and Treasury securities, and certificates of deposit. As of December 31, 2019, we had cash, cash equivalents, and short-term investments of \$890.9 million. The carrying amount of our cash equivalents and short-term investments reasonably approximates fair value, due to the short maturities of these investments. The primary objectives of our investment activities are the preservation of capital, the fulfillment of liquidity needs and the fiduciary control of cash and investments. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to a fluctuation in interest rates, which may affect our interest income and the fair market value of our investments. Due to the short-term nature of our investment portfolio, we believe only dramatic fluctuations in interest rates would have a material effect on our investments. We do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our portfolio. As such we do not expect our operating results or cash flows to be materially affected by a sudden change in market interest rates.

### **Foreign Currency Risk**

The functional currency for our wholly owned foreign subsidiaries is the U.S. dollar. Accordingly, the subsidiaries remeasure monetary assets and liabilities at period-end exchange rates, while nonmonetary items are remeasured at historical rates. Income and expense accounts are remeasured at the average exchange rates in effect during the year. Remeasurement adjustments are recognized in the consolidated statements of operations as foreign currency transaction gains or losses in the year of occurrence. Aggregate foreign currency transaction gains (losses) included in determining net loss were \$(1.7) million, \$(0.9) million, and \$0.6 million for 2019, 2018, and 2017, respectively. Transaction gains and losses are included in other income (expense), net.

As our international operations grow, our risks associated with fluctuation in currency rates will become greater, and we will continue to reassess our approach to managing this risk. In addition, currency fluctuations or a weakening U.S. dollar can increase the costs of our international expansion. For our operating results and cash flows, we evaluated the effects of a 10% shift in exchange rates between those currencies and the U.S. dollar. We have determined that there would not be a material effect on our results of operations from such a shift. To date, we have not entered into any foreign currency hedging contracts, since exchange rate fluctuations have not had a material impact on our operating results and cash flows. Based on our current international structure, we do not plan on engaging in hedging activities in the near future.

### **Inflation Risk**

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. Nonetheless, if our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information in response to this item is included in our consolidated financial statements, together with the report thereon of PricewaterhouseCoopers LLP, appearing in Item 15 of this Annual Report on Form 10-K, and in Item 7 under the heading Management's Discussion and Analysis of Financial Condition and Results of Operations.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Regulations under the Securities Exchange Act of 1934, or the Exchange Act, require public companies, including us, to maintain "disclosure controls and procedures," which are defined in Rule 13a-15(e) and Rule 15d-15(e) to mean a company's controls

and other procedures that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures as of December 31, 2019. Based on their evaluation, as of December 31, 2019, our Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures were effective.

#### **Management's Annual Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f) and Rule 15d-15(f). Our management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under the framework in *Internal Control - Integrated Framework (2013)*, our management concluded that our internal control over financial reporting was effective as of December 31, 2019.

The effectiveness of our internal control over financial reporting as of December 31, 2019, has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears in Item 15(a) of this Annual Report on Form 10-K.

#### **Changes in Internal Control**

There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2019 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **Inherent Limitations on Effectiveness of Controls**

Management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

#### **ITEM 9B. OTHER INFORMATION**

None.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this item will be set forth in the definitive Proxy Statement for our 2020 Annual Meeting of Stockholders (the "Proxy Statement") and is incorporated into this report by reference.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item will be set forth in the Proxy Statement and is incorporated into this report by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item will be set forth in the Proxy Statement and is incorporated into this report by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item will be set forth in the Proxy Statement and is incorporated into this report by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item will be set forth in the Proxy Statement and is incorporated into this report by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)

(1) Financial Statements

*INDEX TO CONSOLIDATED FINANCIAL STATEMENTS*

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(2) Financial Statement Schedules

Financial statement schedules have been omitted because they are not required, not applicable, not present in amounts sufficient to require submission of the schedule, or the required information is shown in the Consolidated Financial Statements or Notes thereto.

(3) Exhibits

The information required by this Item is set forth in the [Exhibits Index](#) that precedes the signature page of this Annual Report on Form 10-K.



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Proofpoint, Inc.

### ***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of Proofpoint, Inc. and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, and the related consolidated statements of operations, of comprehensive loss, of stockholders' equity and of cash flows for each of the three years in the period ended December 31, 2019, including the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

### ***Change in Accounting Principle***

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019.

### ***Basis for Opinions***

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Annual Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### ***Definition and Limitations of Internal Control over Financial Reporting***

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

## **Critical Audit Matters**

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (i) relate to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

### *Revenue – Identifying and evaluating terms and conditions in contracts that impact revenue recognition*

As described in Note 2 to the consolidated financial statements, revenue recognition is determined by management through the following steps: 1) identification of the contract, or contracts, with a customer; 2) identification of the performance obligations in the contract; 3) determination of the transaction price; 4) allocation of the transaction price to the performance obligations in the contract; and 5) recognition of revenue when, or as, the Company satisfies a performance obligation. Management applies significant judgment in identifying and evaluating any terms and conditions in contracts which may impact revenue recognition. For the year ended December 31, 2019, the Company's revenue was \$888 million.

The principal considerations for our determination that performing procedures relating to revenue, specifically identifying and evaluating terms and conditions in contracts that impact revenue recognition, is a critical audit matter are that there was significant judgment by management in identifying and evaluating terms and conditions in contracts that impact revenue recognition. This in turn led to significant auditor judgment and effort in performing procedures to evaluate whether terms and conditions were appropriately identified and evaluated by management.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the revenue recognition process, including controls related to the identification and evaluation of terms and conditions that impact the determination of revenue recognition. These procedures also included, among others, testing the completeness and accuracy of management's identification and evaluation of the specific terms and conditions in contracts with customers by examining revenue contracts on a test basis and testing management's process for identifying and evaluating the terms and conditions in contracts, including management's determination of the impact of those terms and conditions on revenue recognition.

### *Acquisition of ObserveIT, Ltd. – Valuation of Developed Technology and In-process Research and Development Intangible Assets*

As described in Note 3 to the consolidated financial statements, the Company acquired ObserveIT, Ltd. on November 25, 2019 for net consideration of \$214 million, which resulted in \$35 million of developed technology and \$21 million of in-process research and development intangible assets being recorded. A discounted cash flow method was used to value the developed technology and in-process research and development intangible assets. Management applied significant judgement in estimating the fair value of these intangible assets, which involved the use of significant assumptions with respect to forecasted revenue, forecasted operating results and discount rates.

The principal considerations for our determination that performing procedures relating to the valuation of developed technology and in-process research and development intangible assets in the acquisition of ObserveIT, Ltd. is a critical audit matter are that there was a high degree of auditor judgment and subjectivity in applying procedures relating to the fair value measurement of the developed technology and in-process research and development intangible assets due to the significant judgment by management when developing the estimates. Significant audit effort was required in performing procedures and evaluating the significant assumptions relating to the estimates, including forecasted revenue, forecasted operating results and discount rates. The audit effort also involved the use of professionals with specialized skill and knowledge to assist in evaluating the audit evidence obtained from these procedures.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the acquisition accounting, including controls over management's valuation of the developed technology and in-process research and development intangible assets and controls over the development of the assumptions related to the valuation, including forecasted revenue, forecasted operating results and discount rates. These procedures also included, among others, reading the purchase agreement and testing management's process for estimating the fair value of the developed technology and in-process research and development intangible assets. Testing management's process included (i) evaluating the appropriateness of the discounted cash flow method, (ii) testing the completeness, accuracy and relevance of underlying data used in the discounted cash flow method (ii) and evaluating the reasonableness of the significant assumptions, which involved considering the past performance of the acquired business and industry data. Professionals with specialized skill and knowledge were used to assist in the evaluation of the discounted cash flow method used by management and the reasonableness of the discount rates.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 20, 2020

We have served as the Company's auditor since 2008, which includes periods before the Company became subject to SEC reporting requirements.

**Proofpoint, Inc.**  
**Consolidated Balance Sheets**  
(in thousands, except per share amounts)

	At December 31,	
	2019	2018
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 847,555	\$ 185,392
Short-term investments	43,385	46,307
Accounts receivable, net	265,741	199,194
Inventory	1,249	481
Deferred product costs	2,723	1,800
Deferred commissions	47,250	37,391
Prepaid expenses and other current assets	22,081	16,872
Total current assets	1,229,984	487,437
Property and equipment, net	73,512	70,627
Operating lease right-of-use asset	51,852	—
Long-term deferred product costs	581	303
Goodwill	687,517	460,425
Intangible assets, net	186,023	136,645
Long-term deferred commissions	90,305	69,989
Other assets	17,737	7,592
Total assets	<u>\$ 2,337,511</u>	<u>\$ 1,233,018</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 16,311	\$ 20,237
Accrued liabilities	119,423	90,719
Deferred rent	—	829
Operating lease liabilities	20,202	—
Deferred revenue	615,874	490,296
Total current liabilities	771,810	602,081
Convertible senior notes	749,620	—
Long-term deferred rent	—	3,757
Long-term operating lease liabilities	36,223	—
Other long-term liabilities	19,172	6,812
Long-term deferred revenue	168,189	107,834
Total liabilities	1,745,014	720,484
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Convertible preferred stock, \$0.0001 par value; 5,000 shares authorized; no shares issued and outstanding as of December 31, 2019 and 2018	—	—
Common stock, \$0.0001 par value; 200,000 shares authorized; 56,784 and 55,149 shares issued and outstanding at December 31, 2019 and December 31, 2018, respectively	6	6
Additional paid-in capital	1,318,084	1,107,953
Accumulated other comprehensive income (loss)	1	(7)
Accumulated deficit	(725,594)	(595,418)
Total stockholders' equity	592,497	512,534
Total liabilities and stockholders' equity	<u>\$ 2,337,511</u>	<u>\$ 1,233,018</u>

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

**Proofpoint, Inc.**  
**Consolidated Statements of Operations**  
(in thousands, except per share amounts)

	Year Ended December 31,		
	2019	2018	2017
<b>Revenue:</b>			
Subscription	\$ 875,006	\$ 704,400	\$ 506,355
Hardware and services	13,184	12,594	13,326
Total revenue	888,190	716,994	519,681
<b>Cost of revenue:(1)(2)</b>			
Subscription	206,997	180,253	125,832
Hardware and services	29,217	21,508	17,546
Total cost of revenue	236,214	201,761	143,378
Gross profit	651,976	515,233	376,303
<b>Operating expense:(1)(2)</b>			
Research and development	230,463	185,391	129,803
Sales and marketing	416,717	345,368	248,694
General and administrative	109,727	86,185	52,735
Total operating expense	756,907	616,944	431,232
Operating loss	(104,931)	(101,711)	(54,929)
Interest expense	(12,526)	(16,761)	(28,608)
Other income, net	7,109	1,491	3,785
Loss before income taxes	(110,348)	(116,981)	(79,752)
(Provision for) benefit from income taxes	(19,917)	13,232	9,950
Net loss	\$ (130,265)	\$ (103,749)	\$ (69,802)
Net loss per share, basic and diluted	\$ (2.33)	\$ (1.99)	\$ (1.58)
Weighted average shares outstanding, basic and diluted	55,902	52,111	44,258
<b>(1) Includes stock-based compensation expense as follows:</b>			
Cost of subscription revenue	\$ 16,966	\$ 14,012	\$ 10,635
Cost of hardware and services revenue	\$ 4,001	\$ 2,287	\$ 1,893
Research and development	\$ 50,739	\$ 40,204	\$ 30,588
Sales and marketing	\$ 61,858	\$ 50,320	\$ 33,962
General and administrative	\$ 42,761	\$ 35,885	\$ 20,382
<b>(2) Includes intangible amortization expense as follows:</b>			
Cost of subscription revenue	\$ 30,760	\$ 26,971	\$ 14,512
Research and development	\$ —	\$ 45	\$ 60
Sales and marketing	\$ 14,888	\$ 14,141	\$ 3,934

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

**Proofpoint, Inc.**  
**Consolidated Statements of Comprehensive Loss**  
**(In thousands)**

	<u>Year Ended December 31,</u>		
	<u>2019</u>	<u>2018</u>	<u>2017</u>
Net loss	\$ (130,265)	\$ (103,749)	\$ (69,802)
Other comprehensive income (loss), net of tax:			
Unrealized gain (loss) on investments, net	8	2	(2)
Comprehensive loss	<u>\$ (130,257)</u>	<u>\$ (103,747)</u>	<u>\$ (69,804)</u>

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

**Proofpoint, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
<b>Balances at December 31, 2016</b>	43,015	\$ 4	\$ 514,034	\$ (7)	\$ (417,652)	\$ 96,379
Cumulative effect adjustment from adoption of new accounting pronouncement	—	—	999	—	(999)	—
Net loss	—	—	—	—	(69,802)	(69,802)
Unrealized loss on short-term investments	—	—	—	(2)	—	(2)
Conversion of convertible senior notes to common stock (Note 10)	5,159	1	193,153	—	—	193,154
Stock-based compensation expense	—	—	88,449	—	—	88,449
Acquisition of businesses (Note 3)	—	—	424	—	—	424
Common stock issued	2,672	—	34,024	—	—	34,024
Tax withholding upon vesting of restricted stock awards	(521)	—	(43,511)	—	—	(43,511)
<b>Balances at December 31, 2017</b>	50,325	5	787,572	(9)	(488,453)	299,115
Cumulative effect adjustment from adoption of new accounting pronouncement	—	—	—	—	(3,216)	(3,216)
Net loss	—	—	—	—	(103,749)	(103,749)
Unrealized gain on short-term investments	—	—	—	2	—	2
Conversion of convertible senior notes to common stock (Note 10)	2,928	1	213,305	—	—	213,306
Stock-based compensation expense	—	—	131,178	—	—	131,178
Common stock issued	2,463	—	36,449	—	—	36,449
Tax withholding upon vesting of restricted stock awards	(567)	—	(60,551)	—	—	(60,551)
<b>Balances at December 31, 2018</b>	55,149	6	1,107,953	(7)	(595,418)	512,534
Cumulative effect adjustment from adoption of new accounting pronouncement (Note 8)	—	—	—	—	89	89
Net loss	—	—	—	—	(130,265)	(130,265)
Unrealized gain on short-term investments	—	—	—	8	—	8
Stock-based compensation expense	—	—	159,694	—	—	159,694
Acquisition of businesses (Note 3)	72	—	892	—	—	892
Common stock issued	2,148	—	40,744	—	—	40,744
Tax withholding upon vesting of restricted stock awards	(585)	—	(69,351)	—	—	(69,351)
Embedded conversion feature on convertible senior notes (Note 10)	—	—	163,023	—	—	163,023
Purchase of capped calls (Note 10)	—	—	(84,871)	—	—	(84,871)
<b>Balances at December 31, 2019</b>	56,784	\$ 6	\$ 1,318,084	\$ 1	\$ (725,594)	\$ 592,497

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

**Proofpoint, Inc.**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	Year Ended December 31,		
	2019	2018	2017
<b>Cash flows from operating activities</b>			
Net loss	\$ (130,265)	\$ (103,749)	\$ (69,802)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization	80,332	73,553	42,098
Stock-based compensation	176,325	142,708	97,460
Change in fair value of contingent consideration	—	(79)	(1,533)
Amortization of debt issuance costs and accretion of debt discount	11,708	8,383	21,789
Amortization of deferred commissions	50,415	37,076	28,476
Noncash lease costs	23,339	—	—
Loss on conversion of convertible notes	—	7,207	2,696
Deferred income taxes	(2,371)	(15,258)	(15,953)
Other	1,855	1,469	(348)
Changes in assets and liabilities, net of effect of acquisitions:			
Accounts receivable	(62,239)	(81,890)	(31,744)
Inventory	(768)	249	(132)
Deferred product costs	(1,203)	(302)	338
Deferred commissions	(80,590)	(66,254)	(45,910)
Prepaid expenses	(7,915)	(1,905)	(1,663)
Other current assets	57	2,155	(139)
Long-term assets	(499)	311	(3,429)
Accounts payable	(3,569)	8,396	(1,648)
Accrued liabilities	33,191	17,184	14,539
Deferred rent	—	(101)	1,867
Operating lease liabilities	(24,529)	—	—
Deferred revenue	179,234	155,591	116,724
Net cash provided by operating activities	242,508	184,744	153,686
<b>Cash flows from investing activities</b>			
Proceeds from maturities of short-term investments	93,838	66,080	102,556
Proceeds from sales of short-term investments	—	11,931	—
Purchase of short-term investments	(90,955)	(78,688)	(96,741)
Purchase of property and equipment	(35,193)	(29,522)	(46,958)
Receipts from escrow account	—	3,321	6,066
Acquisitions of business, net of cash and restricted cash acquired	(317,155)	(223,786)	(155,350)
Net cash used in investing activities	(349,465)	(250,664)	(190,427)
<b>Cash flows from financing activities</b>			
Proceeds from issuance of common stock	28,091	27,579	25,725
Withholding taxes related to restricted stock net share settlement	(66,006)	(60,706)	(42,823)
Proceeds from issuance of convertible senior notes, net of costs	901,293	—	—
Purchase of capped calls	(84,640)	—	—
Repayments of equipment loans and capital lease obligations	—	(37)	(34)
Repayment of convertible notes	—	(142)	(14)
Contingent consideration payments	—	(555)	(6,066)
Net cash provided by (used in) financing activities	778,738	(33,861)	(23,212)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(26)	(727)	1,076
Net increase (decrease) in cash, cash equivalents and restricted cash	671,755	(100,508)	(58,877)
<b>Cash, cash equivalents, and restricted cash</b>			
Beginning of period	186,152	286,660	345,537
End of period	\$ 857,907	\$ 186,152	\$ 286,660
<b>Supplemental disclosures of cash flow information</b>			
Cash paid for interest	\$ —	\$ 1,249	\$ 4,236
Cash paid for taxes	\$ 10,770	\$ 120	\$ 5,311
<b>Supplemental disclosure of noncash investing and financing activities</b>			
Unpaid purchases of property and equipment and asset retirement obligations	\$ 3,483	\$ 2,706	\$ 3,349
Operating lease right-of-use assets exchanged for lease obligations	\$ 15,668	\$ —	\$ —
Liability awards converted to equity	\$ 12,651	\$ 8,870	\$ 8,307
Convertible senior notes converted to equity	\$ —	\$ 213,306	\$ 193,153



	December 31, 2019	December 31, 2018	December 31, 2017
<b>Reconciliation of cash, cash equivalents and restricted cash as shown in the consolidated statement of cash flows</b>			
Cash and cash equivalents	\$ 847,555	\$ 185,392	\$ 286,072
Restricted cash included in prepaid expenses and other current assets	3,734	283	315
Restricted cash included in other non-current assets	6,618	477	273
Total cash, cash equivalents and restricted cash	<u>\$ 857,907</u>	<u>\$ 186,152</u>	<u>\$ 286,660</u>

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

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements**  
**(dollars and share amounts in thousands, except per share amounts)**

**1. The Company and Summary of Significant Accounting Policies**

***The Company***

Proofpoint, Inc. (the “Company”) was incorporated in Delaware in June 2002 and is headquartered in California.

Proofpoint, Inc. is a leading security-as-a-service provider that enables large and mid-sized organizations worldwide to defend, protect, archive and govern their most sensitive data. The Company’s security-and compliance platform is comprised of an integrated suite of threat protection, information protection, and brand protection solutions, including email protection, advanced threat protection, email authentication, data loss prevention, SaaS application protection, response orchestration and automation, digital risk, web browser isolation, email encryption, archiving, eDiscovery, supervision, secure communication, phishing simulation and security awareness computer-based training.

***Correction of Classification of Short-term and Long-term Deferred Revenue***

Management has determined that in the Company’s consolidated financial statements for the year ended December 31, 2018, short-term deferred revenue was overstated by \$2,446, or 0.5%, in its consolidated balance sheet as of December 31, 2018. The Company has revised the December 31, 2018 consolidated balance sheet to correct the classification from short-term deferred revenue to long-term deferred revenue. The correction had no impact on the results of operations or cash flows of the Company.

***Basis of Presentation and Consolidation***

The accompanying consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”). The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

During the reporting periods, the Company completed a number of acquisitions which are more fully described in Note 3 “Acquisitions”. The consolidated financial statements include the results of operations from these business combinations from their date of acquisition.

***Reclassifications***

Certain reclassifications have been made to prior year balances in order to conform to the current period presentation. “Interest income” has been reclassified from “Interest expense” to “Other income, net” in the consolidated statements of operations. The reclassifications had no impact on previously reported net loss or accumulated deficit.

***Use of Estimates***

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of expenses during the reporting period. Actual results could differ materially from those estimates. Significant items subject to such estimates and assumptions include those related to revenue recognition, deferred commissions, fair value of assets acquired and liabilities assumed in business combinations, impairment assessments of goodwill, intangible assets and other long-lived assets, loss contingencies, and income taxes.

***Foreign Currency Remeasurement and Transactions***

The functional currency of the Company’s wholly-owned foreign subsidiaries is the U.S. dollar. Accordingly, the subsidiaries remeasure monetary assets and liabilities at period-end exchange rates, while

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

nonmonetary items are remeasured at historical rates. Income and expense accounts are remeasured at the average exchange rates in effect during the year. Remeasurement adjustments are recognized in the consolidated statements of operations as transaction gains or losses within other income (expense), net, in the period of occurrence. Aggregate transaction gains (losses) included in determining net loss were \$(1,655), \$(943) and \$574 for the years ended December 31, 2019, 2018 and 2017, respectively.

***Cash and Cash Equivalents***

The Company considers currency on hand, demand deposits, time deposits, money market funds and all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash and cash equivalents. Cash and cash equivalents are held in various financial institutions in the United States and internationally.

***Investments***

The Company classifies all its investments as available-for-sale at the time of purchase since it is management's intent that these investments be available for current operations, and as such, includes these investments as short-term investments on its balance sheets. These investments consist of money market funds, corporate debt securities, commercial papers, U.S. agency and Treasury securities, and certificates of deposit with original maturities longer than three months. Short-term investments classified as available-for-sale are recorded at fair value with the related unrealized gains and losses included in accumulated other comprehensive income (loss), a component of stockholders' equity. Realized gains and losses are recorded in the consolidated statements of operations and comprehensive loss based on specific identification.

***Inventories***

Inventories are stated at lower of cost or net realizable value, with costs computed on a first-in, first-out basis. The Company periodically reviews its inventories for excess and obsolete items and adjusts carrying costs to estimated net realizable values when they are determined to be less than cost. Inventories held at December 31, 2019 and December 31, 2018 consist primarily of finished goods.

***Revenue Recognition***

Effective January 1, 2018, the Company adopted ASC 606 using the full retrospective method. Refer to Note 2 for a detailed discussion of accounting policies related to revenue recognition, including deferred revenue, deferred commissions and deferred product costs.

***Property and Equipment***

Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful life of the related asset. Amortization of leasehold improvements is computed using the straight-line method over the shorter of the lease term or the estimated useful life of the asset or improvement. Cost of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred.

***Impairment of Intangible Assets and Other Long-Lived Assets***

The Company evaluates long-lived assets, including property, equipment and definitive-lived intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of such assets (or asset group) to the future undiscounted cash flows the assets (or asset group) is expected to generate. If the assets are considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired assets. The Company also evaluates the estimated remaining useful lives of intangible assets and other long-lived assets to assess whether a revision to the remaining periods of amortization is required. No assets were determined to be impaired as of December 31, 2019.

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

**Software Development Costs**

Internally developed software includes security software developed to meet the Company's internal needs to provide cloud-based subscription services to its end-customers and business software that the Company customizes to meet its operating needs. These capitalized costs consist of internal compensation related costs and external direct costs incurred during the application development stage. The costs capitalized were not material in the years ended December 31, 2019, 2018 and 2017.

The costs to develop software that is marketed externally have not been capitalized as the current software development process is essentially completed concurrently with the establishment of technological feasibility. As such, all related software development costs are expensed as incurred and included in research and development expense in the consolidated statements of operations.

Internally and externally developed software is amortized over the software's estimated useful life of three to five years.

**Advertising and Promotion Costs**

Expenses related to advertising and promotion of solutions is charged to sales and marketing expense as incurred. The Company did not incur any material advertising and promotion expenses during the years ended December 31, 2019, 2018 and 2017.

**Goodwill and Intangible Assets**

Goodwill represents the excess of the purchase price of the acquired enterprise over the fair value of identifiable assets acquired and liabilities assumed. The Company performs an annual goodwill impairment test during the fourth quarter of a calendar year and more frequently if an event or circumstances indicates that impairment may have occurred. For the purposes of impairment testing, the Company has determined that it has one operating segment and one reporting unit. The Company performs a two-step impairment test of goodwill whereby the fair value of the reporting unit is compared to its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not considered impaired and further testing is not required. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the Company must perform the second step of the impairment test in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then impairment loss equal to the difference is recorded. The identification and measurement of goodwill impairment involves the estimation of the fair value of the Company. No impairment indicators were identified by the Company as of December 31, 2019.

Intangible assets consist of developed technology, customer relationships, non-compete arrangements, trademarks and patents, order backlog, and in-process research and development asset. The values assigned to intangibles are based on estimates and judgments regarding expectations for success and life cycle of solutions and technologies acquired.

Intangible assets are amortized on a straight-line basis over their estimated lives, which approximate the pattern in which the economic benefits of the intangible assets are consumed, as follows (in years):

	<u>Low</u>	<u>High</u>
Developed technology	2	7
Customer relationships	2	8
Trade names and trademarks	1	5
Patents	4	5
Order backlog	1	3

The in-process research and development asset is not amortized until the associated project is completed.

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

***Warranty***

The Company provides limited warranties on all sales and provides for the estimated cost of the warranties at the date of sale, to the extent not already provided by its own vendors. Warranty costs and the accrued warranty liabilities were not material for all periods presented.

***Income Taxes***

The Company accounts for income taxes in accordance with authoritative guidance, which requires use of the asset and liability method. Under this method, deferred income tax assets and liabilities are determined based on the difference between the consolidated financial statements carrying amounts and the tax basis of assets and liabilities and are measured using the enacted tax rates expected to apply to taxable income in the years in which the differences are expected to be reversed.

The Company records net deferred tax assets to the extent the Company believes these assets will more likely than not be realized. In making such determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent financial operations.

The Company recognizes interest and penalties related to uncertain tax positions within the income tax expense line in the consolidated statements of operations. Accrued interest and penalties are included within the related tax liability line on the consolidated balance sheets.

***Research and Development***

Research and development expense consists primarily of personnel costs, consulting services, allocated facilities costs and depreciation. Research and development costs are expensed as incurred.

***Employee Benefit Plans***

The Company's tax-deferred savings plan is qualified under Section 401(k) of the United States Internal Revenue Code. Employees may make voluntary, tax-deferred contributions to the 401(k) Plan up to the statutorily prescribed annual limit. The Company makes discretionary matching contributions to the 401(k) Plan on behalf of employees up to the limit determined by the Board of Directors. The Company contributed \$2,816 and \$1,563 to the 401(k) Plan in 2019 and 2018. There were no contributions made by the Company in 2017.

***Stock-Based Compensation***

The Company issues stock-based compensation awards to employees and directors in the form of stock options, restricted stock units ("RSUs"), performance stock units ("PSUs"), employee stock purchase plan ("ESPP") and stock bonus and other liability awards (collectively, "awards").

The Company measures and recognizes compensation expense for all stock-based awards based on the awards' fair value. Stock-based compensation for RSUs is measured based on the value of the Company's common stock on the grant date.

The actual number of PSUs earned and eligible to vest are determined based on the Company's achievement of the financial and operational performance conditions pre-defined when the awards are granted. The Company recognizes share-based compensation expense for the PSUs on a straight-line basis over the requisite service period for each separately vesting portion of the award when it is probable that the performance conditions will be achieved. The Company reassesses the probability of vesting at each reporting period for awards with performance conditions and adjusts stock-based compensation cost based on its probability assessment. The Company recognizes a cumulative catch up adjustment for changes in its probability assessment in subsequent reporting periods.

Stock-based compensation for employee stock options and ESPP awards are measured on the date of grant using a Black-Scholes option pricing model.

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

Stock bonus and other liability awards are accounted for as liability-classified awards, because the obligations are based predominantly on fixed monetary amounts that are generally known at the inception of the obligation, to be settled with a variable number of shares of the Company's common stock.

Awards vest either on a graded schedule or in a lump sum. The Company determines the fair value of each award as a single award and recognizes the expense on a straight-line basis over the service period of the award, which is generally the vesting period. The exercise price of stock options granted is equal to the fair value of the Company's common stock on the date of grant. Stock options expire ten years from the date of grant.

***Comprehensive Loss***

Comprehensive loss includes all changes in equity that are not the result of transactions with stockholders. The Company's comprehensive loss consists of its net loss and changes in unrealized gains (losses) from its available-for-sale investments. The Company had no material reclassifications out of accumulated other comprehensive income into net loss in 2019, 2018 and 2017.

***Loss Contingencies***

The Company may be involved in various lawsuits, claims and proceedings that arise in the ordinary course of business. The Company records a provision for a liability when it believes that it is both probable that a liability has been incurred and the amount can be reasonably estimated. Significant judgment is required to determine both probability and the estimated amount. The Company reviews these provisions at least quarterly and adjusts these provisions to reflect the impact of negotiations, settlements, rulings, and updated information.

***Accounting Pronouncements Adopted in 2019***

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842) ("ASU 2016-02" or "ASC 842"), which requires lessees to record most leases on their balance sheets but recognize the expenses in their statements of operations in a manner similar to current practice. ASU 2016-02 states that a lessee needs to recognize a lease liability for the obligation to make lease payments and a right-to-use ("ROU") asset for the right to use the underlying asset for the lease term.

The Company adopted ASU 2016-02 in the first quarter of 2019, utilizing the modified retrospective transition approach through a cumulative-effect adjustment to the opening accumulated deficit balance as of January 1, 2019.

Refer to Note 8 "Leases" for more information regarding the impact of the adoption of ASU 2016-02 on the Company's financial statements.

***Recent Accounting Pronouncements Not Yet Effective***

In December 2019, the FASB issued ASU No. 2019-02, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"). ASU 2019-12 removes certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. ASU 2019-12 also amends other aspects of the guidance to help simplify and promote consistent application of GAAP. The guidance is effective for interim and annual periods beginning after December 15, 2020, with early adoption permitted. The Company is currently assessing the impact that the adoption of ASU 2019-12 will have on its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* ("ASU 2018-15"). ASU 2018-15 aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The update to the standard is effective for interim and annual periods beginning after December 15, 2019, with early adoption permitted. Entities can choose to adopt the ASU 2018-15 prospectively or retrospectively. The Company is currently assessing the impact that the adoption of ASU 2018-15 will have on its consolidated financial statements.

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles - Goodwill and Other (Topic 350): Simplifying the Accounting for Goodwill Impairment* (“ASU 2017-04”). ASU 2017-04 removes the requirement to perform a hypothetical purchase price allocation to measure goodwill impairment. A goodwill impairment charge will be the amount by which a reporting unit’s carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. The update to the standard is effective for interim and annual periods beginning after December 15, 2019, with early adoption permitted, and should be applied prospectively. The Company does not expect the adoption of ASU 2017-04 to have a material impact on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”). ASU 2016-13 changes the impairment model for most financial assets, and requires the use of an expected loss model in place of the currently used incurred loss method. Under this model, entities will be required to estimate the lifetime expected credit loss on such instruments and record an allowance to offset the amortized cost basis of the financial asset, resulting in a net presentation of the amount expected to be collected on the financial asset. The update to the standard is effective for interim and annual periods beginning after December 15, 2019. The Company does not expect the adoption of ASU 2016-13 to have a material impact on its consolidated financial statements.

## **2. Revenue, Deferred Revenue and Deferred Contract Costs**

The core principle of ASC 606 is to recognize revenue to depict the transfer of services or products to customers in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services or products. The Company applies significant judgment in identifying and evaluating any terms and conditions in contracts which may impact revenue recognition. The principle is achieved through the following five-step approach:

- *Identification of the contract, or contracts, with the customer* - The Company considers the terms and conditions of the contract and its customary business practice in identifying its contracts under ASC 606. The Company determines it has a contract with a customer when the contract is approved, the Company can identify each party’s rights regarding the services and products to be transferred, the Company can identify the payment terms for the services and products, the Company has determined the customer has the ability and intent to pay and the contract has commercial substance. At contract inception, the Company evaluates whether two or more contracts should be combined and accounted for as a single contract and whether the combined contract or single contract includes more than one performance obligation. The Company applies judgment in determining the customer’s ability and intent to pay, which is based on a variety of factors, including the customer’s historical payment experience or, in the case of a new customer, credit and financial information pertaining to the customer.
- *Identification of the performance obligation in the contract* - Performance obligations promised in a contract are identified based on the services or products that will be transferred to the customer that are both i) capable of being distinct, whereby the customer can benefit from the service or product either on its own or together with other resources that are readily available from third parties or from the Company, and ii) distinct in the context of the contract, whereby the transfer of the services or products is separately identifiable from other promises in the contract. To the extent a contract includes multiple promised services or products, the Company applies judgment to determine whether promised services or products are capable of being distinct and distinct in the context of the contract. If these criteria are not met the promised services or products are accounted for as a combined performance obligation.
- *Determination of the transaction price* - The transaction price is determined based on the consideration to which the Company expects to be entitled in exchange for transferring services and products to the customer. Variable consideration is included in the transaction price if, in the Company’s judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. None of the Company’s contracts contain a significant financing component.
- *Allocation of the transaction price to the performance obligations in the contract* - If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

of the transaction price to each performance obligation based on a relative standalone selling price, or SSP, basis.

- *Recognition of revenue when, or as, the Company satisfies a performance obligation* - The Company recognizes revenue when control of the services or products are transferred to the customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services or products. The Company records its revenue net of any value added or sales tax.

The Company generates sales directly through its sales team and, to a growing extent, through its channel partners. Sales to channel partners are made at a discount and revenues are recorded at this discounted price once all revenue recognition criteria are met. Channel partners generally receive an order from an end-customer prior to placing an order with the Company, and these partners do not carry any inventory of the Company's products or solutions. Payment from channel partners is not contingent on the partner's success in sales to end-customers. In the event that the Company offers rebates, joint marketing funds, or other incentive programs to a partner, recorded revenues are reduced by these amounts accordingly.

Payment terms on invoiced amounts are typically 30 to 45 days.

***Disaggregation of Revenue***

The Company derives its revenue primarily from: (1) subscription service revenue; (2) subscription software revenue, and (3) hardware and services, which include professional service and training revenue provided to customers related to their use of the platform.

The following table presents the Company's revenue disaggregation:

	Year Ended December 31,		
	2019	2018	2017
Subscription service revenue	\$ 849,267	\$ 681,138	\$ 489,274
Subscription software revenue	25,739	23,262	17,081
Hardware and services	13,184	12,594	13,326
Total revenue	<u>\$ 888,190</u>	<u>\$ 716,994</u>	<u>\$ 519,681</u>

***Subscription service revenue***

Subscription service revenue is derived from a subscription-based enterprise licensing model with contract terms typically ranging from one to three years, and consists of (1) subscription fees from the licensing of the Company's security-as-a-service platform and its various components, (2) subscription fees for software with support and related future updates where the software updates are critical to the customers' ability to derive benefit from the software due to the fast changing nature of the technology. These function together as one performance obligation, and (3) subscription fees for the right to access the Company's customer support services for software with significant standalone functionality and support services for hardware. The hosted on-demand service arrangements do not provide customers with the right to take possession of the software supporting the hosted services. Support revenue is derived from ongoing security updates, upgrades, bug fixes, and maintenance. A time-elapsed method is used to measure progress because the Company transfers control evenly over the contractual period. Accordingly, the fixed consideration related to subscription service revenue is generally recognized on a straight-line basis over the contract term beginning on the date access is provided, as long as other revenue recognition criteria have been met. Most of the Company's contracts are non-cancelable over the contract term. Customers typically have the right to terminate their contract for cause if the Company fails to perform in accordance with the contractual terms. Some of the Company's customers have the option to purchase additional subscription services at a stated price. These options are evaluated on a case-by-case basis but generally do not provide a material right as they are priced at or above the Company's SSP and, as such, would not result in a separate performance obligation.



**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

***Subscription software revenue***

Subscription software revenue is primarily derived from term-based software that is deployed on the customers' own servers and has significant standalone functionality, is recognized upon transfer of control to the customer. The control for subscription software is transferred at the later of delivery to the customer or the software license start date.

***Hardware and services***

Hardware revenue consists of amounts derived from the sale of the Company's on-premise hardware appliance, which is recognized upon passage of control, which occurs upon shipment of the product. Professional services revenue consists of fees associated with consulting, implementation and training services for assisting customers in implementing and expanding the use of the Company's services and products. These services are distinct from subscription, subscription software licenses and hardware. Professional services do not result in significant customization of the Company's services and products. The Company recognizes revenue related to the professional services as they are performed.

***Contracts with multiple performance obligations***

Most of the Company's contracts with customers contain multiple performance obligations that are distinct and accounted for separately. The transaction price allocated to subscription services and subscription software that does not have significant standalone functionality is determined by considering factors such as historical pricing practices, and the selling price of hardware and professional services is estimated using a cost plus model. The selling price for support of a functional subscription software license is calculated as a percentage of functional subscription software license value which is derived by analyzing internal pricing practice, customer expectations, and industry practice.

***Variable consideration***

Revenue from sales is recorded at the net sales price, which is the transaction price, and includes estimates of variable consideration. The amount of variable consideration that is included in the transaction price is constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue will not occur when the uncertainty is resolved. If the Company's services or products do not meet certain service level commitments, the Company's customers are entitled to receive service credits representing a form of variable consideration. The Company has not historically experienced any significant incidents affecting the defined levels of reliability and performance as required by the Company's subscription contracts. Accordingly, any estimated refunds related to these contracts in the consolidated financial statements are not material during the periods presented.

***Unbilled accounts receivables***

Unbilled accounts receivable represents amounts for which the Company has recognized revenue, pursuant to its revenue recognition policy, for software licenses already delivered and professional services already performed, but billed in arrears and for which the Company believes it has an unconditional right to payment. The unbilled accounts receivable balance, included in accounts receivable in the consolidated balance sheet, was \$3,261 and \$1,276 as of December 31, 2019 and 2018, respectively.

***Deferred commissions***

The Company capitalizes sales commissions and associated payroll taxes paid to internal sales personnel, and referral fees paid to independent third-parties, that are incremental to the acquisition of customer contracts. These costs are recorded as deferred commissions on the consolidated balance sheets. The Company determines whether costs should be deferred based on its sales compensation plans, if the commissions are incremental and would not have occurred absent the customer contract. Sales commissions for renewal of a subscription contract are not considered commensurate with the commissions paid for the acquisition of the initial subscription contract given the substantive difference in commission rate between new and renewal contracts. Commissions paid upon the initial acquisition of a contract are amortized over an estimated period of benefit of five years while commissions

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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paid related to renewal contracts are amortized over a contractual renewal period. Amortization is recognized based on the expected future revenue streams under the customer contracts. Amortization of deferred sales commissions is included in sales and marketing expense in the accompanying consolidated statements of operations. The Company determines the period of benefit for commissions paid for the acquisition of the initial subscription contract by taking into consideration its initial estimated customer life and the technological life of the Company's software and related significant features. The Company classifies deferred commissions as current or long-term based on the timing of when the Company expects to recognize the expense. The Company periodically reviews these deferred commission costs to determine whether events or changes in circumstances have occurred that could impact the period of benefit of these deferred contract acquisition costs. There were no material impairment losses recorded during the periods presented.

For the years ended December 31, 2019, 2018 and 2017, the Company capitalized \$80,590, \$66,254 and \$45,910 of commission costs, respectively, and amortized \$50,415, \$37,076 and \$28,476, respectively.

***Deferred product costs***

Deferred product costs are the incremental costs to fulfill a contract that are directly associated with each non-cancellable customer contract and primarily consist of royalty payments made to third parties, from whom the Company has obtained licenses to integrate certain software into its products. The deferred product costs are recognized based on the contractual term, and included in cost of revenue in the accompanying consolidated statements of operations. The Company classifies deferred product costs as current or long-term based on the timing of when the Company expects to recognize the expense.

For the years ended December 31, 2019, 2018 and 2017, the Company capitalized \$4,727, \$2,765 and \$2,510 of deferred product costs, respectively, and amortized \$3,531, \$2,463 and \$2,849, respectively.

***Deferred revenue***

The Company records deferred revenue when cash payments are received, or invoices are issued in advance of the Company's performance, and generally recognizes revenue over the contractual term. The Company recognized revenue of \$490,172, \$363,483 and \$242,428 during the years ended December 31, 2019, 2018 and 2017, respectively, that was included in the deferred revenue balances at the beginning of the respective periods.

The Company recognized \$1,906, \$2,901 and \$1,055 of revenue during the years ended December 31, 2019, 2018 and 2017, respectively, related to the performance obligations satisfied in prior periods. The acquisition of ObserveIT, Ltd. (see Note 3 "Acquisitions") on November 25, 2019, increased deferred revenue by \$6,700, of which \$681 was recognized in the year ended December 31, 2019.

***Remaining performance obligations***

Contracted revenue as of December 31, 2019 that has not yet been recognized ("contracted not recognized") was \$676,707, which includes deferred revenue and non-cancellable amounts that will be invoiced and recognized as revenue in future periods and excludes contracts with an original expected length of one year or less. The Company expects 59% of contracted and not recognized revenue to be recognized over the next twelve months, 38% in years two and three, with the remaining balance recognized thereafter.

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**Notes to Consolidated Financial Statements (Continued)**  
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### 3. Acquisitions

Acquisitions are accounted for under the purchase method of accounting in which the tangible and identifiable intangible assets and liabilities of each acquired company are recorded at their respective fair values as of each acquisition date, including an amount for goodwill representing the difference between the respective acquisition consideration and fair values of identifiable net assets. The Company believes that for the acquisitions described below, the combined entities will achieve savings in corporate overhead costs and opportunities for growth through expanded geographic and customer segment diversity with the ability to leverage additional products and capabilities. These factors, among others, contributed to a purchase price in excess of the estimated fair value of the acquired companies' net identifiable assets acquired and, as a result, goodwill was recorded in connection with the acquisitions. Goodwill related to the acquisitions of ObserveIT, Ltd. and Meta Networks, Ltd. is deductible for tax purposes, and goodwill related to the acquisition of Wombat Security Technologies, Inc. is not deductible for tax purposes.

While the Company uses its best estimates and assumptions as part of the purchase price allocation process to value assets acquired and liabilities assumed at the acquisition date, these estimates and assumptions are subject to refinement. When additional information becomes available, such as finalization of negotiations of working capital adjustments and tax related matters, the Company may revise its preliminary purchase price allocation. As a result, during the preliminary purchase price allocation period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill. Subsequent to the purchase price allocation period, adjustments to assets acquired or liabilities assumed are recognized in the operating results.

#### *2019 Acquisitions*

##### *ObserveIT, Ltd.*

On November 25, 2019 (the "ObserveIT Acquisition Date"), pursuant to the terms of the share purchase agreement, the Company acquired all shares of ObserveIT, Ltd. ("ObserveIT"). ObserveIT provides detection and prevention from insider threats solutions including data loss detection and response, user activity monitoring, incident response and compliance.

By combining ObserveIT's endpoint agent technology and data risk analytics with the Company's information classification, threat detection and intelligence, the Company has an insight into user activity with their sensitive data, wherever it resides, and the ability to immediately remediate risk.

These factors, among others, contributed to a purchase price in excess of the estimated fair value of acquired net identifiable assets and, as a result, goodwill was recorded in connection with the acquisition. The Company has estimated fair values of acquired tangible assets, intangible assets and liabilities at the ObserveIT Acquisition Date. The amounts reported are considered provisional as the Company is completing the valuation work to determine the fair value of certain assets and liabilities acquired, largely with respect to working capital adjustments. The results of operations and the provisional fair values of the acquired assets and liabilities assumed have been included in the accompanying consolidated financial statements since the ObserveIT Acquisition Date.

At the ObserveIT Acquisition Date, the consideration transferred was \$213,747, net of cash acquired of \$4,752. Of the consideration transferred, \$3,250 was held in escrow to secure indemnification obligations, which has not been released as of the issuance of these consolidated financial statements. The revenue from ObserveIT was not material in 2019, and due to the continued integration of the combined businesses, it was impractical to determine the earnings.

Per the terms of the share purchase agreement, unvested stock options held by ObserveIT employees were canceled and exchanged for the Company's unvested stock options. The fair value of \$446 of these unvested awards was attributed to pre-combination services and was included in consideration transferred. The fair value of \$5,427 was allocated to post-combination services. The unvested awards are subject to the recipient's continued service with the Company and \$5,427 is recognized ratably as stock-based compensation expense over the required remaining service period.

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**Notes to Consolidated Financial Statements (Continued)**  
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Also, as part of the share purchase agreement, the unvested restricted shares of a certain employee of ObservelT were exchanged into the right to receive \$532 of deferred cash consideration. The deferred cash consideration is presented as restricted cash on the Company's consolidated balance sheet. The deferred cash consideration of \$485 was allocated to post-combination expense and was not included in the purchase price. The deferred cash consideration is subject to forfeiture if employment terminates prior to the lapse of the restrictions, and the fair value is expensed as compensation expense over the three-year vesting period.

The Discounted Cash Flow Method was used to value the acquired developed technology, in-process research and development asset, customer relationships and order backlog. The Relief from Royalty Method was used to value the acquired trade name. Management applied significant judgment in estimating the fair values of these intangible assets, which involved the use of significant assumptions with respect to forecasted revenue, forecasted operating results and discount rates.

The following table summarizes the fair values of tangible assets acquired, liabilities assumed, intangible assets and goodwill:

	<b>Estimated Fair Value</b>	<b>Estimated Useful Life (in years)</b>
Current assets	\$ 10,603	N/A
Fixed assets	2,132	N/A
Operating lease right-of-use asset	2,669	N/A
Other assets	652	N/A
Customer relationships	15,800	5
Order backlog	1,300	1
Core/developed technology	35,400	4
Trade name	400	2
In-process research and development*	20,600	N/A
Operating lease liabilities	(3,317)	N/A
Deferred revenue	(6,700)	N/A
Other liabilities	(5,414)	N/A
Goodwill	144,374	Indefinite
	<u>\$ 218,499</u>	

\*Purchased in-process research and development will be accounted for as an indefinite-lived intangible asset until the underlying project is completed or abandoned.

*Meta Networks, Ltd.*

On May 15, 2019 (the "Meta Networks Acquisition Date"), pursuant to the terms of the share purchase agreement, the Company acquired all shares of Meta Networks, Ltd. ("Meta Networks"), an innovator in zero trust network access.

By combining Meta Networks' innovative zero trust network access technology with the Company's people-centric security capabilities the Company expects to make it far simpler for enterprises to precisely control employee and contractor access to on-premises, cloud and consumer applications.

These factors, among others, contributed to a purchase price in excess of the estimated fair value of acquired net identifiable assets and, as a result, goodwill was recorded in connection with the acquisition. The results of operations and the fair values of the acquired assets and liabilities assumed have been included in the accompanying consolidated financial statements since the Meta Networks Acquisition Date.

At the Meta Networks Acquisition Date, the consideration transferred was \$104,664, net of cash acquired of \$104. Of the consideration transferred, \$12,500 was held in escrow to secure indemnification obligations, which has not been released as of the issuance of these consolidated financial statements. The revenue from Meta Networks was not material in 2019, and due to the continued integration of the combined businesses, it was impractical to determine the earnings.

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Per the terms of the share purchase agreement, unvested stock options and unvested restricted stock units held by Meta Networks employees were canceled and exchanged for the Company's unvested stock options and unvested restricted stock units, respectively. The fair value of \$184 of these unvested awards was attributed to pre-combination services and was included in consideration transferred. The fair value of \$12,918 was allocated to post-combination services. The unvested awards are subject to the recipient's continued service with the Company, and \$12,918 will be recognized ratably as stock-based compensation expense over the required remaining service period.

Also, as part of the share purchase agreement, the unvested restricted shares of certain employees of Meta Networks were exchanged into the right to receive \$7,827 of deferred cash consideration and 72 shares of the Company's common stock that were deferred with the fair value of \$8,599. The deferred cash consideration was presented as restricted cash on the Company's consolidated balance sheet as of December 31, 2019. The deferred cash consideration of \$7,596 and the deferred stock \$8,338 (see Note 11 "Equity Award Plans") were allocated to post-combination expense and were not included in the purchase price. The deferred cash consideration and deferred shares are subject to forfeiture if employment terminates prior to the lapse of the restrictions, and their fair value is expensed as compensation and stock-based compensation expense over the three-year vesting period.

The Cost to Recreate Method was used to value the acquired developed technology asset. Management applied judgment in estimating the fair value of this intangible asset, which involved the use of significant assumptions such as the cost and time to build the acquired technology, developer's profit and rate of return.

The following table summarizes the fair values of tangible assets acquired, liabilities assumed, intangible assets and goodwill:

	Fair Value	Estimated Useful Life (in years)
Current assets	\$ 356	N/A
Fixed assets	68	N/A
Core/developed technology	21,000	3
Deferred tax liability, net	(1,854)	N/A
Other liabilities	(671)	N/A
Goodwill	85,869	Indefinite
	<u>\$ 104,768</u>	

**2018 Acquisition**

*Wombat Security Technologies, Inc.*

On February 28, 2018 (the "Wombat Acquisition Date"), pursuant to the terms of the merger agreement, the Company acquired all shares of Wombat Security Technologies, Inc. ("Wombat"), a leader for phishing simulation and security awareness computer-based training. By collecting data from Wombat's PhishAlarm solution, the Company has access to data on phishing campaigns as seen by non-Company customers, providing broader visibility and insight to the Proofpoint Nexus platform.

With this acquisition, the Company's customers can leverage the industry's first solution combining the Company's advanced threat protection with Wombat's phishing simulation and computer-based security awareness training. With the combined solutions, the Company's customers can:

- use real detected phishing attacks for simulations, assessing users based on the threats that are actually targeting them;
- both investigate and take action on user-reporting phishing, leveraging orchestration and automation to find real attacks, quarantine emails in users' inboxes, and lock user accounts to limit risk; and
- train users in the moment immediately after they click for both simulated and real phishing attacks.

The Company also expects to achieve savings in corporate overhead costs for the combined entities. These factors, among others, contributed to a purchase price in excess of the estimated fair value of acquired net identifiable assets and, as a result, goodwill was recorded in connection with the acquisition.

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At the Wombat Acquisition Date, the consideration transferred was \$225,366, net of cash acquired of \$13,452.

Per the terms of the merger agreement, unvested in-the-money stock options held by Wombat employees were canceled and paid off using the same amount per option as for the common share less applicable exercise price for each option. The fair value of \$1,580 of these unvested options was attributed to pre-combination service and included in consideration transferred. The fair value of unvested options of \$1,571 was allocated to post-combination services and expensed in the three months ended March 31, 2018. Also, as part of the merger agreement, 51 shares of the Company's common stock were deferred for certain key employees with the total fair value of \$5,458 (see Note 11 "Equity Award Plans"), which was not included in the purchase price. The deferred shares are subject to forfeiture if employment terminates prior to the lapse of the restrictions, and their fair value is expensed as stock-based compensation expense over the remaining service period.

The following table summarizes the fair values of tangible assets acquired, liabilities assumed, intangible assets and goodwill:

	Fair Value	Estimated Useful Life (in years)
Current assets	\$ 23,344	N/A
Fixed assets	954	N/A
Customer relationships	37,800	7
Order backlog	6,800	2
Core/developed technology	35,200	4
Trade name	2,400	4
Deferred revenue	(14,700)	N/A
Deferred tax liability, net	(14,725)	N/A
Other liabilities	(1,120)	N/A
Goodwill	162,865	Indefinite
	<u>\$ 238,818</u>	

**2017 Acquisitions**

*Cloudmark, Inc.*

On November 21, 2017 (the "Cloudmark Acquisition Date"), pursuant to the terms of the merger agreement, the Company acquired all shares of Cloudmark, Inc. ("Cloudmark"), a leader in messaging security and threat intelligence for internet service providers and mobile carriers worldwide. As part of the acquisition, Cloudmark's Global Threat Network was incorporated into Company's cloud-based Nexus platform, which powers its email, social media, mobile, and SaaS security effectiveness.

The Company believes that with this acquisition, it will benefit from increased messaging threat intelligence from the analysis of billions of daily emails, malicious domain intelligence, and visibility into fraudulent and malicious SMS messages directed to mobile carriers worldwide. The Company also expects to achieve savings in corporate overhead costs for the combined entities. These factors, among others, contributed to a purchase price in excess of the estimated fair value of acquired net identifiable assets and, as a result, goodwill was recorded in connection with the acquisition.

At the Cloudmark Acquisition Date, the consideration transferred was \$107,283, net of cash acquired of \$31,973.

Per the terms of the merger agreement, unvested stock options and unvested restricted stock units held by Cloudmark employees were canceled and exchanged for the Company's unvested stock options and unvested restricted stock units, respectively. The fair value of \$91 of these unvested awards was attributed to pre-combination services and included in consideration transferred. The fair value of \$1,180 was allocated to post-combination

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services. The unvested awards are subject to the recipient's continued service with the Company, and \$1,180 is recognized ratably as stock-based compensation expense over the required remaining service period.

The following table summarizes the fair values of tangible assets acquired, liabilities assumed, intangible assets and goodwill:

	<u>Fair Value</u>	<u>Estimated Useful Life (in years)</u>
Current assets	\$ 37,390	N/A
Fixed assets	543	N/A
Non-current assets	74	N/A
Liabilities	(4,422)	N/A
Deferred revenue	(15,400)	N/A
Customer relationships	15,300	8
Order backlog	1,400	1
Core/developed technology	18,500	4
Deferred tax liability, net	(7,905)	N/A
Goodwill	93,776	Indefinite
	<u>\$ 139,256</u>	

*WebLife Balance, Inc.*

On November 30, 2017 (the "WebLife Acquisition Date"), pursuant to the terms of a merger agreement, the Company acquired all shares of WebLife Balance, Inc. ("WebLife"), a browser isolation offerings vendor, to extend its advanced threat protection capabilities into personal email, while preserving the privacy of its users.

The Company has estimated fair values of acquired tangible assets, intangible assets and liabilities at the WebLife Acquisition Date. The results of operations and the fair values of the acquired assets and liabilities assumed have been included in the accompanying consolidated financial statements since the WebLife Acquisition Date.

At the WebLife Acquisition Date, the consideration transferred was \$48,765, net of cash acquired of \$278.

Per the terms of the merger agreement, unvested stock options held by WebLife employees were canceled and exchanged for the Company's unvested awards. The fair value of \$333 of these unvested options was attributed to pre-combination service and included in consideration transferred. The fair value of \$1,468 was allocated to post-combination services. The unvested awards are subject to the recipient's continued service with the Company, and \$1,468 is recognized ratably as stock-based compensation expense over the required remaining service period. Also, as part of the merger agreement, 107 shares of the Company's common stock were deferred for certain key employees with the total fair value of \$9,652 (see Note 11 "Equity Award Plans"), which was not included in the purchase price. The deferred shares are subject to forfeiture if employment terminates prior to the lapse of the restrictions, and their fair value is expensed as stock-based compensation expense over the remaining period.

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The following table summarizes the fair values of tangible assets acquired, liabilities assumed, intangible assets and goodwill:

	Fair Value	Estimated Useful Life (in years)
Current assets	\$ 534	N/A
Fixed assets	23	N/A
Liabilities	(88)	N/A
Deferred revenue	(700)	N/A
Customer relationships	600	5
Core/developed technology	16,600	5
Deferred tax liability, net	(4,440)	N/A
Goodwill	36,514	Indefinite
	<u>\$ 49,043</u>	

**Pro Forma Financial Information (unaudited)**

The following unaudited pro forma financial information presents the combined results of operations for the years ended December 31, 2019, 2018 and 2017 as though the acquisitions that occurred during the reporting periods had occurred as of the beginning of the comparable prior annual reporting periods, with adjustments to give effect to pro forma events that are directly attributable to the acquisitions such as amortization expense of acquired intangible assets, stock-based compensation directly attributable to the acquisitions and acquisition-related transaction costs. Accordingly, these unaudited pro forma results are presented for informational purposes only and are not necessarily indicative of what the actual results of operations of the combined company would have been if the acquisitions had occurred at the beginning of the period presented, nor are they indicative of future results of operations:

	Year Ended December 31,		
	2019	2018	2017
Total revenue	\$ 911,968	\$ 743,345	\$ 594,966
Net loss	\$ (158,448)	\$ (152,238)	\$ (89,221)
Basic and diluted net loss per share	\$ (2.83)	\$ (2.92)	\$ (2.02)

The unaudited pro forma financial information includes acquisition-related transaction costs of \$3,294 recorded within operating expenses for the year ended December 31, 2019.

**4. Concentration of Risks**

Financial instruments that potentially subject the Company to credit risk consist principally of cash and cash equivalents, short-term investments and accounts receivable.

The Company limits its concentration of risk in cash equivalents and short-term investments by diversifying its investments among a variety of industries and issuers and by limiting the average maturity to one year or less. The Company's professional portfolio managers adhere to this investment policy as approved by the Company's Board of Directors.

The Company's investment policy is to invest only in fixed income investments denominated and payable in U.S. dollars. Investment in obligations of the U.S. government and its agencies, money market instruments, commercial paper, certificates of deposit, bankers' acceptances, corporate bonds of U.S. companies, municipal securities and asset backed securities are allowed. The Company does not invest in auction rate securities, futures contracts, or hedging instruments.

The Company's accounts receivables are derived from revenue earned from customers primarily located in the United States of America. The Company performs periodic evaluations of its customers' financial condition and



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generally does not require its customers to provide collateral or other security to support accounts receivable, and maintains an allowance for doubtful accounts. Credit losses historically have not been material.

During the year ended December 31, 2019, two partners accounted for 12% and 11% of total revenue, respectively. During the years ended December 31, 2018 and 2017, one partner accounted for 12% of total revenue in each year. These partners sold to a number of end users, none of which accounted for more than 10% of our total revenue in 2019, 2018 and 2017.

Two partners accounted for 13% and 11% of total accounts receivable, respectively, as of December 31, 2019. Two partners accounted for 12% of total accounts receivable each as of December 31, 2018.

**5. Balance Sheet Components**

Property and equipment at December 31, 2019 and December 31, 2018 consist of the following:

	Useful Life (in years)	December 31,	
		2019	2018
Computer equipment	2 to 4	\$ 170,010	\$ 142,777
Software	2 to 5	5,184	3,782
Furniture	5	4,244	3,637
Office equipment	2 to 5	658	585
Leasehold improvements	5 years, or lease term, if shorter	14,819	13,129
Other	2	408	59
Construction in progress		3,630	1,088
		198,953	165,057
Less: Accumulated depreciation		(125,441)	(94,430)
		<u>\$ 73,512</u>	<u>\$ 70,627</u>

Depreciation expense for the years ended December 31, 2019, 2018 and 2017 was \$34,684, \$32,396, and \$23,591, respectively, including depreciation expense for assets under capital leases of \$29 and \$31 for the years ended December 31, 2018 and 2017, respectively.

The allowance for doubtful accounts receivable was not material as of December 31, 2019 and 2018.

Accrued liabilities at December 31, 2019 and December 31, 2018 consisted of the following:

	December 31,	
	2019	2018
Accrued compensation	\$ 73,384	\$ 55,924
ESPP contributions	4,138	3,224
Customer deposits	12,316	5,961
Accrued royalties	1,528	1,373
Other	28,057	24,237
	<u>\$ 119,423</u>	<u>\$ 90,719</u>

**6. Goodwill and Intangible Assets**

The goodwill activity and balances are presented below:

	Year Ended December 31,	
	2019	2018
Beginning balance	\$ 460,425	\$ 297,704
Acquisitions during period	230,243	162,865
Purchase accounting adjustments	(3,151)	(144)
Closing balance	<u>\$ 687,517</u>	<u>\$ 460,425</u>

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**Intangible Assets**

Intangible assets consisted of the following:

	December 31, 2019			December 31, 2018		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 210,469	\$ (110,284)	\$ 100,185	\$ 154,069	\$ (79,525)	\$ 74,544
Customer relationships	87,200	(25,608)	61,592	71,400	(15,166)	56,234
Trade names and patents	3,730	(2,349)	1,381	3,330	(1,430)	1,900
Order backlog	8,100	(6,360)	1,740	6,800	(2,833)	3,967
In-process research and development	21,125	—	21,125	—	—	—
	\$ 330,624	\$ (144,601)	\$ 186,023	\$ 235,599	\$ (98,954)	\$ 136,645

Amortization expense of intangibles totaled \$45,648, \$41,157 and \$18,506 during the years ended December 31, 2019, 2018 and 2017, respectively.

Future estimated amortization costs of intangible assets as of December 31, 2019 are presented below:

Year Ended December 31,	
2020	\$ 57,990
2021	53,810
2022	31,548
2023	21,983
2024	13,686
Thereafter	7,006
	\$ 186,023

**7. Fair Value Measurements and Investments**

**Fair Value Measurements**

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., the “exit price”) in an orderly transaction between market participants at the measurement date. A hierarchy for inputs used in measuring fair value has been defined to minimize the use of unobservable inputs by requiring the use of observable market data when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on active market data. Unobservable inputs are inputs that reflect the Company’s assumptions about the assumptions market participants would use in pricing the asset or liability based on the best information available in the circumstances.

The fair value hierarchy prioritizes the inputs into three broad levels:

- Level 1: Quoted (unadjusted) prices in active markets for identical assets or liabilities. The Company’s Level 1 assets generally consist of money market funds.
- Level 2: Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability. The Company’s Level 2 assets and liabilities generally consist of corporate debt securities, commercial papers, U.S. agency and Treasury securities and convertible senior notes.
- Level 3: Unobservable inputs to the valuation methodology that are supported by little or no market activity and that are significant to the measurement of the fair value of the assets or liabilities. Level 3

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assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques, as well as significant management judgment or estimation.

The following tables summarize, for each category of assets or liabilities carried at fair value, the respective fair value as of December 31, 2019 and December 31, 2018 and the classification by level of input within the fair value hierarchy:

	December 31, 2019			
	Total	Level 1	Level 2	Level 3
<b>Assets</b>				
<u>Cash equivalents:</u>				
Money market funds	\$ 815,158	\$ 815,158	\$ —	\$ —
Commercial paper	9,989	—	9,989	—
<u>Short-term investments:</u>				
Corporate debt securities	13,454	—	13,454	—
Commercial paper	27,932	—	27,932	—
U.S. Treasury securities	1,999	—	1,999	—
<b>Total financial assets</b>	<b>\$ 868,532</b>	<b>\$ 815,158</b>	<b>\$ 53,374</b>	<b>\$ —</b>

	December 31, 2018			
	Total	Level 1	Level 2	Level 3
<b>Assets</b>				
<u>Cash equivalents:</u>				
Money market funds	\$ 133,202	\$ 133,202	\$ —	\$ —
Commercial paper	12,478	—	12,478	—
<u>Short-term investments:</u>				
Corporate debt securities	13,470	—	13,470	—
Commercial paper	30,838	—	30,838	—
U.S. Treasury securities	1,999	—	1,999	—
<b>Total financial assets</b>	<b>\$ 191,987</b>	<b>\$ 133,202</b>	<b>\$ 58,785</b>	<b>\$ —</b>

Based on quoted market prices as of December 31, 2019, the fair value of the 2024 Notes (Note 10) was approximately \$951,050, determined using Level 2 inputs as they are not actively traded in markets.

The following table represents a reconciliation of the Acquisition-related contingent consideration liability measured at fair value on a recurring basis, using significant unobservable inputs (Level 3):

	<b>Amount</b>
Balance as of December 31, 2016	\$ 8,233
Additions during the period	—
Payments during the period	(6,066)
Adjustments to fair value during the period recorded in General and administrative expenses	(1,533)
Balance as of December 31, 2017	634
Additions during the period	—
Payments during the period	(555)
Adjustments to fair value during the period recorded in General and administrative expenses	(79)
Balance as of December 31, 2018	<b>\$ —</b>

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The carrying amounts of the Company's cash equivalents, accounts receivable and accounts payable approximate their fair values due to their short maturities.

**Investments**

The cost and fair value of the Company's cash, cash equivalents and available-for-sale investments as of December 31, 2019 and December 31, 2018 were as follows:

	December 31, 2019			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
<b>Cash and cash equivalents:</b>				
Cash	\$ 22,408	\$ —	\$ —	\$ 22,408
Money market funds	815,158	—	—	815,158
Commercial paper	9,989	—	—	9,989
<b>Total</b>	<b>\$ 847,555</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 847,555</b>
<b>Short-term investments:</b>				
Corporate debt securities	\$ 13,453	\$ 2	\$ (1)	\$ 13,454
Commercial paper	27,932	—	—	27,932
U.S. Treasury securities	1,998	1	—	1,999
<b>Total</b>	<b>\$ 43,383</b>	<b>\$ 3</b>	<b>\$ (1)</b>	<b>\$ 43,385</b>

	December 31, 2018			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
<b>Cash and cash equivalents:</b>				
Cash	\$ 39,712	\$ —	\$ —	\$ 39,712
Money market funds	133,202	—	—	133,202
Commercial paper	12,478	—	—	12,478
<b>Total</b>	<b>\$ 185,392</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 185,392</b>
<b>Short-term investments:</b>				
Corporate debt securities	\$ 13,477	\$ —	\$ (7)	\$ 13,470
Commercial paper	30,838	—	—	30,838
U.S. Treasury securities	1,999	—	—	1,999
<b>Total</b>	<b>\$ 46,314</b>	<b>\$ —</b>	<b>\$ (7)</b>	<b>\$ 46,307</b>

As of December 31, 2019 and 2018, all investments mature in less than one year. Fair values for marketable securities are based on quoted market prices for the same or similar instruments.

The Company reviews its investments on a quarterly basis to identify and evaluate investments that have an indication of possible impairment and has determined that no other-than-temporary impairments were required to be recognized during the years ended December 31, 2019, 2018 and 2017.

**8. Leases**

The Company determines if an arrangement is, or contains, a lease at inception. Operating leases are included in operating right-of-use ("ROU") assets and operating lease liabilities in the consolidated balance sheets.

ROU assets represent the Company's right to use an underlying asset for the lease term, and lease liabilities represent the Company's obligation to make lease payments based on the lease contracts. Operating lease ROU assets and liabilities were recognized at adoption date, or lease commencement date if the commencement date was after January 1, 2019, based on the present value of lease payments over the remaining lease term. The Company's lease contracts do not provide an implicit rate, as such the Company used its incremental borrowing rate based on

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**Notes to Consolidated Financial Statements (Continued)**  
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the information available at adoption date, or lease commencement date if the commencement date was after January 1, 2019, in determining the present value of lease payments. The operating lease ROU assets also includes any lease payments made to the lessors at or before the lease commencement date, and excludes lease incentives. The lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Lease expense is recognized on a straight-line basis over the lease term.

The Company has operating leases for corporate offices, research and development facilities, sales and marketing offices and data centers.

The Company adopted ASC 842 in the first quarter of 2019, utilizing the modified retrospective transition approach through a cumulative-effect adjustment to the opening accumulated deficit as of January 1, 2019. The Company continues to report the comparative periods presented in the period of adoption under ASC 840.

Upon adoption of ASC 842, the Company elected:

- the package of practical expedients which allows for not reassessing (1) whether existing contracts contain leases, (2) the lease classification for existing leases, and (3) whether existing initial direct costs meet the new definition;
- the practical expedient in ASC Subtopic 842-10 to not separate non-lease components from lease components for its real estate and data center leases and instead account for each separate lease component, and non-lease components associated with that lease component, as a single lease component; and
- not to recognize ROU assets and lease liabilities for short-term leases, which have a lease term of twelve months or less.

The following table summarizes the effects of adopting ASC 842:

	Ending Balance as of December 31, 2018	Adjustments	Opening Balance as of January 1, 2019
<b>Assets</b>			
Prepaid expenses and other current assets	\$ 16,872	\$ (81)	\$ 16,791
Operating lease right-of-use assets	\$ —	\$ 59,549	\$ 59,549
<b>Liabilities</b>			
Accounts payable	\$ 20,237	\$ (216)	\$ 20,021
Deferred rent	\$ 829	\$ (829)	\$ —
Operating lease liabilities	\$ —	\$ 24,820	\$ 24,820
Long-term operating lease liabilities	\$ —	\$ 39,361	\$ 39,361
Long-term deferred rent	\$ 3,757	\$ (3,757)	\$ —
<b>Stockholders' Equity</b>			
Accumulated deficit	\$ (595,418)	\$ 89	\$ (595,329)

The Company's real estate leases have remaining lease terms for one to ten years, some of which include options to extend the lease period up to ten years. The data center leases have remaining lease terms of one year to three years, some of which have renewal periods of one year.

In October 2018, the Company entered into a 127-month lease agreement to lease approximately 242,400 square feet of corporate office space in Sunnyvale, California, which is expected to become the Company's new corporate headquarters beginning in 2020. The property will be constructed by the landlord, with the completion date expected to occur between August and November 2020, which is when the lease is expected to commence. As such, no ROU assets or related lease liabilities were recorded in the financial statements in 2019. The lease contains a rent holiday period, scheduled rent increases, lease incentives, and renewal option which allow the lease term to be extended by five years. Base rental payments will be approximately \$161,300 over the lease term.

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**Notes to Consolidated Financial Statements (Continued)**  
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The components of lease expense were as follows:

	<u>Year Ended December 31,</u>	
	<u>2019</u>	
Operating lease cost	\$	26,115
Short-term lease cost		2,846
Variable lease cost		3,444
Total lease cost	\$	<u>32,405</u>

Supplemental information related to leases was as follows:

	<u>Year Ended December 31,</u>	
	<u>2019</u>	
Cash paid for amounts included in the measurement of operating lease liabilities	\$	27,104
Right-of-use assets obtained in exchange for operating lease obligations	\$	15,668
Weighted-average remaining lease term - operating leases		4 years
Weighted-average discount rate - operating leases		5.04%

Maturities of lease liabilities as of December 31, 2019 were as follows:

	<u>Operating leases</u>	
Year ending December 31,		
2020	\$	20,858
2021		13,531
2022		11,091
2023		6,357
2024		4,304
Thereafter		7,867
Total lease payments		64,008
Less imputed interest		(7,583)
Total	\$	<u>56,425</u>

Premises rent expense was \$10,944 and \$8,010 for the years ended December 31, 2018 and 2017, respectively.

As previously disclosed in the Company's 2018 Annual Report on Form 10-K and under ASC-840, future minimum lease payments for operating leases having initial or remaining noncancelable lease terms in excess of one year as of December 31, 2018 were as follows:

<b>Liability as of December 31, 2018</b>	<u>Operating Leases</u>	
2019	\$	25,313
2020		17,535
2021		19,155
2022		21,581
2023		19,609
Thereafter		129,154
Total minimum lease payments	\$	<u>232,347</u>

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## 9. Commitments and Contingencies

### *Purchase Commitments*

As of December 31, 2019, the Company's minimum purchase commitments for products and services were \$100,215, of which \$58,137 represent long-term purchase commitments through the year ending December 31, 2023.

### *Contingencies*

Under the indemnification provisions of the Company's customer agreements, the Company agrees to indemnify and defend and hold harmless its customers against, among other things, infringement of any patent, trademark or copyright under any country's laws or the misappropriation of any trade secret arising from the customers' legal use of the Company's solutions. The exposure to the Company under these indemnification provisions is generally limited to the total amount paid by the customers under the applicable customer agreement. However, certain indemnification provisions potentially expose the Company to losses in excess of the aggregate amount paid to the Company by the customer under the applicable customer agreement. To date, there have been no claims against the Company or its customers pursuant to these indemnification provisions.

### *Legal Contingencies*

From time to time, the Company may be involved in legal proceedings and subject to claims in the ordinary course of business. For lawsuits where the Company is the defendant, the Company is in the process of defending these litigation matters, and while there can be no assurances and the outcomes of these matters are currently not determinable, the Company currently believes that there are no existing claims or proceedings that are likely to have a material adverse effect on the Company's financial position, results of operations or cash flows.

## 10. Convertible Senior Notes

### *0.25% Convertible Senior Notes due 2024*

On August 23, 2019, the Company issued \$920,000 aggregate principal amount of 0.25% Convertible Senior Notes due 2024 (the "2024 Notes"). The offering represented \$800,000 aggregate principal amount of the 2024 Notes plus the full exercise of the initial buyers' option to purchase up to an additional \$120,000 aggregate principal amount. The net proceeds after the agent's discount and issuance costs of \$19,065 from the 2024 Notes offering were approximately \$900,935. The Company used \$84,871 of the net proceeds from the offering to pay the cost of the capped call transactions described below. The Company expects to use the remaining net proceeds for general corporate purposes, which may include acquisitions or other strategic transactions. The 2024 Notes are senior unsecured, unsubordinated obligations of the Company. The 2024 Notes bear interest at 0.25% per year, payable semi-annually in arrears every February 15 and August 15, beginning on February 15, 2020. The 2024 Notes mature on August 15, 2024, unless repurchased, redeemed or converted in accordance with their terms prior to such date.

The initial conversion rate is 6.4941 shares of the Company's common stock per \$1 principal amount of the 2024 Notes, which equates to an initial conversion price of \$153.99 per share of common stock. Throughout the term of the 2024 Notes, the conversion rate may be adjusted upon the occurrence of certain events.

At the Company's option, on or after August 20, 2022, the Company will be able to redeem all or a portion of the 2024 Notes at 100% of the principal amount, plus any accrued and unpaid interest, under certain conditions. The Company may redeem the 2024 Notes in shares of the Company's common stock, cash, or some combination of each.

Prior to April 15, 2024, the 2024 Notes will be convertible at the option of the holders only upon the satisfaction of certain conditions and during certain periods upon the following circumstances:

- during any calendar quarter commencing after December 31, 2019, if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during the period

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of 30 consecutive trading days ending on, and including, the last trading day of the preceding calendar quarter is greater than or equal to 130% of the applicable conversion price on each such trading day;

- during the five business day period after any five consecutive trading day period in which the trading price per \$1 principal amount of the 2024 Notes for each trading day of that five day consecutive trading day period was less than 98% of the product of the last reported sale price of the Company's common stock and the applicable conversion rate on each such trading day;
- upon a notice of redemption in which case, the Company will increase the conversion rate for the 2024 Notes so surrendered for conversion in connection with such redemption notice in accordance with the indenture; or
- upon the occurrence of specified corporate transactions, as described in the indenture.

On or after April 15, 2024, holders may convert their 2024 Notes at the applicable conversion rate at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date.

Holders of the 2024 Notes also have the right to require the Company to repurchase all or a portion of the 2024 Notes at 100% of the principal amount, plus accrued and unpaid interest, if any, upon the occurrence of certain fundamental changes to the Company.

In accounting for the issuance of the 2024 Notes, the Company separated the 2024 Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of similar liabilities that do not have associated convertible features. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the principal amount of the 2024 Notes. The Company bifurcated the conversion option of the 2024 Notes from the debt instrument, classified the conversion option in equity and will accrete the resulting debt discount as interest expense over the contractual term of the 2024 Notes using the effective interest rate method. The equity component is not remeasured while the 2024 Notes continue to meet the conditions for equity classification. Upon issuance of the 2024 Notes, after allocation of debt discount and issuance costs, the Company recorded \$737,912 as debt and \$163,023 as additional paid in capital within stockholders' equity.

The effective interest rate of the liability component of the 2024 Notes is 4.76%. This interest rate was based on the interest rates of similar liabilities held by other companies with similar credit risk ratings at the time of issuance that did not have associated convertible features.

The debt discount and issuance costs were allocated based on the total amount incurred to the liability and equity components using the same proportions as the proceeds from the 2024 Notes. The equity issuance costs of \$3,450 were recorded as a decrease to additional paid-in capital at the issuance date.

The following table represents the carrying value of the 2024 Notes as of December 31, 2019:

	December 31, 2019	December 31, 2018
Liability component:		
Principal	\$ 920,000	\$ —
Less: debt discount and issuance costs, net of amortization	(170,380)	—
Net carrying amount	\$ 749,620	\$ —
Equity component (1)	\$ 163,023	\$ —

(1) Recorded on the consolidated balance sheets as additional paid-in capital, net of the \$3,450 issuance costs in equity.



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***Capped Calls***

In connection with the issuance of the 2024 Notes, including the initial purchasers' exercise of the option to purchase additional 2024 Notes, the Company entered into privately negotiated capped call transactions with certain counterparties (the "Capped Calls"). The Capped Calls are expected to reduce potential dilution to the Company's common stock upon conversion of the 2024 Notes and/or offset any cash payments that the Company is required to make in excess of the principal amount of the converted 2024 Notes, as the case may be, with such reduction and/or offset subject to a cap. The Capped Calls have a cap price equal to \$223.98 per share, subject to certain adjustments, and expire on August 15, 2024. The Capped Calls are subject to adjustment upon the occurrence of specified extraordinary events affecting the Company, including merger events, tender offers and announcement events. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions.

For accounting purposes, the Capped Calls are separate transactions, and not part of the terms of the 2024 Notes. As these transactions meet certain accounting criteria, the Capped Calls are recorded in stockholders' equity and are not accounted for as derivatives. The premium paid for the purchase of the Capped Calls in the amount of \$83,720 and related issuance cost of \$1,151 have been recorded as a reduction to additional paid-in capital and will not be remeasured.

***0.75% Convertible Senior Notes***

On June 17, 2015, the Company issued \$200,000 principal amount of 0.75% Convertible Senior Notes (the "2020 Notes") due 2020 in a private offering to qualified institutional buyers ("Holders") pursuant to Rule 144A under the Securities Act of 1934, as amended (the "Securities Act"). The initial Holders of the 2020 Notes also had an option to purchase an additional \$30,000 in principal amount which was exercised in full. The net proceeds after the agent's discount and issuance costs of \$6,581 from the 2020 Notes offering were approximately \$223,419. The Company used the net proceeds for working capital and general corporate purposes, which included funding the Company's operations, capital expenditures, and acquisitions of businesses, products or technologies. The 2020 Notes bore interest at 0.75% per year, payable semi-annually in arrears every June 15 and December 15, beginning on December 15, 2015.

During the quarter ended September 30, 2018, \$229,869 of the principal amount of the 2020 Notes was converted into 2,928 shares of common stock, with the remaining \$142 repaid in cash. The shares of common stock had a fair value of \$336,994 at the time of the conversion. This transaction resulted in a \$7,207 loss on extinguishment that was included in interest expense in the Consolidated Statement of Operations. The loss on extinguishment was calculated as the difference between the fair value amount allocated to the liability component on the date of conversion and net carrying amount of the liability component.

***1.25% Convertible Senior Notes***

On December 11, 2013, the Company issued \$175,000 principal amount of 1.25% Convertible Senior Notes due 2018 (the "2018 Notes," and together with the 2020 Notes and 2024 Notes, the "Notes") in a private offering to Holders pursuant to Rule 144A under the Securities Act. The initial Holders of the 2018 Notes also had an option to purchase an additional \$26,250 in principal amount which was exercised in full. The net proceeds after the agent's discount and issuance costs of \$5,803 from the 2018 Notes offering were approximately \$195,446. The Company used the net proceeds for working capital and general corporate purposes, which included funding the Company's operations, capital expenditures, and acquisitions of businesses, products or technologies believed to be of strategic importance. The 2018 Notes bore interest at 1.25% per year, payable semi-annually in arrears every June 15 and December 15, beginning on June 15, 2014.

During the year ended December 31, 2017, \$201,250 of the principal amount of the 2018 Notes was converted into 5,159 shares of common stock, with the remaining \$14 paid in cash. The shares of common stock had a fair value of \$473,176 at the time of the conversion. This resulted in a \$2,696 loss on extinguishment that was included in interest expense in the Consolidated Statement of Operations. The loss on extinguishment was calculated as the difference between the fair value amount allocated to the liability component and net carrying amount of the liability component.

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For the years ended December 31, 2019, 2018 and 2017, the Company incurred the following interest expense and loss on conversion related to the Notes:

	2019	2018	2017
Interest expense related to contractual interest coupon	\$ 818	\$ 1,171	\$ 4,123
Amortization of debt discount and issuance costs	11,708	8,383	21,789
Loss on conversion	—	7,207	2,696
Total	<u>\$ 12,526</u>	<u>\$ 16,761</u>	<u>\$ 28,608</u>

**11. Equity Award Plans**

***Stock-Based Compensation Plans***

On March 30, 2012, the Board of Directors and the Company's stockholders approved the 2012 Equity Incentive Plan (the "2012 Plan"), which became effective in April 2012. The Company has eight equity incentive plans: the Company's 2002 stock option plan (the "2002 Plan"), the 2012 Plan and six plans assumed by the Company upon various business acquisitions. The assumed plans are the Cloudmark plan, the WebLife plan, the Meta Network plan, the ObserveIT plan, and two FireLayers plans. Upon the Company's initial public offering, all shares that were reserved under the 2002 Plan but not issued, and shares issued but subsequently returned to the plan through forfeitures, cancellations and repurchases became part of the 2012 Plan and no further shares will be granted pursuant to the 2002 Plan. No further shares will be granted pursuant to the assumed plans. All outstanding stock awards under the 2002 Plan, the assumed plans and 2012 Plan will continue to be governed by their existing terms. Under the 2012 Plan, the Company has the ability to issue incentive stock options ("ISOs"), nonstatutory stock options ("NSOs"), restricted stock awards, stock bonus awards, stock appreciation rights ("SARs"), restricted stock units ("RSUs"), and performance stock units ("PSUs"). The 2012 Plan also allows direct issuance of common stock to employees, outside directors and consultants at prices equal to the fair market value at the date of grant of options or issuance of common stock. Additionally, the 2012 Plan provides for the grant of performance cash awards to employees, directors and consultants. The Company has the right to repurchase any unvested shares (at the option exercise price) of common stock issued directly or under option exercises. The right of repurchase generally expires over the vesting period.

Stock bonus and other liability awards are accounted for as liability-classified awards, because the obligations are based predominantly on fixed monetary amounts that are generally known at the inception of the obligation, to be settled with a variable number of shares of the Company's common stock.

Under the equity incentive plans, the term of an option grant shall not exceed ten years from the date of its grant and options generally vest over a three to four-year period, with vesting on a monthly or annual interval. Under the 2002 Plan and the 2012 Plan, 32,759 shares of common stock are reserved for issuance to eligible participants. As of December 31, 2019, 7,162 shares were available for future grant. Restricted stock awards generally vest over a four-year period.

The Company net-share settles equity awards held by employees by withholding shares upon vesting to satisfy tax withholding obligations. The shares withheld to satisfy employee tax withholding obligations are returned to the Company's 2012 Plan and will be available for future issuance. Payments for employee's tax obligations to the tax authorities are recognized as a reduction to additional paid-in capital and reflected as financing activities in the Company's consolidated statements of cash flows.

***Stock Options***

The fair value of options granted is estimated on the grant date using the Black-Scholes option valuation model. This valuation model for stock-based compensation expense requires the Company to make assumptions and judgments about the variables used in the calculation, including the expected term (weighted-average period of time that the options granted are expected to be outstanding), the volatility of the common stock price and the assumed risk-free interest rate. The Company accounts for forfeitures as they occur.

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No options were granted during the years ended December 31, 2019, 2018 and 2017.

Stock option activity is as follows:

	Shares subject to Options Outstanding			
	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
<b>Balance at December 31, 2016</b>	3,183	\$ 18.91	5.39	\$ 164,842
Options assumed per business acquisitions	13	20.27		
Options exercised	(1,126)	11.04		
Options forfeited and canceled	(30)	45.54		
<b>Balance at December 31, 2017</b>	2,040	22.88	5.17	\$ 134,511
Options exercised	(767)	12.78		
Options forfeited and canceled	(18)	49.24		
<b>Balance at December 31, 2018</b>	1,255	28.67	4.77	\$ 69,224
Options assumed per business acquisitions	91	11.77		
Options exercised	(297)	17.00		
Options forfeited and canceled	(2)	13.46		
<b>Balance at December 31, 2019</b>	1,047	\$ 30.55	4.38	\$ 88,190
Exercisable, December 31, 2019	957	\$ 31.75	4.03	\$ 79,448
Vested and expected to vest, December 31, 2019	1,047	\$ 30.55	4.38	\$ 88,190

The Company realized no income tax benefit from stock option exercises in each of the periods presented due to recurring losses and the valuation allowances for deferred tax assets.

The total intrinsic value of options exercised was \$30,766, \$73,057 and \$82,131 for the years ended December 31, 2019, 2018 and 2017, respectively. Total cash proceeds from such option exercises were \$5,048, \$9,802 and \$12,383 for the years ended December 31, 2019, 2018 and 2017, respectively.

The grant date fair value of options that vested was \$1,373, \$3,447 and \$7,450 during the years ended December 31, 2019, 2018 and 2017, respectively.

As of December 31, 2019, the Company had unrecognized stock-based compensation expense of \$8,594 related to stock options that will be recognized, over the average remaining vesting term of the options of 1.97 years.

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**Restricted Stock Units and Performance Stock Units**

A following table summarizes the activity of RSUs and PSUs:

	RSUs and PSUs Outstanding	
	Number of Shares	Granted Fair Value Per Unit
<b>Awarded and unvested at December 31, 2016</b>	3,465	\$ 56.11
Awards assumed per business acquisition	8	91.10
Awards granted	1,865	84.91
Awards vested	(1,320)	52.36
Awards forfeited	(478)	63.44
<b>Awarded and unvested at December 31, 2017</b>	3,540	71.77
Awards granted	3,209	101.56
Awards vested	(1,446)	69.50
Awards forfeited	(735)	93.70
<b>Awarded and unvested at December 31, 2018</b>	4,568	89.88
Awards assumed per business acquisition	75	119.13
Awards granted	2,228	118.30
Awards vested	(1,546)	87.98
Awards forfeited	(430)	94.33
<b>Awarded and unvested at December 31, 2019</b>	4,895	\$ 103.48

As of December 31, 2019, there was \$383,227 of unamortized stock-based compensation expense related to unvested RSUs, which are expected to be recognized over a weighted average period of 3.38 years.

The Company granted 171 shares, 474 shares and 177 shares of PSUs in the years ended December 31, 2019, 2018 and 2017, respectively. The PSU vesting conditions were based on individual performance targets. Unamortized stock-based compensation expense was \$32,025 as of December 31, 2019.

**Stock Bonus Awards and Other Liability Awards**

The total accrued liability for the stock bonus awards and other liability awards was \$13,427 and \$12,741 as of December 31, 2019 and 2018, respectively.

During the years ended December 31, 2019, 2018 and 2017, 107 shares, 61 shares and 85 shares of common stock earned under the stock bonus program were issued. Stock-based compensation expense related to stock bonus program were \$13,427, \$12,701 and \$6,616, respectively, for the years ended December 31, 2019, 2018 and 2017.

In March 2015, the Company issued liability awards with a fair value of \$6,885, which vested over three years period and were subject to continuous service and other conditions. The liability awards were settled with a variable number of shares of the Company's common stock. During the years ended December 31, 2018 and 2017, 20 and 29 shares were vested and issued, respectively. The Company recognized \$408 and \$2,293 of stock-based compensation expense related to these liability awards in the years ended December 31, 2018 and 2017. There are no outstanding liability awards as of December 31, 2018.

**Employee Stock Purchase Plan**

On March 30, 2012, the Board of Directors and the Company's stockholders approved the 2012 Employee Stock Purchase Plan (the "ESPP"), which became effective in April 2012. A total of 745 shares of the Company's common stock were initially reserved for future issuance under the ESPP. The number of shares reserved for issuance under the ESPP will increase automatically on January 1 of each of the first eight years commencing with 2013 by the number of shares equal to 1% of the Company's shares outstanding on the immediately preceding December 31, but not to exceed 1,490 shares, unless the Board of Directors, in its discretion, determines to make a

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smaller increase. As of December 31, 2019, there were 2,165 shares of the Company's common stock available for future issuance under the ESPP.

The fair value of the option component of the ESPP shares was estimated at the grant date using the Black-Scholes option pricing model with the following weighted average assumptions:

	Year ended December 31,		
	2019	2018	2017
Expected life (in years)	0.5	0.5	0.5
Volatility	36% - 37%	33% - 40%	29% - 37%
Risk-free interest rate	1.58 - 2.43%	1.76% - 2.50%	0.76% - 1.16%
Dividend yield	—%	—%	—%

The Company issued 266 shares, 231 shares and 183 shares under the ESPP in the years ended December 31, 2019, 2018 and 2017, respectively, at a weighted average exercise price per share of \$86.51, \$77.02, and \$73.02, respectively. As of December 31, 2019, the Company expects to recognize \$3,531 of the total unamortized compensation cost related to employee purchases under the ESPP over a weighted average period of 0.37 years.

**Restricted Stock and Deferred Shares**

As part of the FireLayers acquisition, the Company granted 111 shares of restricted stock in 2016 to certain key employees with a total fair value of \$8,669 with annual vesting term of three years. The Company recognized \$2,349, \$2,887 and \$2,887 of stock-based compensation expense in 2019, 2018 and 2017, respectively. They are considered issued and outstanding shares of the Company at the grant date and have the same rights as other shares of common stock. As of December 31, 2019, all shares were vested.

As part of the Weblife acquisition, 107 shares were deferred for certain key employees with the total fair value of \$9,652, and a vesting period between three and four years. The Company recognized \$2,415, \$2,415 and \$205 of stock-based compensation in the years ended December 31, 2019, 2018 and 2017, respectively. As of December 31, 2019, there was \$4,617 of unamortized stock-based compensation expense related to the unvested deferred shares. The deferred shares are subject to forfeiture if employment terminates prior to the lapse of the deferral date, and are expensed over the vesting period.

As part of the Wombat acquisition, 51 shares were deferred for certain key employees with the total fair value of \$5,458, and a vesting period of two years. The Company recognized \$2,788 and \$2,288 of stock-based compensation in the years ended December 31, 2019 and 2018, respectively. As of December 31, 2019, there was \$382 of unamortized stock-based compensation expense related to the unvested deferred shares. The deferred shares are subject to forfeiture if employment terminates prior to the lapse of the deferral date, and are expensed over the vesting period.

As part of the Meta Networks acquisition in 2019, 72 shares were deferred for certain key employees with the total fair value of \$8,338 allocated to post-combination expense, and a vesting period of three years. The Company recognized \$1,748 of stock-based compensation in the year ended December 31, 2019. As of December 31, 2019, there was \$6,590 of unamortized stock-based compensation expense related to the unvested deferred shares. The deferred shares are subject to forfeiture if employment terminates prior to the lapse of the deferral date and are expensed over the vesting period. They are considered issued and outstanding shares of the Company at the acquisition date and have the same rights as other shares of common stock.

**12. Net Loss per Share**

Basic net loss per share of common stock is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period. The weighted-average number of shares of common stock used to calculate basic net loss per share of common stock excludes those shares subject to repurchase related to stock options or restricted stock that were exercised or issued prior to vesting as these shares are not deemed to be issued for accounting purposes until they vest. Diluted net loss per share of common stock is computed by dividing the net loss using the weighted-average number of shares of common stock, excluding common stock subject to repurchase, and, if dilutive, potential shares of common stock outstanding during the period. Basic and diluted net

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

loss per common share was the same for all periods presented as the impact of all potentially dilutive securities outstanding was anti-dilutive.

The following table presents the potentially dilutive common shares outstanding that were excluded from the computation of diluted net loss per share of common stock for the periods presented because including them would have been anti-dilutive:

	December 31,		
	2019	2018	2017
Stock options to purchase common stock	1,047	1,255	2,040
Restricted stock units	4,895	4,568	3,540
Employee stock purchase plan	157	163	118
Common stock subject to repurchase	207	195	90
Stock bonus awards and other liability awards	117	152	98
2024 Notes	5,975	—	—
2020 Notes	—	—	2,831
Total	<u>12,398</u>	<u>6,333</u>	<u>8,717</u>

**13. Segment Reporting**

Operating segments are reported in a manner consistent with the internal reporting supported and defined by the components of an enterprise about which separate financial information is available, provided and is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. The Company's chief operating decision maker is its Chief Executive Officer. The Company's Chief Executive Officer reviews financial information presented on a consolidated basis. The Company has one business activity, and there are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. Accordingly, the Company determined that it has one operating and reportable segment.

The following sets forth total revenue by geographic area. Revenue by geographic area is based upon the billing address of the customer:

	Year Ended December 31,		
	2019	2018	2017
<b>Total revenue by geographic area:</b>			
United States	\$ 713,305	\$ 584,294	\$ 432,564
Rest of world	174,885	132,700	87,117
Total revenue	<u>\$ 888,190</u>	<u>\$ 716,994</u>	<u>\$ 519,681</u>

The following sets forth long-lived tangible assets by geographic area:

	December 31,	
	2019	2018
<b>Long-lived assets:</b>		
United States	\$ 58,447	\$ 57,682
Rest of world	15,065	12,945
Total long-lived assets	<u>\$ 73,512</u>	<u>\$ 70,627</u>

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

**14. Income Taxes**

The domestic and foreign components of loss before income taxes were as follows for the years ended December 31, 2019, 2018 and 2017:

	Year Ended December 31,		
	2019	2018	2017
Domestic	\$ (142,830)	\$ (126,128)	\$ (110,192)
Foreign	32,482	9,147	30,440
Loss before income taxes	<u>\$ (110,348)</u>	<u>\$ (116,981)</u>	<u>\$ (79,752)</u>

The (provision for) benefit from income taxes is comprised of:

	Year Ended December 31,		
	2019	2018	2017
<b>Current tax expense:</b>			
Federal	\$ —	\$ —	\$ —
State	258	258	80
Foreign	22,030	1,768	5,923
Total current	<u>22,288</u>	<u>2,026</u>	<u>6,003</u>
<b>Deferred tax expense:</b>			
Federal	264	(12,773)	(12,268)
State	—	(1,812)	(266)
Foreign	(2,635)	(673)	(3,419)
Total deferred	<u>(2,371)</u>	<u>(15,258)</u>	<u>(15,953)</u>
Provision for (benefit from) income taxes	<u>\$ 19,917</u>	<u>\$ (13,232)</u>	<u>\$ (9,950)</u>

As the result of adopting ASU 2016-09, the Company recorded excess tax benefits on a prospective basis starting January 1, 2017, resulting in a cumulative-effect adjustment recorded in consolidated statements of stockholders' equity in 2017. The reconciliation of income tax expense (benefit) to the income tax provision (benefit) included in the consolidated statements of operations at the statutory federal income tax rate of 21% for the year ended December 31, 2019 and 2018, and 34% for the years ended December 31, 2017 is as follows:

	Year Ended December 31,		
	2019	2018	2017
Tax at federal statutory rate	\$ (23,173)	\$ (24,566)	\$ (27,116)
Foreign income tax rate differential	717	307	(3,076)
State, net of federal benefit	(4,939)	(3,859)	(2,942)
Stock compensation charges	(11,265)	(20,341)	(32,150)
SubPart F and other permanent items	9,657	1,597	2,155
Section 162m	8,465	5,501	601
Provision to return and other	(453)	(1,082)	2,480
Research and development credits	(21,413)	(11,165)	(7,713)
Uncertain tax positions	16,110	2,171	5,888
Impact of Tax Act and other tax law changes	(42)	—	85,606
Valuation allowance	46,253	38,205	(33,683)
Provision for (benefit from) income taxes	<u>\$ 19,917</u>	<u>\$ (13,232)</u>	<u>\$ (9,950)</u>

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

Deferred tax assets and liabilities reflect the net tax effects of net operating loss and tax credit carryovers and the temporary differences between the carrying amount of assets and liabilities for financial reporting and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets were as follows:

	At December 31,	
	2019	2018
<b>Deferred tax assets:</b>		
Net operating loss carryforwards	\$ 215,365	\$ 192,508
Tax credit carryforwards	49,300	33,799
Research expenditures	12,139	577
Deferred revenue	16,254	17,716
Stock compensation	20,156	16,861
Fixed assets	1,345	313
Accruals and other	13,753	12,619
Gross deferred tax assets	328,312	274,393
Valuation allowance	(224,047)	(222,734)
Total deferred tax assets	104,265	51,659
<b>Deferred tax liabilities:</b>		
Intangible assets and other	(26,203)	(23,282)
Deferred commissions	(33,263)	(26,008)
Convertible senior notes	(42,304)	—
Total deferred tax liabilities	(101,770)	(49,290)
Total net deferred tax assets (liabilities)	\$ 2,495	\$ 2,369
Non-current deferred income tax assets (included in other long-term assets)	\$ 3,721	\$ 2,946
Non-current deferred income tax liabilities (included in long-term liabilities)	\$ 1,226	\$ 577

The Company records net deferred tax assets to the extent that Company believes these assets will more likely than not be realized. In making such determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent financial operations.

Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. The valuation allowance increased by \$1,313, \$41,521 and \$50,056 during the years ended December 31, 2019, 2018 and 2017, respectively. The change in valuation allowance for the year ended December 31, 2018, included an increase of \$3,392 related to the 2020 Notes conversion. The change in valuation allowance for the year ended December 31, 2019, included a decrease of \$44,855 related to the 2024 Notes issued in August 2019.

During the three months ended March 31, 2017, the Company transferred certain intellectual property rights from its wholly owned subsidiary in Israel to the United States. Although the transfer of intellectual property rights between consolidated entities did not result in any gain in the consolidated statements of operations, the transfer did result in a taxable gain in Israel. In the Company's financial statements ending before January 1, 2018, taxes incurred related to the intercompany transaction have been treated as a prepaid tax asset in the Company's consolidated balance sheet and were being amortized to income tax expense over the life of the intellectual property. Effective January 1, 2018, pursuant to the Company's modified retrospective adoption of ASU 2016-16, the Company's remaining prepaid tax asset of \$3,216 was recorded as an increase to accumulated deficit.

In December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the "Tax Act"). The Tax Act significantly impacts the future ongoing U.S. corporate income tax by, among things, lowering the U.S. corporate income tax rates from 34% to 21%, providing for unlimited net operating loss carry-forward periods, and implementing a territorial tax system. The reduction of the U.S. corporate tax rate required the Company to revalue its U.S. deferred tax assets and liabilities during fiscal 2017 to the newly enacted federal rate of 21%. This transitional impact resulted in a provisional deferred tax benefit of \$2,024 in the year ended December 31, 2017 related to a reduction in a US deferred tax liability on certain long-



**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(dollars and share amounts in thousands, except per share amounts)**

lived acquired intangibles. This transitional impact also resulted in a \$87,621 provisional reduction of certain of the Company's US deferred tax assets which are offset by a full valuation allowance.

As of December 31, 2019, the amounts recorded for the Tax Act no longer remain provisional as the Company completed its accounting for the effect of the 2017 Tax Act within the measurement period under the SEC guidance. However, the amounts recorded for the repatriation tax, the remeasurement of deferred taxes, and the Company's reassessment of permanently reinvested earnings, uncertain tax positions and valuation allowances may be impacted by future clarification and guidance regarding available tax accounting methods and elections, earnings and profits computations, state tax conformity to federal tax changes, among others.

During the year ended December 31, 2019, the Company recorded a current and deferred tax expense of \$17,670 related to the transfer of certain intellectual property rights from its wholly owned subsidiary in Israel. During the year ended December 31, 2018, the Company recorded a deferred tax benefit of \$14,725 related to changes in the Company's valuation allowance resulting from the Wombat business acquisition. During the year ended December 31, 2017, the Company recorded a deferred tax benefit of \$7,904 and \$4,440 related to changes in the Company's US valuation allowances as a result of the Cloudmark and WebLife acquisitions, respectively.

As of December 31, 2019 and 2018, the Company had net operating loss carry-forwards for federal income tax purposes of \$841,970 and \$797,569, respectively. The federal net operating losses generated prior to tax year beginning in 2018 and which are subject to expiration will expire between 2020 and 2037. As of December 31, 2019 and 2018, the Company had federal research credit carry-forwards of \$37,783 and \$24,556 respectively. The federal research and development credits will begin to expire in 2022.

As of December 31, 2019 and 2018, the Company had net operating loss carry-forwards for state income tax purposes of approximately \$417,505 and \$396,665, respectively. The state net operating losses will continue to expire between 2019 and 2039. As of December 31, 2019 and 2018, the Company had research and development credit carry-forwards for state income tax purpose of \$32,291 and \$22,987, respectively. The state research and development credits have no expiration period.

As of December 31, 2019, the Company had net operating losses carry-forwards in non-U.S. locations of approximately \$52,851. As of December 31, 2018, the Company had no net operating losses carry-forwards in non-U.S. locations. As of December 31, 2019 and 2018, the Company had research and development credit carry-forwards in its non-U.S. locations of approximately \$2,863 and \$2,426, respectively. The non-U.S. research and development credits will begin to expire in 2032.

Utilization of the federal and state net operating losses may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Analyses have been conducted to determine whether an ownership change had occurred since inception. The analyses have indicated that although ownership changes have occurred in prior years, the net operating losses and research and development credits would not expire before utilization as a result of the ownership change. In the event the Company has subsequent changes in ownership, net operating losses and research and development credit carryovers could be limited and may expire unutilized as a result of the subsequent ownership change.

The Company recognizes interest and penalties related to uncertain tax positions within the income tax expense line in the consolidated statements of operations. Accrued interest and penalties are included within the related tax liability line in the consolidated balance sheets. During the year ended December 31, 2019, the Company increased income tax expense by \$368 from interest and penalties related to tax contingencies and has \$677 of interest and penalties recorded as a long-term income tax liability. During the year ended December 31, 2018, the Company reduced income tax benefit by \$21 from interest and penalties related to tax contingencies and has \$309 of interest and penalties recorded as a long-term income tax liability as of December 31, 2018.

As of December 31, 2019, the Company had recorded unrecognized tax benefits of \$16,068 that if recognized, would benefit the Company's effective tax rate. As of December 31, 2018, the Company had recorded unrecognized tax benefits of \$4,616 that, if recognized, would benefit the Company's effective tax rate.

**Proofpoint, Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
(dollars and share amounts in thousands, except per share amounts)

The Company is currently under audit by the Israel Tax Authority for tax years 2013 through 2017. Related to the audit by the Israel Tax Authority it is reasonably possible that the Company's uncertain tax positions could change within the next 12 months. An estimate of the range of any change cannot be made. The Company believes it has recorded all appropriate provisions for all jurisdictions and open years. However, the Company can give no assurance that taxing authorities will not propose adjustments that would increase its tax liabilities. The Company is not currently under audit by the IRS or any similar taxing authority in any other material jurisdiction.

Because of net operating loss and credit carry-forwards, all of the Company's tax years dating to inception in 2002 remain open to tax examination in U.S. and certain state tax jurisdictions. For other major non-U.S. jurisdictions, tax years from 2012 to present remain open to tax examination. The Company is not currently under audit in any material jurisdictions.

The aggregate changes in the balance of gross unrecognized tax benefits were as follows:

<b>Balance as of December 31, 2016</b>	\$	5,846
Increase in balances related to tax positions taken during the current period		8,160
Increase in balances related to tax positions taken during the prior period		45
Decrease in balances related to tax positions taken during the prior period		(2)
Decrease in balances related to statute expirations during the current period		(188)
<b>Balance as of December 31, 2017</b>		<u>13,861</u>
Increase in balances related to tax positions taken during the current period		2,692
Increase in balances related to tax positions taken during the prior period		217
Decrease in balances related to tax positions taken during the prior period		—
Decrease in balances related to statute expirations during the current period		(316)
<b>Balance as of December 31, 2018</b>		<u>16,454</u>
Increase in balances related to tax positions taken during the current period		14,195
Increase in balances related to tax positions taken during the prior period		2,637
Decrease in balances related to tax positions taken during the prior period		—
Decrease in balances related to statute expirations during the current period		(116)
<b>Balance as of December 31, 2019</b>	<u>\$</u>	<u>33,170</u>

As part of the transition to the new territorial tax system, the Tax Act imposed a one-time repatriation tax on deemed repatriation of historical earnings of foreign subsidiaries. Based on the evaluation of the Company's operations, no repatriation tax charge was owed due to negative earnings and profits in the Company's foreign operations.

**EXHIBIT INDEX**

Exhibit No.	Exhibit Title	Incorporated by Reference		
		Form	File No.	Filing Date
2.1	* <a href="#">Share Purchase Agreement among Proofpoint Israel Holdings Limited, ObserveIT Ltd. and Shareholder Representative Services, LLC, dated November 2, 2019.</a>			
3.01	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant.</a>	S-1A	333-178479	April 9, 201
3.02	<a href="#">Amended and Restated Bylaws of the Registrant.</a>	8-K	001-35506	February 20, 2
4.01	<a href="#">Form of Registrant's common stock certificate.</a>	S-1A	333-178479	April 9, 201
4.02	<a href="#">Indenture between Registrant and Wells Fargo Bank, National Association (including the form of 0.25% Convertible Senior Notes due 2024), dated August 23, 2019.</a>	8-K	001-35506	August 23, 2
4.03	* <a href="#">Description of Securities Registered Under Section 12 of the Exchange Act.</a>			
10.01	<a href="#">Form of Indemnity Agreement.</a>	10-Q	001-35506	October 31, 2
10.02	† <a href="#">2002 Stock Option/Stock Issuance Plan and form of option grant.</a>	S-1A	333-178479	April 9, 201
10.03	† <a href="#">Amended and Restated 2012 Equity Incentive Plan and Form of Grant Agreements</a>	10-Q	001-35506	July 29, 201
10.04	† <a href="#">2012 Employee Stock Purchase Plan.</a>	S-1A	333-178479	April 9, 201
10.05	† <a href="#">Corporate Bonus Program.</a>	10-K	001-35506	February 26, 2
10.06	<a href="#">Lease between the Registrant and Pathline LLC, dated October 23, 2018</a>	8-K	001-35506	October 25, 2
10.07	† <a href="#">Offer Letter to Gary Steele from the Registrant, dated November 17, 2002.</a>	S-1	333-178479	December 14, .
10.08	† <a href="#">Offer Letter to Paul Auvil from the Registrant, dated March 9, 2007.</a>	S-1A	333-178479	January 25, 2
10.09	† <a href="#">Offer Letter to David Knight from the Registrant, dated March 14, 2011.</a>	S-1A	333-178479	January 25, 2
10.10	† <a href="#">Offer Letter to Blake Salle from the Registrant, dated October 24, 2018.</a>	10-K	001-35506	February 21, 2
10.11	† <a href="#">Offer Letter to Bhagwat Swaroop from Registrant, dated April 27, 2016.</a>	10-K	001-35506	February 23, 2
21.01	* <a href="#">Subsidiaries of Registrant.</a>			
23.01	* <a href="#">Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.</a>			
31.01	* <a href="#">Certification of Chief Executive Officer Pursuant to Rule 13-a-14 of the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>			
31.02	* <a href="#">Certification of Chief Financial Officer Pursuant to Rule 13-a-14 of the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>			
32.01	** <a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>			
32.02	** <a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>			
101.INS	** Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.			
	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.			
101.SCH	** Inline XBRL Taxonomy Extension Schema Document.			
101.CAL	** Inline XBRL Taxonomy Extension Calculation Linkbase Document.			
101.DEF	** Inline XBRL Taxonomy Extension Definition Linkbase Document.			
101.LAB	** Inline XBRL Taxonomy Extension Label Linkbase Document.			
101.PRE	** Inline XBRL Taxonomy Extension Presentation Linkbase Document.			
104	** Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).			

. Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally to the SEC a copy of any omitted schedule upon request.

† Indicates a management contract or compensatory plan.

\* Filed herewith

\*\*These exhibits are furnished with this Annual Report on Form 10-K and are not deemed filed with the Securities and Exchange Commission and are not incorporated by reference in any filing of Proofpoint, Inc. under the Securities Act of 1933 or the Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 20, 2020.

**PROOFPOINT, INC.**

By: \_\_\_\_\_  
/s/ GARY STEELE  
Gary Steele  
*Chief Executive Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Gary Steele and Paul Auvil, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or any of them or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons in the capacities and on the date indicated:

Name	Title	Date
<u>/s/ Gary Steele</u> Gary Steele	Chief Executive Officer (Principal Executive Officer)	February 20, 2020
<u>/s/ Paul Auvil</u> Paul Auvil	Chief Financial Officer (Principal Financial Officer and Principal Accounting officer)	February 20, 2020
<u>/s/ Dana Evan</u> Dana Evan	Director	February 20, 2020
<u>/s/ Jonathan Feiber</u> Jonathan Feiber	Director	February 20, 2020
<u>/s/ Kristen Gil</u> Kristen Gil	Director	February 20, 2020
<u>/s/ Kevin Harvey</u> Kevin Harvey	Director	February 20, 2020
<u>/s/ R. Scott Herren</u> R. Scott Herren	Director	February 20, 2020
<u>/s/ Michael Johnson</u> Michael Johnson	Director	February 20, 2020
<u>/s/ Leyla Seka</u> Leyla Seka	Director	February 20, 2020
<u>/s/ Richard Wallace</u> Richard Wallace	Director	February 20, 2020

**SHARE PURCHASE AGREEMENT**

by and among

**PROOFPOINT, INC.,**  
a Delaware corporation,

**PROOFPOINT ISRAEL HOLDINGS LIMITED,**  
a company organized under the laws of Israel,

**OBSERVE IT LTD.,**  
a company organized under the laws of Israel,

**THE COMPANY SHAREHOLDERS**

and

**SHAREHOLDER REPRESENTATIVE SERVICES LLC,**  
as the Shareholders' Agent

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Dated as of November 2, 2019

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## Exhibits

Exhibit A	Definitions
Exhibit B	Form of Joinder Agreement
Exhibit C	Form of Non-Compete Agreement
Exhibit D	Form of Non-Israeli Residence Declaration
Exhibit E	Form of Escrow Agreement
Exhibit F	Form of Share Transfer Deed
Exhibit G	Form of Affidavit of Lost Share Certificate
Exhibit H	Form of Legal Opinion
Exhibit I	Form of Benefits Waiver
Exhibit J	Form of Resignation Letter
Exhibit K	Form of Parachute Payment Waiver
Exhibit L-1	Form of FIRPTA Statement
Exhibit L-2	Form of FIRPTA Notification
Exhibit M	Form of Tax Certificate
Exhibit N	Form of Shareholders' Register
Exhibit O	Form of Shareholders Letter of Transmittal
Exhibit P	Form of Promised Equity Waiver
Exhibit Q	Form of Bring-Along Notice
Exhibit R	Form of Option Cancellation and Conversion Agreement
Exhibit S	Form of Spousal Consent
Exhibit T	Form of Warrant Termination Agreement

## Schedules

Company Disclosure Schedule	
Schedule A	Signing Shareholders
Schedule B	Post-Signing Shareholders
Schedule C	Key Employees
Schedule D	Specified Payments
Schedule 1.2(b)(vi)	Benefits Waivers
Schedule 1.2(b)(xvi)	Notices, Consents, Amendments and Terminated Contracts
Schedule 6.5	Actions

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## SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT (this “*Agreement*”) is made and entered into as of November 2, 2019 (the “*Agreement Date*”), by and among Proofpoint, Inc., a Delaware corporation (“*Parent*”), Proofpoint Israel Holdings Limited, a company organized under the laws of Israel and a direct or indirect wholly-owned subsidiary of Parent (“*Acquirer*”), Observe IT Ltd., a company organized under the laws of Israel (the “*Company*”), the Company Shareholders set forth on Schedule A, and Shareholder Representative Services, a Colorado limited liability company, solely in its capacity as the representative, agent and attorney-in-fact of the Company Securityholders (the “*Shareholders’ Agent*”). Certain other capitalized terms used herein are defined in Exhibit A.

### RECITALS

- A. The Company Shareholders listed on Schedule A hereto as of the Agreement Date own Company Shares representing approximately 70% of the total issued and outstanding Company Shares as of the Agreement Date (such Company Shareholders who have signed this Agreement on the date hereof, the “*Signing Shareholders*”).
  - B. As of immediately prior to the Closing Date, Schedule A shall be deemed to be automatically updated, without any action by any of the parties, to include the names of all other Company Shareholders who, between the date of this Agreement and the Closing Date, either (i) become signatories to this Agreement through execution of a Joinder Agreement in substantially the form attached hereto as Exhibit B (a “*Joinder Agreement*”), or (ii) subject to Section 6.17, sell their Company Shares by virtue of implementation of Section 341 of the Companies Law or the Bring-Along Provision, including those Company Shareholders as of the Agreement Date listed on Schedule B and any holder of Company Options or Company Series A Warrants who exercised such Company Options or Company Series A Warrants between the Agreement Date and the Closing (collectively, the “*Post-Signing Shareholders*”), and each such Person shall be deemed a Signing Shareholder for all purposes of this Agreement.
  - C. Acquirer desires, subject to the terms and conditions set forth in this Agreement, to purchase from the Company Shareholders, in consideration for the payment set forth and described herein, all of the Company Share Capital owned by such Company Shareholders free from any Encumbrances, subject to the terms and conditions set forth in this Agreement (the “*Share Purchase*”), and each Signing Shareholder desires to sell to Acquirer all such Company Share Capital owned by such Signing Shareholder.
  - D. The Company, the Company Shareholders, Parent and Acquirer desire to make certain representations, warranties, covenants and other agreements in connection with the Share Purchase as set forth herein.
  - E. Concurrently with the execution of this Agreement, and as a condition and inducement to Acquirer’s willingness to enter into this Agreement, each of the Key Employees listed on Schedule C (each, a “*Key Employee*”) have executed (1) a new employment offer letter or an amendment to such Key Employee’s existing offer letter, together with a confidential information and invention assignment agreement (together, an “*Offer Letter*”) with Parent or one of its Affiliates (including the Company following the Closing), and (2) a Non-Compete and Non-Solicitation Agreement in the form attached as Exhibit C (each, a “*Non-Compete Agreement*”), with Parent or one of its Affiliates (including the Company following the Closing), each to become effective upon the Closing.
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F. The board of directors of the Company (the “**Company Board of Directors**”) has carefully considered the terms of this Agreement and has unanimously determined that the terms and conditions of the transactions contemplated by the Agreement and the documents referenced herein (collectively, the “**Transactions**”), are in the best interests of, and are advisable to, the Company and the Company Securityholders.

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

**ARTICLE 1**  
**THE SHARE PURCHASE**

1.1 The Share Purchase.

(a) Company Share Capital.

(i) Company Series B Preferred Shares. On the terms and subject to the conditions of this Agreement, each Company Shareholder holding Company Series B Preferred Shares shall sell, transfer and deliver to Acquirer at the Closing, and Acquirer agrees to purchase from each Company Shareholder holding Company Series B Preferred Shares, all of the Company Series B Preferred Shares owned by such Company Shareholder as of immediately prior to the Closing (as set forth on the Spreadsheet) free and clear of all Encumbrances, in exchange for an amount in cash equal to the product of (x) the Participating Per Share Payment Amount, multiplied by (y) the total number of Company Series B Preferred Shares held by such Company Shareholder, without interest, subject to the withholding of such Company Shareholder’s portion of the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Shareholders’ Agent Expense Amount in respect of such Company Series B Preferred Shares pursuant to Section 1.3(a)(ii) and Section 1.3(b).

(ii) Company Series A-1 Preferred Shares. On the terms and subject to the conditions of this Agreement, each Company Shareholder holding Company Series A-1 Preferred Shares shall sell, transfer and deliver to Acquirer at the Closing, and Acquirer agrees to purchase from each Company Shareholder holding Company Series A-1 Preferred Shares, all of the Company Series A-1 Preferred Shares owned by such Company Shareholder as of immediately prior to the Closing (as set forth on the Spreadsheet) free and clear of all Encumbrances, in exchange for an amount in cash equal to the product of (x) the Company Series A-1 Preferred Per Share Payment Amount, multiplied by (y) the total number of Company Series A-1 Preferred Shares held by such Company Shareholder, without interest, subject to the withholding of such Company Shareholder’s portion of the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Shareholders’ Agent Expense Amount in respect of such Company Series A-1 Preferred Shares pursuant to Section 1.3(a)(ii) and Section 1.3(b).

(iii) Company Series A Preferred Shares. On the terms and subject to the conditions of this Agreement, each Company Shareholder holding Company Series A Preferred Shares shall sell, transfer and deliver to Acquirer at the Closing, and Acquirer agrees to purchase from each Company Shareholder holding Company Series A Preferred Shares, all of the Company Series A Preferred Shares owned by such Company Shareholder as of immediately prior to the Closing (as set forth on the Spreadsheet) free and clear of all Encumbrances, in exchange for an amount in cash equal to the product of (x) the Company Series A Preferred Per Share Payment Amount, multiplied by (y) the total number of Company Series A Preferred Shares held by such Company Shareholder, without interest, subject to the withholding of such Company Shareholder’s portion of the Adjustment Escrow Amount, the Indemnity

Escrow Amount and the Shareholders' Agent Expense Amount in respect of such Company Series A Preferred Shares pursuant to Section 1.3(a)(ii) and Section 1.3(b).

(iv) Company Ordinary Shares. On the terms and subject to the conditions of this Agreement, each Company Shareholder holding Company Ordinary Shares, including Unvested Company Shares, shall sell, transfer and deliver to Acquirer at the Closing, and Acquirer agrees to purchase from each Company Shareholder holding Company Ordinary Shares, all of the Company Ordinary Shares owned by such Company Shareholder as of immediately prior to the Closing (as set forth on the Spreadsheet) free and clear of all Encumbrances, in exchange for an amount in cash equal to the product of (x) the Participating Per Share Payment Amount multiplied by (y) the total number of Company Ordinary Shares held by such Company Shareholder, without interest, subject to the withholding of such Company Shareholder's portion of the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Shareholders' Agent Expense Amount in respect of such Company Ordinary Shares pursuant to Section 1.3(a)(ii) and, in the case of Unvested Company Shares, the vesting conditions set forth in Section 1.1(a)(vi); provided, however, that the after-tax cash proceeds payable to any Company Shareholder with an outstanding Employee Loan Amount shall first be automatically withheld and applied as repayment with respect to such Employee Loan Amount.

(v) The amount of cash each Company Shareholder is entitled to receive for all Company Shares held by such Company Shareholder at the Closing shall be rounded to the nearest cent and computed after aggregating cash amounts for all such Company Shares. In addition, and with respect to each Company Shareholder, severally and not jointly, Acquirer and any other Payor may deduct any withholding amounts as further described in this Article 1. Notwithstanding anything to the contrary in this Agreement, any payment with respect to 102 Company Shares shall be deposited with the 102 Trustee to be held and released in accordance with the provisions of Section 102 of the Ordinance, the Option Tax Ruling, the Interim Options Ruling or any other approval that may be issued by the ITA.

(vi) Except as otherwise set forth in an applicable Benefits Waiver, the payment of cash pursuant to this Section 1.1(a) in exchange for Unvested Company Shares issued and outstanding immediately prior to the Closing shall be subject to the vesting arrangements and other terms and conditions that were applicable to such Unvested Company Shares immediately prior to or at the Closing such that the cash payable pursuant to this Section 1.1(a) in exchange for such Unvested Company Shares issued and outstanding immediately prior to the Closing ("Unvested Cash") shall become payable, subject to the withholding of the applicable portion of the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Shareholders' Agent Expense Amount in respect of such Company Ordinary Shares pursuant to Section 1.3(a)(vi) and Section 1.3(b), on the date that such Unvested Company Shares would have become vested under the vesting schedule set forth in an applicable Benefits Waiver. No Unvested Cash, or right thereto, may be pledged, encumbered, sold, assigned or transferred (including any transfer by operation of law), by any Person or be taken or reached by any legal or equitable process in satisfaction of any Liability of such Person, prior to the distribution to such Person of such Unvested Cash in accordance with this Agreement.

(b) Company Options.

(i) Vested Company Options.

(1) On the terms and subject to the conditions of this Agreement, at the Closing, each Vested Company Option that is In the Money shall be cancelled, converted into and represent the right to receive, subject to Section 1.1(d), an amount in cash, without interest, with respect to each Company Ordinary Share issuable upon the exercise of such Vested Company Option, equal to the excess of the Participating Per Share Payment Amount over the per share exercise price of such Vested

Company Option (the “*Option Payments*”). The amount of cash each holder of an In the Money Vested Company Option is entitled to receive for such In the Money Vested Company Option shall, as a condition of payment, be subject to the execution and delivery of an Option Cancellation and Conversion Agreement by such holder, and shall be rounded to the nearest cent and computed after aggregating cash amounts for all In the Money Vested Company Options held by such holder. In addition, and with respect to each holder of In the Money Vested Company Option, severally and not jointly, Acquirer and any other Payor may deduct from such Company Optionholder’s Option Payment any withholding amounts for Taxes as further described in this Article I; provided, however, that the after-tax cash proceeds payable to any holder of Vested Company Options with an outstanding Employee Loan Amount shall first be automatically withheld and applied as repayment with respect to such Employee Loan Amount.

(2) At the Closing, each outstanding Vested Company Option that is not In the Money shall, without any further action on the part of any holder thereof, expire and be cancelled and extinguished without any present or future right to receive any consideration therefor.

(3) Notwithstanding anything to the contrary in this Agreement, any payment for In the Money Vested Company Options that are 102 Company Options shall be deposited with the 102 Trustee to be held and released in accordance with the provisions of Section 102 of the Ordinance, the Option Tax Ruling, the Interim Options Ruling or any other approval that may be issued by the ITA.

(ii) Unvested Company Options.

(1) At the Closing, each Unvested Company Option that is outstanding as of immediately prior to the Closing and that is held by a Company Employee who, immediately following the Closing, is a Continuing Employee, shall, on terms and subject to the conditions set forth in this Agreement, be assumed by Parent and converted into an option to purchase Parent Common Stock. Except as otherwise set forth in this Agreement or in any applicable Benefits Waiver, each assumed Company Option (each, an “*Assumed Option*”) shall continue to have, and be subject to, the same terms and conditions set forth in the Company Option Plan and the Company Option agreement relating thereto as in effect immediately prior to the Closing, except that (x) such Assumed Option shall be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Shares that were issuable upon exercise of such Assumed Option immediately prior to the Closing multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock with no cash being payable for any fractional share eliminated by such rounding, and (y) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such Assumed Option shall be equal to the quotient obtained by dividing the exercise price per share of Company Shares at which such Assumed Option was exercisable immediately prior to the Closing by the Exchange Ratio, rounded up to the nearest whole cent. Notwithstanding anything herein to the contrary, the exercise price of each Assumed Option, the number of shares of Parent Common Stock issuable pursuant to each Assumed Option and the terms and conditions of each Assumed Option shall in all events be determined with respect to any Assumed Option granted to an employee who is a U.S. resident or citizen, in compliance with Section 409A of the Code, and in the case of any Company Option that qualifies as an “incentive stock option” within the meaning of Section 422 of the Code, Section 424(a) of the Code. The Assumed Options, to the extent issued in exchange for Unvested Company Options that are 102 Company Options, shall be deposited with the 102 Trustee to be held and released in accordance with the provisions of Section 102 of the Ordinance, the Option Tax Ruling, the Interim Options Ruling or any other approval that may be issued by the ITA.

(2) At the Closing, each Unvested Company Option that is outstanding as of immediately prior to the Closing and that is held by any person who is not a Continuing Employee shall, without any further action on the part of any holder thereof or the Company, be cancelled and extinguished without any present or future right to receive any consideration therefor.

(3) The Company Option Plan shall terminate as of the Closing, and the provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of Company Shares or Company Share Capital shall be cancelled as of the Closing. Prior to the Closing, and subject to the review and approval of Acquirer, the Company shall take all actions necessary to effect the transactions and terms contemplated by this Section 1.1(b), including adopting all necessary resolutions, giving all required notices and using commercially reasonable efforts to obtain any required consents from holders of Company Options pursuant to the Company Option Plan, any Company Option agreement and Applicable Law.

(c) Company Warrants.

(i) On the terms and subject to the conditions of this Agreement, at the Closing, each Company Series A Warrant shall be cancelled and converted into and represent the right to receive, subject to Section 1.1(d), an amount in cash, without interest, with respect to each Company Series A Preferred Share issuable upon the exercise of such Company Series A Warrant, equal to the excess of the Company Series A Preferred Per Share Payment Amount over the per share exercise price of such Company Series A Warrant (the “*Warrant Payments*”). The amount of cash the holder of Company Series A Warrant is entitled to receive for such Company Series A Warrant shall, as a condition of payment, be subject to the execution and delivery of a Warrant Termination Agreement by such holder, and shall be rounded to the nearest cent and computed after aggregating cash amounts for all Company Series A Warrants held by such holder.

(ii) At the Closing, each unvested Company Warrant shall, without any further action on the part of any holder thereof, expire and be cancelled and extinguished without any present or future right to receive any consideration therefor.

(d) Adjustments. In the event of any share split, reverse share split, share dividend (including any dividend or distribution of securities convertible into capital shares), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company Shares occurring after the Agreement Date and prior to the Closing, all references in this Agreement to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or trading prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such share split, reverse share split, share dividend, reorganization, reclassification, combination, recapitalization or other like change.

(e) Withholding: Certain Tax Matters.

(i) Each of Parent, Acquirer, the Paying Agent, the 102 Trustee and the Company (each, a “*Payor*”) shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement as the Payor determines are required to be deducted or withheld therefrom or in connection therewith under the Code or any provision of state, local or foreign Tax law or under any other Applicable Law, including the Ordinance. To the extent such amounts were so deducted or withheld, such amounts shall be (i) treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid and (ii) timely remitted by each Payor to the applicable Governmental Entity. In the case of any amounts withheld and upon receipt of written request from any Company Securityholder, the withholding party shall provide to such Company Securityholder written confirmation of the amount so withheld.

(ii) Notwithstanding Section 1.1(e)(i), if the Paying Agent provides Acquirer, prior to the Closing Date, with an undertaking as required under Section 6.2.4.3 of the Income Tax Circular

19/2018 (Transaction for Sale of Rights in a Corporation that includes consideration that will be transferred to the Company Shareholders at future dates) (the "**Paying Agent Undertaking**"), with respect to Israeli Tax, any amount payable to a Company Shareholder, or Company Warrantholder (each a "**Payee**") under this Agreement at the Closing shall be retained by the Paying Agent, for the benefit of such Payee for a period of up to 180 days from the Closing or an earlier date required in writing by such Payee or as otherwise requested by the ITA (the "**Withholding Drop Date**") (during which time no amount shall be withheld from amounts paid to the Paying Agent, except as provided below or as requested in writing by the ITA) and during which time, such Payee may obtain (or, if one already exists, present to the Paying Agent) a valid certificate or ruling issued by the ITA in form and substance acceptable to Acquirer (which, for the avoidance of doubt includes Acquirer's opportunity to review, comment and approve the application to the ITA): (i) exempting Acquirer from the duty to withhold Israeli Taxes with respect to such payment to Payee, (ii) determining the applicable rate of Israeli Taxes to be withheld from the payment due to such Payee or (iii) providing any other instructions regarding the payment or withholding with respect to the applicable portion of the consideration due to such Payee (the "**Qualified Withholding Certificate**"). In the event that no later than three Business Days prior to the Withholding Drop Date a Payee submits to Acquirer and/or the Paying Agent, a Qualified Withholding Certificate, the Paying Agent, shall act in accordance with the provisions of such Qualified Withholding Certificate, subject to any deduction and withholding (other than Israeli Tax law) as may be required to be deducted and withheld under the Code, or any provision of state, local or foreign Tax law. If a Payee: (A) does not provide Acquirer or the Paying Agent with a Qualified Withholding Certificate no later than three Business Days prior to the Withholding Drop Date or (B) submits a written request to Acquirer and the Paying Agent to release the amounts held by the Paying Agent to such Payee, prior to the Withholding Drop Date and fails to submit a Qualified Withholding Certificate at or before such time, then the amount to be withheld and transferred to the ITA from the amounts payable to such Payee shall be calculated according to the applicable withholding rate (calculated in NIS based on a US\$:NIS exchange rate known at the payment date) as determined by Acquirer and the Paying Agent. Such amount shall be delivered or caused to be delivered to the ITA by the Paying Agent, and the Paying Agent shall release to such Payee the balance of the amount due to such Payee that is not so withheld, subject to any deduction and withholding as may be required to be deducted and withheld under the Code, or any provision of state, local or foreign Tax law (other than Israeli Tax law). For the avoidance of doubt, (i) if the Paying Agent Undertaking is provided to Acquirer prior to the Closing Date, then a Payee shall not be required to provide a Payor a Qualified Withholding Certificate (and thus no withholding of Tax shall apply) with respect to such Payee's portion of the Escrow Fund, until the actual payment of such amount or any portions thereof to each such Payee is made, in which case any applicable withholding will be calculated (as provided above) and delivered to the ITA. Any currency conversion commissions will be borne by the applicable Payee and deducted from payments to be made to such Payee, and (ii) in the absence of a Qualified Withholding Certificate which also covers the Payee's portion of the Shareholders' Agent Expense Fund, the applicable amount of Israeli Tax to be withheld from such Payee's portion of any amount paid or other consideration deliverable to such Payee will be calculated (as provided above) also on such Payee's portion of the Shareholders' Agent Expense Fund, and will be deducted and delivered to the ITA as provided above, unless the ITA provides different written instructions satisfactory to Acquirer.

(iii) Notwithstanding anything to the contrary herein, any payments (including issuance of Assumed Options) made to holders of 102 Company Securities will be subject to deduction or withholding of Israeli Tax under the Ordinance on the 15<sup>th</sup> day of the calendar month following the month during which the Closing occurs, unless with respect to Israeli resident holders of Company Options and/or 102 Company Shares, the Options Tax Ruling (or the Interim Options Ruling) shall have been obtained before the 15<sup>th</sup> day of the calendar month following the month during which the Closing occurs, and in such case, Acquirer or the Company, or any Person acting on their behalf shall act in accordance with the Options Tax Ruling (or Interim Options Ruling).

(iv) Notwithstanding anything to the contrary herein, with respect to non-Israeli resident holders of Company Options, who were granted such awards in consideration solely for work or services performed outside of Israel (and who shall provide Acquirer, prior to any payment to them, with a validly executed declaration in the form attached hereto as Exhibit D regarding their non-Israeli residence and confirmation that they were granted such awards in consideration solely for work or services performed outside of Israel), such payments shall not be subject to any withholding or deduction of Israeli Tax and shall be made through the Company's or its Subsidiaries' payroll processing service or system as set forth in Section 1.3(a)(v).

(v) Notwithstanding anything to the contrary herein, to the extent that any Tax withholding is required with respect to the issuance of the Assumed Options, any Payor may withhold such amount from any cash consideration payable hereunder to the applicable Payee with respect to any of such Payee's Company Options and, if such cash is insufficient to make such withholding, then from any other amounts payable to such holder hereunder. No Assumed Option shall be issued to such Payee until such Payee transfers the required withholding amount to the applicable Payor.

(vi) Israeli Tax Rulings. As soon as reasonably practicable after the Agreement Date, the Company shall cause its Israeli counsel and/or Company Contractors, in full coordination with Parent and Acquirer and their Israeli counsel, to prepare and file with the ITA an application for the following rulings:

(1) A ruling in relation to the 102 Company Securities and 3(i) Company Options, confirming, among others, that: (i) neither the payment of the Aggregate Consideration for 102 Company Shares or the Option Payments for 102 Company Options, nor the assumption by Acquirer or Parent of the Assumed Options granted under Section 102 of the Ordinance, will constitute a violation of the requirements of Section 102 of the Ordinance, provided that the applicable consideration (i.e. cash consideration or Assumed Options) attributed to holders of Company 102 Securities is deposited with the 102 Trustee for the statutory minimum trust period under Section 102 of the Ordinance, (ii) the assumption by Acquirer or Parent of the Assumed Options granted under Section 102 and Section 3(i) of the Ordinance, will not constitute a tax event, and with respect to 102 Company Options, the tax will be deferred to the earlier of the actual sale of the Assumed Options and their release from trust, (iii) Acquirer and anyone acting on its behalf, including the Paying Agent, shall be exempt from withholding Tax in relation to any payments or consideration transferred to the 102 Trustee in relation to 102 Company Securities and 3(i) Company Options; and (iv) the transfer of the Escrow Fund in respect of 102 Shares shall not be subject to Israeli Tax until actually received by the applicable Company Shareholder; which ruling may be subject to customary conditions regularly associated with such a ruling (the "**Option Tax Ruling**"). If the Option Tax Ruling is not granted prior to the 15th day of the calendar month following the month in which the Closing occurs, the Company shall seek to receive prior to such date an interim tax ruling confirming among others that Acquirer and anyone acting on its behalf (including the Paying Agent) shall be exempt from Israeli withholding Tax in relation to any payments made to the 102 Trustee with respect to 102 Company Securities and 3(i) Company Options (which interim tax ruling may be subject to customary conditions regularly associated with such an interim tax ruling) (the "**Interim Options Ruling**", and collectively with Option Tax Ruling, the "**Israeli Tax Rulings**").

(2) The parties (other than the Shareholders' Agent) will cause their respective Israeli counsel, advisors and accountants to coordinate and cooperate and provide all information required with respect to the Company's preparation and filing of such application and in the preparation of any written or oral submissions that may be necessary, proper or advisable to obtain the Israeli Tax Rulings. Subject to the terms and conditions hereof, the Company shall use all efforts to promptly take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to obtain the Israeli Tax Rulings as promptly as practicable; provided, that if none of such Israeli Tax Rulings is obtained

for any reason whatsoever by the Closing Date, the Closing shall not be delayed or postponed. For the avoidance of doubt it is clarified that the language of the Israeli Tax Rulings (as applicable) shall be subject to the prior written approval of Acquirer or its counsel. The Company will inform the Acquirer in advance of any meeting or other discussion with the ITA with respect to any of the Israeli Tax Rulings and allow Acquirer's counsel to attend such meeting and participate in such discussions. Should Acquirer's counsel not attend any such meeting or discussion with the ITA, the counsel of the Company shall provide Acquirer's counsel with an update of such meeting or discussion within one Business Day of such meeting or discussion.

(vii) Notwithstanding the foregoing, Acquirer agrees that the party withholding such amount shall not defer payment to the applicable Tax Authorities beyond the last due date under Applicable Law, unless provided with a cashier's check on or prior to the date of the original payment in such amount as Acquirer deems adequate to cover for any deficiencies due to exchange rate fluctuations; and

(viii) The parties intend that the Share Purchase be a Taxable transaction for U.S. federal income Tax purposes, including with respect to the Aggregate Consideration, the Adjustment Escrow Amount and the Indemnity Escrow Amount, and will so treat the Share Purchase unless otherwise required by a determination of a U.S. court or the Internal Revenue Service. Notwithstanding the foregoing, each party hereto is relying solely on the advice of his, her or its own Tax advisors with respect to the Tax consequences of the Share Purchase.

(ix) Promptly after the execution of this Agreement, Acquirer shall prepare and file with the Israeli Securities Authority an application pursuant to Section 15D of the Securities Law of Israel for an exemption from the requirements of the Israeli Securities Law (1968) concerning the publication of a prospectus in respect of the assumption of the Company Options and shall use commercially reasonable efforts to obtain such exemption.

(f) Treatment of Company Share Capital Owned by the Company. At the Closing, all Company Share Capital that is owned by the Company immediately prior to the Closing shall be canceled by the Company and extinguished without any conversion thereof.

(g) Spreadsheet. Acquirer is permitted and authorized to rely on the allocations set forth in the Spreadsheet and shall have no responsibility or liability with respect to any error in such allocations. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate consideration paid by Acquirer to the Company Securityholders and any amounts deposited in the Escrow Fund and Shareholders' Agent Expense Fund, exceed the Aggregate Consideration (with the shares of Parent Common Stock valued at the Parent Trading Price for purposes of this Section 1.1(g)). For clarity, the aggregate consideration paid by Acquirer to the Company Securityholders shall include any amounts in respect of the Assumed Options, assuming for these purposes the full vesting and exercise of all such Assumed Options.

(h) Closing. Upon the terms and subject to the conditions set forth herein, the closing of the Transactions, including the consummation of the Share Purchase (the "Closing") shall take place at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, 94041 USA, or at such other location as Acquirer and the Company agree, at (i) 10:00 a.m. Pacific time on a date to be agreed by Acquirer and the Company, which date shall be no later than the fifth Business Day following the date on which all of the conditions set forth in Article 7 of this Agreement have been satisfied or waived (other than those conditions that, by their terms, are intended to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions); provided that if such Business Day would otherwise occur anytime during the last month of a fiscal quarter of Parent, then Acquirer may, in

its discretion, delay the Closing until the first Business Day of the next succeeding fiscal quarter of Parent, in which case the Closing shall be held on such first Business Day (so long as all of the conditions set forth in Article 7 (other than those conditions that, by their terms, are intended to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall continue to be satisfied or waived in accordance with this Agreement on such first Business Day) or (ii) such other time as Acquirer and the Company agree. The date on which the Closing occurs is sometimes referred to herein as the “**Closing Date**.”

1.2 Closing Deliveries.

(a) Acquirer Deliveries. Acquirer shall deliver to the Company, at or prior to the Closing:

(i) a certificate, dated as of the Closing Date, executed on behalf of Acquirer by a duly authorized officer of Acquirer to the effect that each of the conditions set forth in Section 7.2(a) has been satisfied;

(ii) an escrow agreement in the form of Exhibit E (the “**Escrow Agreement**”), executed by Acquirer.

(b) Company Deliveries. The Company or the Company Shareholders, as applicable, shall deliver, or cause the Company to deliver, to Acquirer, at or prior to the Closing:

(i) duly executed share transfer deeds in the form attached hereto as Exhibit F (the “**Share Transfer Deed**”) from each Company Shareholder with all of the certificates or instruments which immediately prior to the Closing represented issued and outstanding Company Share Capital held by Company Shareholders (or an affidavit of loss of destruction of certificate in lieu thereof in the form attached hereto as Exhibit G (the “**Affidavit of Lost Share Certificate**”));

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Chief Executive Officer, to the effect that each of the conditions set forth in clauses (a), (d) and (e) of Section 7.3 has been satisfied;

(iii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Chief Executive Officer, certifying the Company’s (A) articles of association, including all amendments thereto, as in effect immediately prior to Closing (the “**Charter Documents**”) (B) unanimous board resolutions approving the Share Purchase and adopting this Agreement and approving the treatment of the Company Options pursuant to the Company Option Plan in accordance with the terms of this Agreement, and (C) minutes of an extraordinary meeting of the Company Shareholders approving the Share Purchase and adopting this Agreement;

(iv) a written opinion from the Company’s outside Israeli legal counsel, in the form attached as Exhibit H, dated as of the Closing Date and addressed to Parent and Acquirer;

(v) written acknowledgments pursuant to which any Person that is entitled to any Transaction Expenses acknowledges (A) the total amount of Transaction Expenses that has been incurred and remains payable to such Person and (B) that, upon payment of such remaining payable amount at the Closing, it shall be paid in full and shall not be owed any other amount by any of Acquirer, the Company or their respective Affiliates with respect to this Agreement or the Transactions;



(vi) a Benefits Waiver, in the form attached hereto as Exhibit I (the “**Benefits Waiver**”), executed by the Company and each Continuing Employee set forth on Schedule 1.2(b)(vi) who might otherwise have, receive or have the right or entitlement to receive in connection with the execution and delivery of this Agreement or the consummation of the Share Purchase (either alone or in combination with any other event), or a termination of employment or service with the Company, Acquirer or any Subsidiary (A) accelerated vesting of or lapsing of restrictions, or amended vesting requirements, with respect to any equity-based compensation or other compensation or payments under any Company Employee Plan, or (B) any severance payments or other payments or benefits (excluding such payments as may be required by Applicable Law);

(vii) (A) Offer Letters, effective as of the Closing, executed by each Key Employee, (B) Non-Compete Agreements, effective as of the Closing, executed by each Key Employee, and (C) offer letters with the Company or one of its Subsidiaries effective as of the Closing, executed by the minimum percentage of Company Employees as required pursuant Section 7.3(f)(ii);

(viii) the Designated Employee Waivers;

(ix) a resignation letter of each of the directors and officers of the Company and the Subsidiaries in office immediately prior to the Closing, effective no later than immediately prior to the Closing, in the form attached hereto as Exhibit J;

(x) certificates of good standing, dated within three Business Days prior to the Closing Date, certifying that the Company and the Subsidiaries are in good standing and, to the extent applicable, that all applicable franchise Taxes and fees of the Company and the Subsidiaries that are due and payable as of the Closing Date have been paid;

(xi) the Spreadsheet, in a form satisfactory to Acquirer, completed to include all of the information specified in Section 6.8, and a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying on behalf of the Company that the Spreadsheet is true, correct and complete in all respects;

(xii) the Company Closing Financial Certificate, which certificate shall be accompanied by such supporting documentation, information and calculations as are necessary for Acquirer to verify and determine the amounts set forth therein;

(xiii) payoff letters or similar instruments in form and substance reasonably satisfactory to Acquirer with respect to all Company Debt, which letters provide for the release of all Encumbrances relating to the Company Debt following satisfaction of the terms contained in such payoff letters (including any premiums above the principal amount of such Company Debt or any fees payable in connection with such Company Debt);

(xiv) executed termination statements (or undertakings to file such termination statements) executed by each Person holding a security interest in any assets of the Company or any Subsidiary as of the Closing Date terminating any and all such security interests and evidence reasonably satisfactory to Acquirer that all Encumbrances on assets of the Company or any Subsidiary shall have been released prior to, or shall be released promptly following, the earlier of the Closing or confirmation of repayment of the applicable Company Debt;

(xv) a parachute payment waiver, in substantially the form attached hereto as Exhibit K (the “**Parachute Payment Waiver**”), executed by each Person required to execute such a waiver pursuant to Section 6.14;

(xvi) evidence satisfactory to Acquirer of the consents, notices, amendments and terminations, as applicable, of each of the Contracts listed on Schedule 1.2(b)(xvi);

(xvii) unless otherwise requested by Acquirer in writing no less than five Business Days prior to the Closing Date, (A) a true, correct and complete copy of resolutions adopted by the Company Board of Directors, certified by the Chief Executive Officer of the Company, authorizing the termination of each or all of the Company Employee Plans that are “employee benefit plans” within the meaning of ERISA, including the Company’s 401(k) Plan (the “**401(k) Plan**”), and (B) an amendment to the 401(k) Plan, executed by the Company, that is sufficient to assure compliance with all applicable requirements of the Code and regulations thereunder so that the Tax-qualified status of the 401(k) Plan shall be maintained at the time of its termination, with such 401(k) Plan amendment and termination to be effective as of the date immediately preceding the Closing Date;

(xviii) the Escrow Agreement, executed by the Shareholders’ Agent;

(xix) a Warrant Termination Agreement duly executed and delivered by each Company Warrantholder;

(xx) IRS Forms 8832 (Entity Classification Elections) electing for the Company to be classified as a partnership for U.S. tax purposes effective on the Closing Date and for each non-U.S. Subsidiary to be classified as a disregarded entity effective on the Closing Date, each duly executed by each Person that is a Company Shareholder on the Closing Date or an officer, member or manager of the Company that is authorized to make such election under local law or the entity’s organizational documents;

(xxi) FIRPTA documentation, in substantially the form of Exhibit L-1, consisting of (i) (A) a statement with respect to the Company’s U.S. Subsidiary that conforms to the requirements of Section 1.897-2(h)(1)(i) of the Treasury Regulations, and (B) the notification to the Internal Revenue Service required under Section 1.897-2(h)(2) of the Treasury Regulations, and (ii) a properly executed statement, issued by the Company pursuant to Treasury Regulations Section 1.1445-11T(d) that no withholding is required under Section 1445 of the Code with respect to the transfer of interests in the Company as a result of the Share Purchase, substantially in the form attached hereto as Exhibit L-2;

(xxii) a certification made on behalf of the Company pursuant to Section 6.04 of IRS Notice 2018-29, in substantially the form of Exhibit M, to the effect that less than 25% of the gain on a sale of the Company’s assets would constitute “effectively connected income” under Section 864(c)(8) of the Code; and

(xxiii) a share certificate registered in the name of the Acquirer, representing ownership of one hundred percent (100%) of the Company Share Capital; and

(xxiv) the shareholders registry of the Company in the form attached hereto as Exhibit N, evidencing the transfer and ownership of all of the Company Shares to Acquirer certified by the Company’s Chief Executive Officer.

Receipt by Acquirer of any of the agreements, instruments, certificates or documents delivered pursuant to this Section 1.2(b) shall not be deemed to be an agreement by Acquirer that the information or statements contained therein are true, correct or complete, and shall not diminish Acquirer’s remedies hereunder if any of the foregoing agreements, instruments, certificates or documents are not true, correct or complete.

(c) Rights Not Transferable. The rights of the Company Securityholders under this Agreement are personal to each such Company Securityholder and shall not be transferable for any reason, other than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (other than as permitted by the immediately preceding sentence) shall be null and void.

(d) No Interest. Notwithstanding anything to the contrary contained herein, no interest shall accumulate on any cash or stock payable in connection with the consummation of the Share Purchase and the other Transactions.

### 1.3 Surrender of Certificates.

#### (a) Exchange Procedures.

(i) At or prior to the Closing, Parent shall initiate a wire to be deposited with an Israeli paying agent to be selected by Acquirer and the Company (the "**Paying Agent**") in an amount of cash sufficient to pay the Aggregate Consideration less (A) the Adjustment Escrow Amount, less (B) the Indemnity Escrow Amount, less (C) the Shareholders' Agent Expense Amount, less (D) the aggregate amount of payments in respect of In the Money Vested Company Options to Company Vested Optionholders that are residents of the United States (such holder, the "**U.S. Optionholders**" and such payments, the "**U.S. Optionholder Payments**"), less (E) the Assumed Option Consideration, and less (F) the Employee Loan Amount.

(ii) At the Closing, Parent will instruct the Paying Agent to pay to each Company Shareholder (other than with respect to Unvested Company Shares), by wire transfer of same-day funds, such Company Shareholder's portion of the Aggregate Consideration less (A) such Company Shareholder's portion of the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Shareholders' Agent Expense Amount in respect of such Company Shares and (B) the Employee Loan Amount, if any, outstanding in respect of the Company Shareholder, as soon as reasonably practicable following surrender to the Paying Agent of a duly executed letter of transmittal substantially in the form attached hereto as Exhibit O (the "**Shareholders Letter of Transmittal**"), together with all of the certificates or instruments which immediately prior to the Closing represented issued and outstanding Company Share Capital held by Company Shareholder (or the Affidavit of Lost Share Certificate), Share Transfer Deeds (the "**Converting Instruments**"), a certificate confirming such Company Shareholder's information contained in the Spreadsheet, in a form attached to the Shareholders Letter of Transmittal (a "**Closing Allocation Certificate**") and, with respect to Company Shareholders that are individuals and residents in a jurisdiction that follows the community property regime, a duly executed Spousal Consent.

(iii) At the Closing, Parent will instruct the Paying Agent to pay to each Company Optionholder who holds In the Money Vested Company Options at the Closing (other than In the Money Vested Company Options held by U.S. Optionholders), by wire transfer of same-day funds, such Company Optionholder's portion of the Option Payments less the amount, if any, of the Employee Loan Amount owed to the Company by such Company Optionholder, as soon as reasonably practicable following the Closing and surrender to the Paying Agent of any documents required hereunder (including an executed Option Cancellation and Conversion Agreement by such Company Optionholder) pursuant to Section 1.1(b) and subject to the terms of this Agreement.

(iv) At the Closing, Acquirer will instruct the Paying Agent to pay to the Company Warrantholder, by wire transfer of same-day funds, such Company Warrantholder's portion of the Warrant Payments as soon as reasonably practicable following the Closing and surrender to the Paying

Agent of any documents required hereunder (including an executed Warrant Termination Agreement), pursuant to Section 1.1(c) and subject to the terms of this Agreement.

(v) At or prior to the Closing, Parent shall initiate a wire to be deposited with a U.S. paying agent to be selected by Acquirer for further payment to the Company or its Subsidiaries in an amount of cash sufficient to make the U.S. Optionholder Payments, and shall thereafter cause the Company or its Subsidiaries to pay to each U.S. Optionholder the applicable U.S. Optionholder Payment through the Company's or one of its Subsidiary's payroll system in accordance with standard payroll practices, including any required withholding for applicable Taxes, following surrender to the Acquirer of any documents required hereunder (including an executed Option Cancellation and Conversion Agreement by such Company Optionholder); provided, however, that with respect to holders of Company Options who are not current or former employees of the Company or its Subsidiaries, references to the payroll system of the Company or one on of its Subsidiaries shall mean through the accounting services of such entity or by such U.S. paying agent, as determined by Parent.

(vi) As soon as practicable following vesting of any Unvested Cash (not to exceed five Business Days), Parent will instruct the Paying Agent to pay the amount of such Unvested Cash to each Company Shareholder entitled to receive such Unvested Cash.

(vii) Notwithstanding the other provisions of this Article 1, as soon as reasonably practicable after the Closing Date but in any event within five Business Days after the Closing Date, Parent shall cause to be deposited with the Shareholders' Agent \$300,000 (the "**Shareholders' Agent Expense Amount**"), which shall be deemed to be withheld from the consideration otherwise payable at the Closing to each Indemnifying Party in accordance with each Indemnifying Party's Pro Rata Share thereof. The Shareholders' Agent Expense Amount shall be used by the Shareholders' Agent for the payment of expenses incurred by it in performing its duties in accordance with Section 9.7 (the "**Shareholders' Agent Expense Fund**").

(b) Escrow Fund. Notwithstanding anything to the contrary in the other provisions of this Article 1, Acquirer shall withhold from the gross cash consideration otherwise payable to each Indemnifying Party (which, in the case of a Company Shareholder that is a holder of Unvested Company Shares, shall be funded solely by the portion of the closing consideration for such Company Shareholder that is vested immediately prior to Closing) in accordance with Section 1.1(a), such Indemnifying Party's Pro Rata Share of the Adjustment Escrow Amount and the Indemnity Escrow Amount. At the Closing, Acquirer shall initiate a wire to be deposited (or cause to be deposited) the Adjustment Escrow Amount and the Indemnity Escrow Amount with the Escrow Agent, as escrow agent pursuant to the Escrow Agreement, to be held by the Escrow Agent in accordance with and subject to the provisions of this Agreement and the Escrow Agreement. The Adjustment Escrow Amount plus any interest or earning paid thereon in accordance with the Escrow Agreement (the "**Adjustment Escrow Fund**") shall be available to compensate Parent for any Aggregate Consideration Shortfall under Section 1.6, and shall be held and distributed in accordance with Section 1.6 and the Escrow Agreement. The Indemnity Escrow Amount plus any interest or earnings paid thereon in accordance with the Escrow Agreement (the "**Indemnity Escrow Fund**" and, together with the Adjustment Escrow Fund, the "**Escrow Fund**"). Subject to Section 9.2, the Indemnity Escrow Fund shall constitute partial security for the benefit of Acquirer (on behalf of itself or any other Indemnified Person) with respect to any Indemnifiable Damages pursuant to the indemnification obligations of the Indemnifying Parties under Article 9, and shall be held and distributed in accordance with Section 9.1 and the Escrow Agreement. The adoption of this Agreement and the approval of the Share Purchase by the Company Shareholders shall constitute, among other things, approval of the Adjustment Escrow Amount and the Indemnity Escrow Amount, the withholding of the Adjustment Escrow Amount and the Indemnity Escrow Amount by Acquirer and the appointment of the Shareholders' Agent. Parent shall be treated as the owner of the Escrow Fund and for Tax purposes, shall report all income earned

thereon; provided, however, that within 30 days of the end of each calendar year, Parent shall be entitled to receive from the Escrow Fund a Tax distribution equal to 25% of the amount of income earned on the Escrow Fund for such year.

(c) Transfers of Ownership. If any cash amount payable pursuant to this Section 1.3 is to be paid to a Person other than the Person to which the Converting Instrument, In the Money Vested Company Option or Company Series A Warrant surrendered in exchange therefor is registered, it shall be a condition of the payment thereof that such Converting Instrument, In the Money Vested Company Option or Company Series A Warrant shall be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange shall have paid to Acquirer or any agent designated by it any transfer or other Taxes required by reason of the payment of cash in any name other than that of the registered holder of such Converting Instrument, In the Money Vested Company Option or Company Series A Warrant, or established to the satisfaction of Acquirer or any agent designated by it that such Tax has been paid or is not payable.

(d) No Liability. Notwithstanding anything to the contrary in this Section 1.3, none of the Company, Parent, Acquirer or any party hereto shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Applicable Law.

(e) Unclaimed Consideration. Following the Closing, each former holder of Company Shares, In the Money Vested Company Options or Company Series A Warrants shall look only to Paying Agent or the Company or Acquirer (subject to abandoned property, escheat and similar Applicable Law) for its claim, only as a general unsecured creditor thereof, to any portion of the Aggregate Consideration payable pursuant to Section 1.3(a) in respect of such Company Shares, In the Money Vested Company Options or Company Series A Warrants. Notwithstanding anything to the contrary contained herein, if any Converting Instrument, In the Money Vested Company Option or Company Series A Warrant has not been surrendered prior to the earlier of the first anniversary of the Closing and such date on which the applicable portion of the Aggregate Consideration payable pursuant to this Section 1.3 in respect of such Converting Instrument, In the Money Vested Company Option or Company Series A Warrant would otherwise escheat to, or become the property of, any Governmental Entity, any amounts payable in respect of such Converting Instrument, In the Money Vested Company Option or Company Series A Warrant shall, to the extent permitted by Applicable Law, become the property of Acquirer, free and clear of all claims or interests of any Person previously entitled thereto.

1.4 No Further Ownership Rights in the Company Share Capital, Company Options or Company Warrants. The applicable portion of the Aggregate Consideration paid or payable following the surrender for exchange of any Converting Instrument, Company Option or Company Warrant in accordance with the terms hereof shall be paid or payable in full satisfaction of all rights pertaining to the shares of Company Share Capital represented by such Converting Instrument, Company Option or Company Warrant, and there shall be no further registration of transfers on the records of Acquirer or the Company of shares of Company Share Capital that were issued and outstanding immediately prior to the Closing. If, after the Closing, any Converting Instrument, Company Option or Company Warrant is presented to the Company or Acquirer for any reason, such Company Shares, Company Option or Company Warrant shall be cancelled and exchanged as provided in this Article 1.

1.5 Certain Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be paid by the applicable Company Securityholder when due, and such Company Securityholder shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees.

1.6 Consideration Adjustment.

(a) Within 120 days after the Closing Date, Parent shall deliver to the Shareholders' Agent a statement (the "**Parent Closing Statement**") setting forth Parent's good faith calculation as of the Closing Date and immediately prior to the Closing of (i) the Company Net Working Capital (including an itemized list of each element of the Company's consolidated current assets, an itemized list of each element of the Company's consolidated current liabilities), (ii) the amount of Company Debt, and (iii) the amount of Transaction Expenses. Parent shall provide the Shareholders' Agent and its representatives reasonable access upon reasonable notice to the records, properties, personnel and (subject to the execution of customary work paper access letters if requested) auditors relating to the preparation of the Parent Closing Statement and shall cause its personnel to reasonably cooperate with the Shareholders' Agent in connection with its review of the Parent Closing Statement.

(b) The Shareholders' Agent shall have 30 days within which to review the Parent Closing Statement after Parent's delivery thereof. The Shareholders' Agent may object to any calculation set forth in the Parent Closing Statement by providing written notice of such objection to Parent within 30 days after Parent's delivery of the Parent Closing Statement (the "**Notice of Objection**"), together with the basis of its objection in reasonable detail and any supporting documentation, information and calculations. If a Notice of Objection is not provided within such 30-day period, the Parent Closing Statement (and each of the calculations set forth therein) shall be deemed final.

(c) If the Shareholders' Agent provides the Notice of Objection, then Parent and the Shareholders' Agent shall confer in good faith for a period of up to 20 days following Parent's receipt of the Notice of Objection in an attempt to resolve any disputed matter set forth in the Notice of Objection, and any resolution by them shall be in writing and shall be final and binding on the parties hereto and the Indemnifying Parties.

(d) If, after the 20-day period set forth in Section 1.6(c), Parent and the Shareholders' Agent cannot resolve any matter set forth in the Notice of Objection, then Parent and the Shareholders' Agent shall engage one of the "big four" independent certified public accounting firm acceptable to both Parent and the Shareholders' Agent or, if such firm is not able or willing to so act, another auditing firm acceptable to both Parent and the Shareholders' Agent (the "**Reviewing Accountant**") to review only the matters in the Notice of Objection that are still disputed by Parent and the Shareholders' Agent and any calculations to the extent relevant thereto. After such review and a review of the Company's relevant books and records, the Reviewing Accountant shall promptly (and in any event within 60 days following its engagement) determine the resolution of such remaining disputed matters, which determination shall (absent fraud or manifest error) be final and binding on the parties hereto and the Indemnifying Parties.

(e) If the Aggregate Consideration as finally determined pursuant to Section 1.6(b), Section 1.6(c) and/or Section 1.6(d), as the case may be (the "**Final Aggregate Consideration**"), is less than the Aggregate Consideration that was calculated in accordance with the Company Closing Financial Certificate (such difference, the "**Aggregate Consideration Shortfall**"), the Aggregate Consideration Shortfall shall be recovered by Parent first from the Adjustment Escrow Fund. To the extent that the Aggregate Consideration Shortfall is greater than the Adjustment Escrow Fund (the "**Excess Adjustment Amount**"), Parent shall recover such Excess Adjustment Amount from the Indemnity Escrow Fund. A joint written instruction setting forth the Aggregate Consideration Shortfall to be paid to Parent and, if applicable, any remaining Adjustment Escrow Fund to the Indemnifying Parties, shall be prepared, signed by Parent and the Shareholders' Agent and delivered to the Escrow Agent. Upon receipt of such instruction, the Escrow Agent shall distribute to Parent such amount of cash from the Adjustment Escrow Fund and, if applicable, any remaining Adjustment Escrow Fund to the Paying Agent for further distribution to the Indemnifying Parties based on their Pro Rata Share.

(f) If the Final Aggregate Consideration is greater than the Aggregate Consideration that was calculated in accordance with the Company Closing Financial Certificate (such difference, the “**Aggregate Consideration Surplus**”), then the Aggregate Consideration Surplus shall be deemed to be added to the Aggregate Consideration and shall be, within three Business Days after delivery of joint written instruction by Parent and the Shareholders’ Agent to the Escrow Agent, wired to the Paying Agent for further distribution to the Indemnifying Parties in accordance with their Pro Rata Share, and Parent and the Shareholders’ Agent shall submit a joint written instruction to the Escrow Agent instructing Escrow Agent to pay to the Paying Agent the Adjustment Escrow Fund for further distribution to the Indemnifying Parties based on their Pro Rata Share.

(g) The fees, costs and expenses of the Reviewing Accountant shall be allocated between the Shareholders’ Agent (on behalf of the Indemnifying Parties), on the one hand, and Parent, on the other hand, in the same proportion that the aggregate amount of the disputed items submitted to the Reviewing Accountant that is unsuccessfully disputed by each such party (as finally determined by the Reviewing Accountant) bears to the total amount of such disputed items so submitted.

#### 1.7 Waiver and Release of Claims.

(a) Effective for all purposes as of the Closing, each Company Shareholder, by executing this Agreement, acknowledges and agrees on behalf of himself, herself or itself and each of his, her or its agents (other than the Shareholders’ Agent), trustees, beneficiaries, directors, officers, Affiliates, subsidiaries, estate, successors and assigns (each, a “**Releasing Party**”) that each hereby releases and forever discharges the Company, each Company Securityholder and Acquirer (each a “**Beneficiary**”) and each of such Beneficiary’s respective subsidiaries, Affiliates, directors, officers, employees, representatives, consultants, agents, members, stockholders, successors, predecessors and assigns (each, a “**Released Party**”) and collectively, the “**Released Parties**”) from any and all Shareholder Claims such Releasing Party may have or assert it has against any of the Released Parties, from the beginning of time through the time of the Closing, in each case whether known or unknown, or whether or not the facts that could give rise to or support a Shareholder Claim are known or should have been known; except with regard to its rights pursuant to this Agreement and the Transactions. In this Agreement a “**Shareholder Claim**” shall mean: (i) any claim or right with regard to any Company Shares, Company Options or Company Warrants other than the Company Shares, Company Options or Company Warrants set forth on such Person’s Closing Allocation Certificate, (ii) any claim or right to receive any portion of the Aggregate Consideration or any other form, amount or value of consideration payable to any Company Shareholder pursuant to the terms of this Agreement, other than as specifically set forth in such Person’s Closing Allocation Certificate (subject to any changes and adjustments contemplated in this Agreement) or (iii) any claim with respect to the authority or enforceability to enter into this Agreement, the Share Purchase or any of the Transactions contemplated hereby.

(b) Each Company Shareholder, by executing this Agreement, hereby confirms, acknowledges, represents and warrants that he, she or it: (A) (i) has examined such Person’s Closing Allocation Certificate and is entitled only to the distribution set forth in such Person’s Closing Allocation Certificate (subject to any changes and adjustments contemplated in this Agreement); (ii) is the holder of the number of Company Ordinary Shares, Company Series A Preferred Shares, Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares, Company Series B-2 Preferred Shares, Company Options and/or Company Warrants set forth in such Person’s Closing Allocation Certificate, (iii) other than the number and class of Company Ordinary Shares, Company Series A Preferred Shares, Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares, Company Series B-2 Preferred Shares, Company Options and/or Company Warrants set forth in such Person’s Closing Allocation Certificate, is not entitled to any additional Company Ordinary Shares, Company Series A Preferred Shares, Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares, Company Series B-2 Preferred Shares,

Company Options, Company Warrants or any other form of Equity Interests, including, shares, options, warrants or any other convertible security, or right to acquire shares, options or warrants of or any other convertible security into Company Share Capital, and (iv) has not heretofore assigned or transferred, or purported to have assigned or transferred, to any corporation (or any other legal entity) or person whatsoever, any Shareholder Claim herein released.

(c) Effective for all purposes as of the Closing, each Company Shareholder, by executing this Agreement, hereby: (i) waives any right to receive any additional Company Ordinary Shares, Company Series A Preferred Shares, Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares, Company Series B-2 Preferred Shares (as a result of any anti-dilution rights, preemptive rights, conversion rights (of any of the Company Shares that are outstanding as of the Agreement Date or any Company Shares he, she or it may have been entitled to receive as a result of the conversion of any convertible loan agreement or any other convertible instrument that was issued by the Company), rights of first offer, co-sale and no-sale rights, any other participation, first refusal or similar rights, any adjustment of the conversion price of any preferred share whatsoever or otherwise); (ii) fully, finally, irrevocably and forever waives any right to convert any of its Company Shares into any other class or series of Company Shares presently and through the Closing (except as provided in this Agreement), (iii) waives any right to receive consideration for such Company Shareholder's Equity Interests in the Company other than as set forth in such Person's Closing Allocation Certificate (including for any interest payments, the method of determination or calculation of any of the values or allocations pursuant to this Agreement, any preferential or other amount resulting from its investment in the Company or the purchase of Company Shares (e.g. in the form of indemnification), the conversion of Company Shares, any other rights of any nature under the Charter Documents, or any Shareholders Agreement, which the Company Shareholders and/or its successors and assignees ever had, now have or hereafter can, shall or may have, at any time, due to actions or events that occurred prior to Closing which do not conform or are not consistent with the terms of this Agreement and the consideration attributed to such Company Shareholders in such Person's Closing Allocation Certificate), (iv) hereby terminates and waives any rights, powers and privileges such Company Shareholder has or may have pursuant to any "*Shareholders Agreement*" (which for purposes of this Agreement will be defined as any investors rights agreement, registration rights agreement or shareholders agreement entered into by such Company Shareholders with respect to the Company) or any right to make a claim or demand for any discrepancy between any Shareholders Agreement, share purchase agreement or convertible loan agreement such Company Shareholder and the provisions of this Agreement and his, her or its entitlement pursuant to such agreements. For as long as this Agreement is in force, each Company Shareholder agrees not to sell, transfer, assign or convert any of its Company Shares, Company Options and/or Company Warrants, or subject such Company Shares, Company Options and/or Company Warrants to any Encumbrances, except pursuant to a transfer request of Company Shares provided to the Company and Acquirer prior to the Agreement Date.

(d) Each Company Shareholder hereby acknowledges that such Company Shareholder is familiar with Section 1542 of the Civil Code of the State of California ("*Section 1542*"), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(e) Effective for all purposes as of the Closing, each Company Shareholder waives and relinquishes on behalf of itself and of its Releasing Parties any rights and benefits in any Shareholder Claim which such Releasing Party may have under Section 1542 or any similar Applicable Law principle



of any jurisdiction. Each Company Shareholder, by executing this Agreement, acknowledges that such Company Shareholder may hereafter discover facts in addition to or different from those which such Company Shareholder now knows or believes to be true with respect to the subject matter of this Agreement, but it is such Company Shareholder's intention to fully and finally and forever settle and release any and all matters, disputes and differences, known or unknown, suspected and unsuspected, which do now exist or may exist or heretofore have existed between itself or any of its Releasing Parties and any Released Party with respect to the subject matter of this Agreement. In furtherance of this intention, the releases herein shall be and remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different facts.

(f) Each Company Shareholder, on behalf of each Releasing Party, further covenants and agrees that such Releasing Party has not heretofore sold, transferred, hypothecated, conveyed or assigned, and shall not hereafter sue any Released Party upon, any Shareholder Claim released under this Section 1.7, and that each Releasing Party shall indemnify and hold harmless the Released Parties against any loss or liability on account of any actions brought by such Releasing Party or such Releasing Party's assigns or prosecuted on behalf of such Releasing Party and on any Shareholder Claim released under this Section 1.7. The parties hereto agree and acknowledge that the limitations on liability set forth in Article 9 and Article 10 shall not apply to this Section 1.7.

(g) Notwithstanding anything in this Section 1.7, the foregoing releases and covenants shall not apply to any claims (a) relating to Parent and/or Acquirer's failure to pay the Aggregate Consideration in accordance with this Agreement, (b) relating to Parent and/or Acquirer's failure to perform any of its obligations, undertakings or covenants or inaccuracies in any representations and warranties of Acquirer or Parent set forth in this Agreement (including any exhibit hereto) and the Escrow Agreement, (c) relating to any employment payment, including salary, bonuses, accrued vacation, any other employee compensation and/or benefits, any amounts set forth in this Agreement to be paid to such Releasing Party and unreimbursed expenses, (d) relating to or arising from any commercial relationship such Company Shareholder may have with any of the Released Parties, and (e) with respect to a Company Shareholder who is a director or officer of the Company, any rights to indemnification for Liabilities under the Charter Documents or written indemnification agreements listed on Schedule 2.15(a)(viii) of the Company Disclosure Schedule incurred in such capacity.

(h) Notwithstanding anything to the contrary: (i) the foregoing release is conditioned upon the consummation of the Closing and shall become null and void, and shall have no effect whatsoever, without any action on the part of any person or entity, upon termination of this Agreement in accordance with Article 8 and (ii) should any provision of this release be found, held, declared, determined, or deemed by any court of competent jurisdiction to be void, illegal, invalid or unenforceable under any applicable statute or controlling law, the legality, validity, and enforceability of the remaining provisions will not be affected and the illegal, invalid, or unenforceable provision will be deemed not to be a part of this release.

## ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure schedule of the Company delivered to Acquirer concurrently with the execution of this Agreement (the "**Company Disclosure Schedule**") (each of which disclosures, in order to be effective, shall clearly indicate the Section and, if applicable, the Subsection of this Article 2 to which it relates (unless and only to the extent the relevance to other representations and warranties is readily apparent from the actual text of the disclosures without any reference to extrinsic documentation or any independent knowledge on the part of the reader regarding the matter disclosed), and each of which disclosures shall also be deemed to be representations and warranties made by the Company

to Acquirer under this Article 2), the Company represents and warrants to Acquirer, as of the Agreement Date and as of the Closing Date, as follows:

2.1 Organization, Standing, Power and Subsidiaries.

(a) The Company is a company duly incorporated and validly existing under the laws of Israel. Each Subsidiary is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation. The Company and the Subsidiaries have the corporate power to own, operate, use, distribute and lease their properties and to conduct the Business and are duly licensed or qualified to do business and are in good standing in each jurisdiction where the failure to be so qualified or in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to have a material and adverse effect with respect to the Company or the Subsidiaries. The Company and the Subsidiaries are not in violation of any of the provisions of their Charter Documents, certificate of incorporation, bylaws or other organizational documents, as applicable.

(b) Except as set forth on Schedule 2.1(b) of the Company Disclosure Schedule, the Company does not have and has not ever had a subsidiary and the Company does not own or control and has never owned or controlled, directly or indirectly, any Equity Interest in, or have any commitment or obligation to invest in, purchase any securities or obligations of, fund, guarantee, contribute or maintain the capital of or otherwise financially support any, corporation, partnership, limited liability company, joint venture or other business association or entity. The Company is the sole owner of all of the issued and outstanding Equity Interests of the Subsidiaries. There are no outstanding subscriptions, options, warrants, “put” or “call” rights, exchangeable or convertible securities or other Contracts of any character relating to the issued or unissued share capital or other securities of the Subsidiaries, or otherwise obligating the Company or any Subsidiaries to issue, transfer, sell, purchase, redeem or otherwise acquire or sell any such securities.

(c) Schedule 2.1(c) of the Company Disclosure Schedule sets forth a true, correct and complete list of: (i) the names of the members of the Company Board of Directors and of the board of directors of each of the Subsidiaries and (ii) the names and titles of the officers of the Company and each of the Subsidiaries.

(d) The Company has not conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, business name or other name, other than its corporate name as set forth in this Agreement.

2.2 Capital Structure.

(a) The authorized share capital of the Company consists solely of (i) 100,000,000 Company Ordinary Shares, (ii) 13,980,858 Company Series A Preferred Shares, (iii) 4,681,449 Company Series A-1 Preferred Shares, (iv) 24,400,000 Company Series B-1 Preferred Shares, and (v) 4,000,000 Company Series B-2 Preferred Shares. As of the Agreement Date, a total of (i) 23,500,035 Company Ordinary Shares, (ii) 13,880,858 Company Series A Preferred Shares, (iii) 4,681,449 Company Series A-1 Preferred Shares, (iv) 19,198,525 Company Series B-1 Preferred Shares, and (v) 2,880,964 Company Series B-2 Preferred Shares are issued and outstanding as of the Agreement Date. The Company holds no treasury shares. As of the Agreement Date, except as set forth in Schedule 2.2(a) of the Company Disclosure Schedule, there are no other issued and outstanding shares of Company Share Capital and no outstanding commitments or Contracts to issue any shares of Company Share Capital other than pursuant to the exercise of outstanding Company Options under the Company Option Plan that are outstanding as of the Agreement Date and the exercise of Company Warrants that are outstanding as of the Agreement Date. Schedule 2.2(a)(i) of the Company Disclosure Schedule accurately sets forth, as of the Agreement Date, a

true, correct and complete list of the Company Shareholders that are the registered owners of any Company Shares and the number and type of such shares so owned by such Company Shareholder. Schedule 2.2(a)(ii) of the Company Disclosure Schedule sets forth a true, correct and complete list of all issued and outstanding Company Shares that are not vested under the terms of any Contract with the Company (including any share option agreement, share option exercise agreement or restricted share purchase agreement) as of the Agreement Date (the “*Unvested Company Shares*”), including as applicable the number and type of such Unvested Company Shares, the per share purchase price paid for such Unvested Company Shares, the vesting schedule for such Unvested Company Shares (and the terms of any acceleration thereof), the per share repurchase price payable for such Unvested Company Shares, the length of the repurchase period following the termination of service of the holder of such Unvested Company Shares and whether a valid election was timely filed under Section 83(b) of the Code in respect of such Unvested Company Shares. The number of such shares set forth as being so owned by such Person constitutes the entire interest of such person in the issued and outstanding Company Share Capital or voting securities of the Company as of the Agreement Date. All issued and outstanding shares of Company Share Capital are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrances, outstanding subscriptions, preemptive rights, rights of first refusal or “put” or “call” rights created by statute or any Contract to which the Company or by which the Company or any of its assets is bound, other than the Charter Documents. The Company has never declared or paid any dividends on any shares of Company Share Capital. There is no Liability for dividends accrued and unpaid by the Company. Except as set forth in Schedule 2.2(a) of the Company Disclosure Schedule, the Company is not under any obligation to register under the Securities Act, applicable Israeli securities law or the rules and regulations promulgated thereunder, any other Applicable Law or “blue sky” laws, any shares of Company Share Capital, any Equity Interests or any other securities of the Company, whether currently outstanding or that may subsequently be issued. Except as set forth in Schedule 2.2(a) of the Company Disclosure Schedule, each Company Series A Preferred Share, Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares and Company Series B-2 Preferred Shares is convertible into Company Ordinary Shares on a one-for-one basis, and as of the Closing, all Company Series B-1 Preferred Shares and Company Series B-2 Preferred Shares will be treated as if converted into Company Ordinary Shares in accordance with the Charter Documents in effect as of the Agreement Date. All issued and outstanding shares of Company Share Capital, Company Options, all Company Warrants were granted or issued in compliance with all Applicable Laws and all requirements set forth in the Charter Documents, the Company Option Plan (as applicable) and any applicable Contracts to which the Company is a party or by which the Company or any of its assets is bound.

(b) As of the Agreement Date, the Company has reserved 9,156,653 Company Ordinary Shares for issuance to employees, non-employee directors and Company Contractors pursuant to the Company Option Plan, of which 6,182,900 Company Ordinary Shares are subject to outstanding and unexercised Company Options, and 2,973,753 Company Ordinary Shares remain available for issuance thereunder. Schedule 2.2(b) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of all holders of outstanding Company Options, including the number of Company Ordinary Shares subject to each Company Option, the number of such shares that are vested or unvested, the “date of grant” of such Company Option (as defined under Treasury Regulation 1.409A-1(b)(5)(vi)(B) or any applicable foreign Tax law), the vesting commencement date, the vesting schedule (and the terms of any acceleration thereof), the exercise price per share, the Tax status of such option under Section 422 of the Code (or any applicable foreign Tax law), the term of each Company Option, the country and state of residence of such holder, whether each such Company Option was granted and is subject to Tax pursuant to Section 3(i) of the Ordinance or Section 102 of the Ordinance and the applicable sub-section of Section 102 of the Ordinance, and for Company Options subject to Section 102(b)(2) of the Ordinance the date of deposit of such Company Option with the 102 Trustee. In addition, Schedule 2.2(b) of the Company Disclosure Schedule indicates which holders of outstanding Company Options are not and were not, at the time of issuance, employees of the Company (including non-employee directors, Company Contractors, vendors, service providers or other similar Persons), including a description of the relationship

between each such Person and the Company. True, correct and complete copies of the Company Option Plan, all agreements and instruments relating to or issued under the Company Option Plan (including executed copies of all Contracts relating to each Company Option and the Company Ordinary Shares purchased upon exercise of such Company Option) have been made available to Acquirer, and such Company Option Plan and Contracts have not been amended, modified or supplemented since being provided to Acquirer, and there are no agreements, understandings or commitments to amend, modify or supplement such Company Option Plan or Contracts in any case from those provided to Acquirer. All tax rulings, opinions, significant correspondence and filings with the ITA relating to the Company Option Plan and any award thereunder have been provided to Acquirer. The terms of the Company Option Plan permit the treatment of Company Options as provided in this Agreement, without notice to, or without the consent or approval of, the holders of such securities, the Company Shareholders or otherwise. Except as set forth in Schedule 2.2(b) of the Company Disclosure Schedule, no benefits under the Company Option Plan or Company Option will accelerate in connection with the Share Purchase (whether alone or in combination with any other event). Except for the Company Option Plan, the Company has never adopted, sponsored or maintained any other plan or agreement providing for equity compensation to any Person.

(c) Except as set forth in Schedule 2.2(c) of the Company Disclosure Schedule, all Company Options outstanding and granted by the Company to its officers and employees in Israel were granted under employee option plan approved, or not rejected within 90 days from filing, by the ITA under the capital gains route of Section 102 of the Ordinance. Except as set forth in Schedule 2.2(c) of the Company Disclosure Schedule the Company has complied with all requirements of such Section 102 and the regulations promulgated thereunder in all respects. Without limiting the generality of the foregoing, each grant of a Company Option was duly authorized no later than the date on which the grant of such Company Option was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the Company Board of Directors (or a duly constituted and authorized committee thereof) and any required Company Shareholders approval, in each case, by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and is in full force and effect, each such grant was made in accordance with the terms of the Company Option Plan and all other Applicable Laws and each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company. All Company Options that were ever issued by the Company ceased to vest on the date on which the holder thereof ceased to be an employee, consultant or director of the Company or any of its Subsidiaries. The exercise of the Company Options and the payment of cash in respect thereof complied and will comply with the terms of the Company Option Plan, the agreement applicable to such Company Options and all Applicable Laws. The Company Option Plan has been duly authorized, approved and adopted by the Company Board of Directors and the Company Shareholders and is in full force and effect.

(d) Schedule 2.2(d) of the Company Disclosure Schedule sets forth, as of the Agreement Date, a true, correct and complete list of all Company Warrantheolders, including the number of shares and type of Company Shares subject to each such warrant, the date of grant, the exercise or vesting schedule (and the terms of any acceleration thereof), the exercise price per share and the term of each such warrant. True, correct and complete copies of each Company Warrant have been provided to Acquirer, and such Company Warrants have not been amended or supplemented since being provided to Acquirer, and there are no Contracts providing for the amendment or supplement of such Company Warrants. The terms of the Company Warrants permit the treatment of Company Warrants as provided herein, without notice to, or the consent or approval of, the Company Warrantheolders, the Company Shareholders or otherwise and without any acceleration of the exercise schedule or vesting provisions in effect for such Company Warrants. All Company Warrants are In the Money Vested Company Warrants.

(e) As of the Agreement Date, there are no authorized, issued or outstanding Equity Interests of the Company other than Company Shares, Company Options and the Company Warrants. Other

than as set forth on Schedule 2.2(a)(i), Schedule 2.2(a)(ii), Schedule 2.2(b) and Schedule 2.2(d) of the Company Disclosure Schedule, as of the Agreement Date, no Person has any Equity Interests of the Company, share appreciation rights, share units, share schemes, calls or rights, or is party to any Contract of any character to which the Company or a Company Securityholder is a party or by which it or its assets is bound, (i) obligating the Company or, to the Company's Knowledge, such Company Securityholder to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any Equity Interests of the Company or other rights to purchase or otherwise acquire any Equity Interests of the Company, whether vested or unvested or (ii) obligating the Company to grant, extend, accelerate the vesting and/or repurchase rights of, change the price of, or otherwise amend or enter into any such Company Option, Company Warrant, call, right or Contract.

(f) No Company Debt (i) granting its holder the right to vote on any matters on which any Company Securityholder may vote (or that is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is in any way based upon or derived from capital or voting share of the Company, is issued or outstanding as of the Agreement Date.

(g) Except as set forth on Schedule 2.2(g) of the Company Disclosure Schedule, the Company has never repurchased, redeemed or otherwise reacquired any Company Share Capital, Company Options, Company Warrants or any other Equity Interests. All shares of Company Share Capital ever repurchased or redeemed by the Company were repurchased or redeemed in compliance with: (i) all applicable securities laws and other Israeli Law and (ii) all requirements set forth in all applicable Charter Documents and Contracts. There are no Contracts relating to voting, purchase, sale or transfer of any Company Share Capital (i) between or among the Company and any Company Securityholder, other than written Contracts granting the Company the right to purchase Company Shares upon termination of employment or service and (ii) to the Knowledge of the Company between or among any of the Company Securityholders. Except as set forth on Schedule 2.2(g) of the Company Disclosure Schedules, neither the Company Option Plan nor any Contract of any character to which the Company is a party to or by which the Company or any of its assets is bound relating to any Company Options or Unvested Company Shares requires or otherwise provides for the accelerated vesting of any Company Options or Unvested Company Shares or for the acceleration of any other benefits thereunder, in each case in connection with the Transactions or upon termination of employment or service with the Company, Parent or Acquirer, or any other event, whether before, upon or following the Closing or otherwise.

(h) Schedule 2.2(h) of the Company Disclosure Schedule identifies each employee of the Company or other Person with an offer letter or other Contract or Company Employee Plan that contemplates a grant of, or right to purchase or receive: (i) options to purchase shares of Company Share Capital or other equity awards with respect to Company Share Capital or (ii) any other securities of the Company, that in each case, have not been issued or granted as of the Agreement Date, together with the number of such options, other equity awards or other securities and any promised terms thereof.

(i) The Spreadsheet will accurately set forth, as of the Closing, the information required by Section 6.8. The number of Company Shares set forth in the Spreadsheet as being owned by a Person, or subject to Company Options held by such Person, will constitute the entire interest of such Person in the issued and outstanding Company Share Capital, voting securities or any other Equity Interests of the Company. As of the Closing, no Person not disclosed in the Spreadsheet will have a right to acquire from the Company any shares of Company Share Capital, Company Options or any other Equity Interests of the Company. In addition, the shares of Company Share Capital and/or Company Options disclosed in the Spreadsheet will be, as of the Closing, free and clear of any Encumbrances, including those created by the Charter Documents or any Contract to which the Company is a party or by which it is bound.

2.3 Authority; Noncontravention.

(a) Authority. The Company has all requisite corporate power and authority to enter into this Agreement and to consummate the Transactions. The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Company Board of Directors, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the Company Board of Directors, has (i) approved this Agreement and approved the Share Purchase and the other Transactions and determined that this Agreement and the Transactions, including the Share Purchase, upon the terms and subject to the conditions set forth herein, advisable, fair to and in the best interests of the Company and the Company Shareholders, (ii) approved this Agreement in accordance with the provisions of Israeli Law and the Charter Documents and (iii) directed that the adoption of this Agreement be submitted to the Company Shareholders for consideration and unanimously recommended that all of the Company Shareholders adopt this Agreement. Other than the Required Company Vote, no vote of the Company Shareholders is required in connection with the execution, delivery or performance of this Agreement by the Company or the Company Shareholders or the consummation of the Share Purchase and the other Transactions, and upon obtaining the Required Company Vote, the Company shall have obtained the required approval of the Transactions from the Company Shareholders in accordance with the Charter Documents and Israeli Law, each as in effect at the time of such approval.

(b) Non-Contravention. The execution and delivery of this Agreement by the Company does not, and the consummation of the Transactions will not, (i) result in the creation of any Encumbrance, on any of the material properties or assets of the Company or any of the shares of Company Share Capital, (ii) except as set forth in Schedule 2.3(b)(ii) of the Company Disclosure Schedule, conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (A) any provision of the Charter Documents or any resolution adopted by the Company Shareholders or Company Board of Directors, (B) any Material Contract or (C) any Applicable Law, or (iii) contravene, conflict with or result in a violation of, or give any Governmental Entity or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, Israeli Law or any Order to which the Company or any of the assets owned or used by the Company is subject.

(c) Other than customary notices to the Israeli Registrar of Companies following the Closing and filing required under the HSR Act, no consent, approval, Order or authorization of, or registration, qualification, designation, declaration or filing with, or notice to, any Governmental Entity or any other Person is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the Transactions (including any filings and notifications as may be required to be made by the Company in connection with the Share Purchase under the Israeli Restrictive Trade Practices Law, 5748-1988 and other Applicable Law), except for such consents, Orders, declarations, authorizations, filings, approvals, notices and registrations that, if not obtained or made, would not adversely affect, and would not reasonably be expected to adversely affect, the Company's ability to perform or comply with the covenants, agreements or obligations of the Company herein or to consummate the Transactions in accordance with this Agreement and Applicable Law.

(d) The execution and delivery of this Agreement by the Company does not, and the consummation of the Transactions will not contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate or modify, any authorization from a Governmental Entity that is held by the Company or that otherwise relates to the Company's Business or to any of the assets owned or used by the Company.

2.4 Company Financial Statements: Absence of Certain Changes.

(a) Attached as Schedule 2.4(a) of the Company Disclosure Schedule are the Company's consolidated audited balance sheet and statements of operations and cash flows for the fiscal year of the Company ended December 31, 2018, and the Company's consolidated unaudited balance sheet and statements of operations and cash flows for the nine month period ended September 30, 2019 in compliance with Accounting Standards Codification (ASC) 842, (such balance sheet, the "**Company Balance Sheet**" and the date thereof, the "**Company Balance Sheet Date**", and all such financial statements being collectively referred to herein as the "**Company Financial Statements**"). Such Company Financial Statements (i) were prepared, to the extent applicable and in all material respects, in accordance with the books and records of the Company and the Subsidiaries, (ii) present fairly in all material respects the financial condition of the Company and the Subsidiaries at the date or dates therein indicated and the results of operations for the period or periods therein specified and (iii) have been prepared in accordance with GAAP, except, in the case of unaudited Company Financial Statements, for the omission of notes thereto and customary year-end audit adjustments and (iv) have been fully approved by the board of directors or shareholders if so required by any Applicable Laws.

(b) Neither the Company nor any Subsidiary has any Liabilities whether or not required to be included in financial statements prepared in accordance with GAAP, other than (i) those set forth or adequately provided for in the Company Balance Sheet included in the Company Financial Statements, (ii) those incurred in the conduct of the Company's or the Subsidiaries' business since the Company Balance Sheet Date in the ordinary course and consistent with past practice that are of the type that ordinarily recur and that are not, individually or in the aggregate, material in nature or amount, (iii) Transaction Expenses reflected on the Company Closing Financial Certificate and (iv) Liabilities that are listed on Schedule 2.4(b) of the Company Disclosure Schedule. Neither the Company nor any Subsidiary has any off balance sheet liability of any nature to, or any financial interest in, any third party or entities, the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of debt expenses incurred by the Company or any the Subsidiary.

(c) Neither the Company nor any Subsidiary, nor to the Knowledge of the Company, any current employee, advisor, consultant or director of the Company or any Subsidiary, has identified or been made aware of any fraud, whether or not material, that involves the Company's or any Subsidiary's management or other current or former employees, consultants, advisors or directors of the Company or any the Subsidiary who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or any Subsidiary, or any claim or allegation regarding any of the foregoing.

(d) From June 30, 2019 until the Agreement Date:

(i) neither the Company nor any Subsidiary has declared or paid any dividends, or authorized or made any distribution upon or with respect to any Company Shares or any Equity Interest of the Subsidiaries;

(ii) neither the Company nor any Subsidiary has incurred any indebtedness for money borrowed or incurred any other non-ordinary course Liabilities in excess of \$25,000 individually or in excess of \$250,000 in the aggregate;

(iii) neither the Company nor any Subsidiary has made any loans, guarantees or advances, nor has provided any type of security interest whatsoever to any Person, other than ordinary advances for expenses;

(iv) neither the Company nor any Subsidiary has sold, exchanged or otherwise disposed of any material assets or rights other than non-exclusive licenses in the ordinary course of its business;

(v) neither the Company nor any Subsidiary has entered into any transactions with any of its officers, directors or employees, or any immediate family member of any such individuals, or any entity controlled by any of such individuals (other than for employment as an officer or director);

(vi) there has not been any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company or the Subsidiaries;

(vii) there has not been any waiver by the Company or any Subsidiary of a valuable right or of a material debt owed to it;

(viii) there has not been any material change or amendment to a Material Contract, except for changes or amendments that are expressly provided for in this Agreement;

(ix) other than in the ordinary course of business or as required by the applicable employment agreement or offer letter, there has not been any material change in any compensation or benefits arrangement or agreement with any employee, officer, director or shareholder of the Company or any Subsidiary;

(x) there has not been any resignation or termination of employment of any officer or employee at management level or above of the Company or any Subsidiary and the Company has no Knowledge of any impending resignation or termination of employment of any such officer or employee at management level or above;

(xi) there has not been any change in any tax election or method of tax accounting made or used by the Company or any Subsidiary, or any settlement or final determination of any tax audit, claim, investigation, litigation or other proceeding or assessment involving the Company or any Subsidiary;

(xii) there has not occurred any event or events that have had, or would reasonably be expected to have, a Material Adverse Effect; or

(xiii) there has not been any arrangement or commitment by the Company or any Subsidiary or any other Person acting on behalf of the Company or any Subsidiary to do any of the things described in this [Section 2.4\(d\)](#).

2.5 Litigation. There is no private or governmental Legal Proceeding before any Governmental Entity, or, to the Knowledge of the Company, threatened in writing, against the Company or any Subsidiary or any of their respective assets or properties or any of their respective directors, officers or



employees (in their capacities as such or relating to their employment, services or relationship with the Company or any Subsidiary). There is no unresolved Order against the Company or any Subsidiary, any of their respective assets or properties, or, to the Knowledge of the Company, any of their respective directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company or any Subsidiary). Neither the Company nor any Subsidiary has any Legal Proceeding pending against any other Person.

2.6 Restrictions on Business Activities. There is no Contract or Order binding upon the Company or any Subsidiary which has or would reasonably be expected to have, whether before or after consummation of the Share Purchase, the effect of prohibiting or impairing any current or presently proposed business practice of the Company or any Subsidiary, any acquisition of property by the Company or any Subsidiary or the conduct of business in any material respect by the Company or any Subsidiary as currently conducted or as presently proposed to be conducted by the Company or the Subsidiaries.

2.7 Compliance with Laws; Governmental Permits.

(a) Since January 1, 2016, each of the Company and each Subsidiary has complied in all material respects with, is not in material violation of, and has not received any written notices of violation with respect to, any Applicable Law with respect to the conduct of its business, or the ownership or operation of its business.

(b) Each of the Company and each Subsidiary has obtained each governmental consent, license, permit, grant, or other authorization of a Governmental Entity (i) pursuant to which the Company or any Subsidiary currently operates or holds any interest in any of its assets or properties or (ii) that is required for the operation of the Company's or any Subsidiary's business or the holding of any such interest in each case except for such consents, licenses, permits grants and other authorizations the failure to obtain would not be material to the business of the Company and the Subsidiaries taken as a whole (all of the foregoing consents, licenses, permits, grants, and other authorizations, collectively, the "**Company Authorizations**"). All of the Company Authorizations are in full force and effect. Since January 1, 2016, neither the Company nor any Subsidiary has received any written notice or other written communication from any Governmental Entity regarding (i) any actual or possible violation of any Company Authorization or any failure to comply with any term or requirement of any Company Authorization or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Company Authorization. None of the Company Authorizations will be terminated or impaired, or will become terminable, in whole or in part, as a result of the consummation of the transactions contemplated by this Agreement.

2.8 Title to Property and Assets. Each of the Company and each Subsidiary has good and marketable title to all of their respective properties, and interests in properties and assets, real and personal, reflected on the Company Financial Statements or acquired after the Company Balance Sheet Date, except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice, or, with respect to leased properties and assets, valid leasehold interests in such properties and assets which afford the Company valid leasehold possession of the properties and assets that are the subject of such leases, in each case, free and clear of all Encumbrances (other than Permitted Encumbrances). The tangible property and equipment of each of the Company and each Subsidiary that are used in the operations of their respective businesses are in such operating condition and repair, subject to normal wear and tear, as necessary for the conduct of the business of the Company as currently conducted and currently proposed to be conducted. All properties used in the operations of the Company or any Subsidiary are reflected on the Company Financial Statements to the extent required under GAAP to be so reflected. Schedule 2.8 of the Company Disclosure Schedule identifies each parcel of real property leased by the Company or any Subsidiary. The

Company and any Subsidiary have adequate rights of ingress and egress into any real property used in the operation of their respective businesses. The Company has heretofore made available to Acquirer's counsel true, correct and complete copies of all leases, subleases and other agreements under which the Company and/or the Subsidiaries use or occupy or have the right to use or occupy, now or in the future, any real property or facility, including all modifications, amendments and supplements thereto. Neither the Company nor any Subsidiary currently owns or has ever owned any real property.

## 2.9 Intellectual Property.

(a) As used in this Agreement, the following terms have the meanings indicated below:

(i) "**Company IP**" means any and all Third Party Intellectual Property used or held for use in the conduct of the business of the Company or any Subsidiary as currently conducted or as currently proposed to be conducted by the Company or any Subsidiary and any and all Company-Owned IP, including the Company Registered Intellectual Property listed in Schedule 2.9(b)(vi).

(ii) "**Company-Owned IP**" means Company IP that is owned by or is purportedly owned by to the Company or any Subsidiary.

(iii) "**Company Products**" means (A) all products or services developed, produced, marketed, licensed, sold, distributed or performed by or on behalf of the Company or any Subsidiary since inception and (B) all products or services currently under development by the Company or any Subsidiary or planned to be developed by the Company or any Subsidiary for Q1'20 and Q2'20 as described on pages 7, 9, 11 and 12 of the Company Roadmap excluding (x) the items identified on page 7 as Network Visibility, Data Classification and Anomaly Engine, and (y) the items identified on page 11 as Unified Incident Mgmt. and Prevention. "**Company Roadmap**" means that certain document "1.12.5 - Roadmap and GTM Alignment\_Oberlin\_Shared\_Data Room.pptx", made available by Company to Acquirer, Parent and its representatives in the virtual data room established by the Company in connection with the Transaction.

(iv) "**Company Registered Intellectual Property**" means all United States, international and foreign (including Israeli): (A) patents and patent applications (including provisional applications), (B) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks, (C) registered Internet domain names, (D) registered copyrights and applications for copyright registration, and (E) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Entity, in each case that is owned by or registered or filed in the name of, the Company or any Subsidiary.

(v) "**Company Source Code**" means, collectively, any software source code, any material portion or aspect of software source code, or any material proprietary algorithm contained in or relating to any software source code of any Company-Owned IP or Company Products.

(vi) "**Governmental Grant**" means any grant, loan, incentive, subsidy, award, participation, exemption, status, cost sharing arrangement, reimbursement arrangement or other benefit (including Tax benefits), relief or privilege provided or made available by or on behalf of or under the authority of the State of Israel, including the Israeli National Authority for Technological Innovation, formerly known as the office of the Chief Scientist of the Israeli Ministry of Economy of the State of Israel (the "**OCS**"), the BIRD Foundation and other bi- or multi-national grant programs for the financing of

research and development or other similar funds, the European Union, the Fund for Encouragement of Marketing Activities of the Israeli government or any other Governmental Entity.

(vii) **“Intellectual Property”** means any and all industrial and intellectual property and all rights associated therewith throughout the world, including all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, all industrial designs and any registrations and applications therefor, all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor, Internet domain names, Internet and World Wide Web URLs or addresses, all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, all computer software, including all source code, object code, firmware, development tools, files, records and data, all schematics, netlists, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, and all rights in prototypes, breadboards and other devices, all databases and data collections, all moral and economic rights of authors and inventors, however denominated, and any similar or equivalent rights to any of the foregoing, and all tangible embodiments of the foregoing.

(viii) **“Third Party Intellectual Property”** means any and all Intellectual Property owned by a third party.

(b) **Status.**

(i) The Company and its Subsidiaries (A) own or (B) have the valid right or license to all Company IP. The Company IP is sufficient for the conduct of the Business.

(ii) Neither the Company nor any Subsidiary has transferred ownership of any Intellectual Property that is or was Company-Owned IP, to any third party, or knowingly permitted their rights in any Intellectual Property that is or was Company-Owned IP to enter the public domain or, with respect to any Intellectual Property for which the Company or any Subsidiary has submitted an application or obtained a registration, lapse (other than through the expiration of registered Intellectual Property at the end of its maximum statutory term).

(iii) The Company and each Subsidiary owns and has good and exclusive title to each item of Company-Owned IP, free and clear of any Encumbrances (other than Permitted Encumbrances and Encumbrances that will be released at Closing). The right, license and interest of the Company or any Subsidiary in and to all Third Party Intellectual Property rights licensed by the Company or any Subsidiary from a third party are free and clear of all Encumbrances (other than Permitted Encumbrances).

(iv) Neither the execution and delivery or effectiveness of this Agreement, the consummation of the transactions contemplated by the Agreement, nor the performance of the Company’s obligations under this Agreement will cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of any Company-Owned IP, or impair the right of the Company, any Subsidiary, Parent or Acquirer to use, possess, sell or license any Company-Owned IP or portion thereof. After the Closing, all Company-Owned IP will be fully transferable, alienable or licensable by Parent or Acquirer without restriction and without payment of any kind to any third party.

(v) Schedule 2.9(b)(v) of the Company Disclosure Schedule lists all Company Products currently marketed by the Company by name and version number.

(vi) Schedule 2.9(b)(vi) of the Company Disclosure Schedule lists all Company Registered Intellectual Property including the jurisdictions in which each such item of Intellectual Property has been issued or registered or in which any application for such issuance and registration has been filed, or in which any other filing or recordation has been made. Schedule 2.9(b)(vi) of the Company Disclosure Schedule sets forth a list of all actions that are required to be taken by the Company or the Subsidiaries, including payment of applicable registration, maintenance and/or renewal fees, within 120 days of the Closing Date with respect to any of the Company Registered Intellectual Property in order to avoid impairment to or abandonment of such Company Registered Intellectual Property.

(vii) Each item of Company Registered Intellectual Property is valid and subsisting (or in the case of applications, applied for), all registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been paid and all documents, recordations and certificates in connection with such Company Registered Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States, Israel and/or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company Registered Intellectual Property and recording the Company's and its Subsidiaries' ownership interests therein.

(viii) Neither the Company nor any Subsidiary is or shall be as a result of the execution and delivery or effectiveness of this Agreement or the performance of the Company's obligations under this Agreement, in breach of any Contract of the Company or any Subsidiary governing any Company IP (the "**Company IP Agreements**") and the consummation of the Transactions will not result in the modification, cancellation, termination, suspension of, or acceleration of any rights, obligations or payments with respect to the Company IP Agreements, or give any non-Company party to any Company IP Agreement the right to do any of the foregoing. Following the Closing, the Company and its Subsidiaries will be permitted to exercise all of the Company's and the Subsidiaries' rights under the Company IP and Company IP Agreements to the same extent the Company or applicable Subsidiary would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company or applicable Subsidiary would otherwise be required to pay.

(ix) None of the Company IP Agreements grants any third party exclusive rights to or under any Company-Owned IP or grants any third party the right to sublicense any Company-Owned IP.

(x) There are no royalties, honoraria, fees or other payments payable by the Company or any Subsidiary to any Person (other than salaries payable to employees, consultants and independent contractors in the scope of their engagement) as a result of the ownership, use, possession, license-in, license-out, sale, marketing, advertising or disposition of any Company-Owned IP by the Company or any Subsidiary.

(xi) To the Company's Knowledge, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any Company-Owned IP, by any third party, including any Company Employee. Neither the Company nor any Subsidiary has brought any action, suit or proceeding against a third party for infringement or misappropriation of any Company-Owned IP or breach of any Company IP Agreement.

(xii) Neither the Company nor any Subsidiary has been sued in any suit, action or proceeding (or received any written notice or, to the Company's Knowledge, threat) which involves a claim of infringement or misappropriation of any Third Party Intellectual Property by the Company or its Subsidiaries or which contests the validity, ownership or right of the Company or any Subsidiary to exercise any Company IP. Neither the Company nor any Subsidiary has received any written communication that involves an offer to license or grant any other rights or immunities under (A) any patent rights or (B) any other Third Party Intellectual Property to avoid infringement.

(xiii) The operation of the Business, including (A) the design, development, manufacturing, reproduction, marketing, licensing, sale, offer for sale, importation, distribution, provision and/or use of any Company Product in any country in the world and (B) the Company's or any Subsidiary's use of any product, device or process used in the Business does not and will not infringe or misappropriate any Third Party Intellectual Property or constitute unfair competition or unfair trade practices under the laws of any jurisdiction and there is no substantial basis for a claim that the design, development, manufacturing, reproduction, marketing, licensing, sale, offer for sale, importation, distribution, provision and/or use of any Company Product or the operation of the business of the Company or any Subsidiary is infringing or has infringed on or misappropriated any Third Party Intellectual Property.

(xiv) None of the Company-Owned IP, the Company Products, the Company or any Subsidiary is subject to any outstanding Order or Contract (A) restricting in any manner the use, transfer, or licensing by the Company or any Subsidiary of any Company-Owned IP except for restrictions on the use of Open Source Materials and "off the shelf" licenses contained in the Contracts governing the use of such Third Party Intellectual Property that is used in any Company Product, (B) which may affect the validity or enforceability of any Company-Owned IP, or (C) restricting the conduct of the business of the Company or any Subsidiary in order to accommodate Third Party Intellectual Property.

(xv) Neither the Company nor any Subsidiary has received any written opinion that any Company Product or the operation of the Business infringes or misappropriates any Third Party Intellectual Property.

(xvi) Each of the Company and each Subsidiary has secured from all of its consultants, employees and independent contractors who independently or jointly contributed to the conception, reduction to practice, creation or development of any Company-Owned IP unencumbered and unrestricted exclusive ownership of, all such contributions created in connection with their services to the Company or any Subsidiary. Without limiting the foregoing, the Company and each Subsidiary has obtained proprietary information and invention disclosure and assignment agreements from all current and former employees and consultants of the Company and each Subsidiary and the Company and each Subsidiary has agreed with all of their respective current and former employees, consultants, and independent contractors, that the Company or any Subsidiary shall be the author of all works that such employees, consultants, or independent contractors have independently or jointly created for the Company or any Subsidiary during or otherwise in connection with their services to the Company or any Subsidiary, and all such respective current and former employees, consultants, and independent contractors have waived and agreed not to assert any and all moral rights with respect to the Company-Owned IP. All current and former Israeli Company Employees have expressly and irrevocably waived, and none of such persons has the right to receive, compensation in connection with "Service Inventions" under Section 134 of the Israeli Patent Law-1967. The Company has made available to Acquirer copies of all forms of such disclosure and assignment documents currently and historically used by the Company and each Subsidiary and, in the case of patents and patent applications, the Company has made available to Acquirer copies of all such assignments.

(xvii) No current (or, to the Company's Knowledge, former) employee, consultant or independent contractor of the Company or any Subsidiary: (i) is in violation of any term or covenant of any Contract executed with the Company or any Subsidiary relating to employment, invention disclosure, invention assignment, non-disclosure or non-competition or any other Contract with any other party by virtue of such employee's, consultant's or independent contractor's being employed by, or performing services for, the Company or any Subsidiary or using trade secrets or proprietary information of others without permission or (ii) has developed any technology, software or other copyrightable, patentable or otherwise proprietary work for the Company or any Subsidiary that is subject to any agreement under which such employee, consultant or independent contractor has assigned or otherwise granted to any third party any rights (including Intellectual Property rights) in or to such technology, software or other copyrightable, patentable or otherwise proprietary work.

(xviii) The employment of any employee of the Company or any Subsidiary or the use by the Company or any Subsidiary of the services of any consultant or independent contractor does not subject the Company or any Subsidiary to any Liability to any third party for improperly soliciting such employee, consultant or independent contractor to work for the Company or any Subsidiary, whether such Liability is based on contractual or other legal obligations of the Company to such third party.

(xix) No current or former employee, consultant or independent contractor of the Company or any Subsidiary has any right, license, claim or interest whatsoever in or with respect to any Company-Owned IP.

(xx) To the extent that any Intellectual Property that is or was Third Party Intellectual Property is incorporated into, integrated or bundled with, or used by the Company or any Subsidiary in the development, manufacture or compilation of any of the Company Products, the Company or a Subsidiary has a written agreement with such third party with respect thereto pursuant to which the Company or a Subsidiary either (A) has obtained complete, unencumbered and unrestricted ownership of, and is the exclusive owner of such Intellectual Property by operation of law or by valid assignment or (B) has obtained perpetual, non-terminable (other than for breach) licenses sufficient for the conduct of the Business to all such Third Party Intellectual Property.

(xxi) The Company and the Subsidiaries have taken commercially reasonable steps to protect and preserve the confidentiality of all confidential or non-public information included in the Company IP ("**Confidential Information**"). All disclosure of Confidential Information owned by the Company or any Subsidiary to a third party and their use thereof has been pursuant to the terms of a written Contract between the Company or a Subsidiary and such third party. All use, disclosure or appropriation of Confidential Information by the Company or any Subsidiary not owned by the Company or the Subsidiaries has been pursuant to the terms of a written agreement between the Company or the Subsidiaries and the owner of such Confidential Information, or is otherwise lawful. All current and former employees and consultants of the Company or any Subsidiary having access to Confidential Information or proprietary information of any of their respective customers or business partners have executed and delivered to the Company an agreement regarding the protection of such Confidential Information or proprietary information (in the case of proprietary information of the Company's or any Subsidiary's customers and business partners, to the extent required by such customers and business partners).

(xxii) Schedule 2.9(b)(xxii) of the Company Disclosure Schedule lists all Open Source Materials that are incorporated into, or integrated or distributed with, any Company Product and indicates the applicable license and license version therefor. The Company is in compliance with the terms and conditions of all licenses for such Open Source Materials used by the Company or any Subsidiary in connection with the development, production or distribution of any Company Products.

(xxiii) Neither the Company nor any Subsidiary has (A) incorporated Open Source Materials into, or combined Open Source Materials with, the Company-Owned IP or Company Products, (B) distributed Open Source Materials in conjunction with any Company-Owned IP or Company Products or (C) used Open Source Materials, in each case, in such a way that, with respect to (A), (B), or (C), creates, or purports to create obligations for the Company or any Subsidiary with respect to any such Company-Owned IP to grant, or purport to grant, to any third party, any rights or immunities under any such Company-Owned IP (including using any Open Source Materials that require, as a condition of use, modification and/or distribution of such Open Source Materials that other Company-Owned IP incorporated into, derived from or distributed with such Open Source Materials be (x) disclosed or distributed in source code form, (y) be licensed for the purpose of making derivative works or (z) be redistributable at no charge).

(xxiv) The software included in the Company Products or software used in the provision of any Company Product (A) is free from known material defects or deficiencies, errors in design, and operating defects, and (B) does not contain any disabling mechanisms or protection features that are designed to disrupt, disable, harm or otherwise impede in any manner the operation of, or provide unauthorized access to, a computer system or network or other device on which such Company Product software is stored or installed or damage or destroy any data or file without the user's consent.

(xxv) All Company Products sold, licensed, leased or delivered by the Company or any Subsidiary to customers and all services provided by or through the Company or any Subsidiary to customers on or prior to the Closing Date conform in all material respects to applicable consumer protection legislation requirements contractual commitments, express and implied warranties and to any representations provided to customers and conform in all material respects to packaging, advertising and marketing materials and to applicable product or service specifications or documentation, all to the extent any such warranties, representations, materials, specifications or documentation are not subject to legally effective express exclusions thereof. Neither the Company nor any Subsidiary has any material Liability (and, to the Knowledge of the Company, there is no legitimate basis for any present or future Legal Proceeding against the Company or any Subsidiary giving rise to any material Liability relating to the foregoing Contracts) for replacement or repair thereof or other damages in connection therewith in excess of any reserves therefor reflected on the Company Financial Statements. The Company Products can be legally sold in each geographical market in which they are sold or marketed.

(xxvi) The Company has used commercially reasonable efforts to document all material bugs, errors and defects in all the Company Products, and such documentation is retained and is available internally at the Company.

(xxvii) For all software used by the Company or any Subsidiary in providing services, or in developing or making available any of the Company Products, the Company or applicable Subsidiary has implemented any and all security patches or upgrades that are generally available for that software.

(xxviii) No (A) government funding, (B) facilities of a university, college, other educational institution or research center or (C) funding from any Person (other than funds received in consideration for shares of Company Share Capital) was used in the development of the Company-Owned IP. No current or former employee, consultant or independent contractor of the Company or any Subsidiary, who was involved in, or who contributed to, the creation or development of any Company-Owned IP, has performed services for any government (including the Israel Defense Forces), university, college or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or any Subsidiary.

(xxix) Neither the Company nor any Subsidiary nor any other Person then acting on their behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure, delivery or license by the Company or any Subsidiary or any Person then acting on their behalf to any Person of any Company Source Code. Schedule 2.9(b)(xxix) of the Company Disclosure Schedule identifies each Contract pursuant to which the Company or any Subsidiary has deposited, or is or may be required to deposit, with an escrow holder or any other Person, any of the Company Source Code. The execution of this Agreement and consummation of the transactions contemplated by this Agreement, in and of themselves, would not reasonably be expected to result in the release from escrow of any Company Source Code.

(xxx) Neither the Company nor any Subsidiary is now or has ever been a member or promoter of, or a contributor to, any development community, industry standards body or any similar organization that would reasonably be expected to require or obligate any of the Company or any Subsidiary to grant or offer to any other Person any license or right to any Company-Owned IP. In addition, if any Company-Owned IP were acquired from a Person other than an employee of or contractor to the Company or any Subsidiary, then, to the Company's Knowledge, such Person is not now nor has ever been a member or promoter of, or a contributor to, any development community, industry standards body or any similar organization that could reasonably be expected to have required or obligated such Person to grant or offer to any other Person any license or right to such Intellectual Property. Neither the Company nor any Subsidiary has a present obligation to grant or offer to any other Person any license or right to any Company-Owned IP by virtue of the Company's, the Subsidiaries' or any other Person's membership in, promotion of, or contributions to any development community, industry standards body or any similar organization. Neither the Company nor any Subsidiary is now or has ever been a member of any patent non-aggression, pooling, cross-licensing or similar community, network or organization, or a party to any related or similar Contract, that restricts in any manner the enforcement of patent rights included in the Company-Owned IP or requires, or in the event of an acquisition or transfer of Company-Owned IP could require, the grant of a license or other immunity under such patent rights to another Person.

(xxxi) The Company and the Subsidiaries maintain and, since January 1, 2016, have maintained at all times posted online privacy policies on all commercial Internet websites owned, maintained or operated by the Company or any Subsidiary at all times. The Company's and the Subsidiaries' data, privacy and security practices comply in all material respects with, and at all times have complied in all material respects with, all Contracts pursuant to which the Company or any Subsidiary Processes or has Processed Personal Data or has otherwise undertaken data protection commitments made by the Company or any Subsidiary, including, but not limited to, commitments contained in the Company's or the Subsidiaries' online privacy policies (collectively, the "**Company Privacy Commitments**") and with Applicable Law (including database registration). Without limiting the generality of the foregoing, the Company and each Subsidiary have since January 1, 2016 (i) had the legal bases (including providing required notice and obtained any necessary consents from end users) required for the Processing of Personal Data for which it is a controller or processor as conducted by or for the Company or the Subsidiaries, and (ii) appropriately honored any privacy choices (including opt-in/opt-out preferences) of end users relating to Personal Data. In addition, the Company and each Subsidiary have provided adequate notice and obtained any necessary consents from data subjects required for the Processing of Personal Data as conducted by or for the Company or the Subsidiaries. Neither the execution, delivery and performance of this Agreement nor the taking over by Acquirer of the Personal Data held by the Business will cause, constitute, or result in a breach or violation of any Applicable Laws or Company Privacy Commitments. Neither the Company nor any Subsidiary has been a party or the subject of any Legal Proceeding, Order, regulatory opinion or audit, and to the Knowledge of the Company no such actions are or have been



threatened, against the Company or any Subsidiary by any Governmental Entity or other Person (i) alleging or confirming non-compliance with Applicable Law pertaining to Personal Data or Company Privacy Commitments by the Company or any Subsidiary, (ii) permitting or mandating relevant Governmental Entities to investigate, requisition information from, or enter the premises of, the Company or any Subsidiary for the purposes of examining the Company's or the Subsidiaries' practices pertaining to Personal Data, or (iii) claiming compensation from the Company or any Subsidiary on the basis that the Company or any Subsidiary is noncompliant with Applicable Laws pertaining to Personal Data or Company Privacy Commitments. There is no circumstance (including any circumstance arising as the result of an audit or inspection carried out by any Governmental Entity) that would reasonably be expected to give rise to, any Legal Proceeding or Order from a Governmental Entity or other Person (including an end user) relating to the matters set forth in clauses (i) through (iii) of the preceding sentence. The Company and each Subsidiary have established and maintain appropriate technical, physical and organizational measures and security systems, plans and technologies related to the Systems and Personal Data in compliance with data security requirements applicable to the Company and the Subsidiaries under Applicable Laws and Company Privacy Commitments, and at all times have taken all industry-standard measures (including implementing and monitoring compliance with adequate measures with respect to technical and physical security) reasonably necessary to protect Personal Data against loss and against unauthorized access, use, modification, disclosure or other misuse to comply with the Company's and the Subsidiaries' applicable contractual commitments and Applicable Laws, including measures that (i) are designed to identify internal and external risks to the security of the confidential information and Personal Data, and (ii) implement and monitor administrative, electronic and physical safeguards to appropriately control those risks and (iii) maintain an incident response program in compliance with Applicable Law in the case of any breach of security compromising Personal Data. Section 2.9(b)(xxxi) of the Company Disclosure Schedule describes all of the databases maintained by the Company that are covered by Israel's data protection law (the Protection of the Privacy Laws, 5741-1981) and whether such databases are registered with any Governmental Entity in Israel. The Company complies with the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (applicable as of May 25, 2018) in all material respects as required by Applicable Laws.

(xxxii) There has been no Security Incident or violation of any Company Privacy Commitments in relation to Company Data, employee data or confidential information which has occurred or, to the Company's Knowledge, is threatened. There has been no unauthorized or illegal Processing of any Company Data, and, to the Company's Knowledge, no circumstance has arisen in which Applicable Laws would require the Company or any Subsidiary to notify a Governmental Entity or any Person of a Security Incident.

(xxxiii) Where the Company or any Subsidiary uses a data processor to Process Personal Data, there is in existence a written Contract between the Company or a Subsidiary and each such data processor that complies with the requirements of all Applicable Laws and Company Privacy Commitments. The Company has made available to Acquirer true, correct and complete copies of all such Contracts. To the Company's Knowledge, such data processor has not breached any such Contracts pertaining to Personal Data Processed by such Persons on behalf of the Company or any Subsidiary.

(xxxiv) Neither the Company nor any Subsidiary has transferred or authorized the transfer of Personal Data outside of the originating country, except where such transfers have complied with the requirements of Applicable Laws and Company Privacy Commitments, and neither the Company nor any Subsidiary knowingly Processes the Personal Data of any natural Person under the age of majority in the relevant jurisdiction (for example, under 13 in the US and under 14 in Korea).

(xxxv) The computer, information technology and data processing systems, facilities and services controlled by the Company or any Subsidiary, including all software, hardware, networks, communications facilities, platforms and related systems and services in the custody or control of the Company or any Subsidiary (collectively, “**Systems**”), are reasonably sufficient for the existing needs of the Company and each Subsidiary, including as to capacity, scalability and ability to process current peak volumes in a secure and timely manner. The Systems are in good working condition to effectively perform all computing, information technology and data processing operations of the Company and each Subsidiary as currently conducted. Except as set forth in Schedule 2.9(b)(xxxv) of the Company Disclosure Schedule, all Systems, other than software that is duly and validly licensed to the Company or any Subsidiary pursuant to a valid and enforceable Contract, are owned and operated by or are under the control of the Company or applicable Subsidiary. From and after the Closing Date, the Company and any Subsidiary will have and be permitted to exercise the same rights with respect to the Systems as the Company and any Subsidiary would have had and been able to exercise had this Agreement not been entered into and the Share Purchase and Transactions not occurred, without the payment of any additional amounts or consideration other than ongoing fees, royalties, or payments which the Company or any Subsidiary would otherwise have been required to pay anyway. The Company has developed and maintains appropriate disaster recovery plans, procedures and facilities for the Business.

(xxxvi) The Company has never received any Governmental Grant.

(xxxvii) All rights in, to and under all Intellectual Property created by the founders for or on behalf or in contemplation of the Company (i) prior to the inception of the Company or (ii) prior to their commencement of employment with the Company have been duly and validly assigned to the Company, and the Company has no reason to believe that any such Person is unwilling to provide the Company or its designee with such cooperation as may reasonably be required to complete and prosecute all appropriate patent and copyright filings related thereto.

2.10 Taxes.

(a) The Company and the Subsidiaries have properly completed and timely filed all income and other material Tax Returns required to be filed by it prior to the Closing Date, have timely paid all material Taxes required to be paid by them (whether or not shown on any Tax Return), and have no material Liability for Taxes in excess of the amounts so paid. All such Tax Returns were complete and accurate and have been prepared in compliance with Applicable Law. There is no written claim for Taxes being asserted against the Company or any Subsidiary that has resulted in an Encumbrance against any of the assets of the Company or any Subsidiary.

(b) The Company has made available to Acquirer true, correct and complete copies of all Tax Returns filed since January 1, 2017, examination reports and statements of deficiencies, adjustments and proposed deficiencies and adjustments in respect of the Company and the Subsidiaries.

(c) The Company Balance Sheet reflects all material Liabilities for unpaid Taxes of the Company and the Subsidiaries for periods (or portions of periods) through the Company Balance Sheet Date. Neither the Company nor any Subsidiary has any Liability for unpaid Taxes accruing after the Company Balance Sheet Date except for Taxes arising in the ordinary course of business consistent with past practice following the Company Balance Sheet Date. Neither the Company nor any Subsidiary has any Liability for Taxes that are not included in the calculation of Company Net Working Capital.

(d) There is (i) no past or pending audit of, or Tax controversy associated with, any Tax Return of the Company and the Subsidiaries that has been or is being conducted by a Tax Authority, (ii) no other procedure, proceeding or contest of any refund or deficiency in respect of Taxes pending or on

appeal with any Governmental Entity, (iii) no extension of any statute of limitations on the assessment of any Taxes granted by the Company or any Subsidiary currently in effect and (iv) no agreement to any extension of time for filing any Tax Return that has not been filed. No claim has ever been made by any Governmental Entity in writing in a jurisdiction where the Company and the Subsidiaries do not file Tax Returns that the Company and the Subsidiaries are or may be subject to taxation by that jurisdiction.

(e) The Company and the Subsidiaries have complied in all material respects with all Applicable Laws relating to the payment and withholding of Taxes, including from payments made or deemed made to employees, suppliers, lenders or any other Persons and have duly and timely withheld and paid over to the appropriate Tax Authority all amounts required to be so withheld and paid under all Applicable Laws. The Company and the Subsidiaries are in compliance with, and its records contain all information and documents necessary to comply with, all applicable information reporting and withholding requirements under all applicable Tax laws.

(f) The Company is duly registered for the purposes of Israeli value added tax and has complied in all material respects with all requirements concerning value added Taxes (“*VAT*”). The Company (i) has not made any exempt transactions (as defined in the Israel Value Added Tax law of 1975) and there are no circumstances by reason of which there might not be an entitlement to full credit of all VAT chargeable or paid on inputs, supplies, and other transactions and imports made by it, (ii) has collected and timely remitted to the relevant Tax Authority all output VAT which it is required to collect and remit under any Applicable Law; and (iii) has not received a refund for input VAT for which they are not entitled under any Applicable Law. No Subsidiary has ever been, and is currently not, required to effect Israeli VAT registration.

(g) Each Subsidiary has collected and remitted all sales, use, value added and similar Taxes (“*Sales Taxes*”) with respect to sales made or services provided and, for all sales or provision of services that are exempt from Sales Taxes that were made without charging or remitting Sales Taxes, each Subsidiary has received and retained any required Tax exemption certificates or other documentation qualifying such sale or provision of services as exempt.

(h) Neither the Company nor any Subsidiary is subject to any restrictions or limitations pursuant to Part E2 of the Ordinance or pursuant to any Tax ruling made with reference to the provisions of Part E2.

(i) The Company does not and has never participated or engaged in any transaction listed in Section 131(g) of the Ordinance and the Israeli Income Tax Regulations (Reportable Tax Planning), 5767-2006 promulgated thereunder nor is it subject to reporting obligations under Sections 131D or 131E of the Ordinance or similar provisions under the Israel Value Added Tax law of 1975.

(j) The Company is not and has never been a real property corporation (*Igud Mekarke'in*) within the meaning of this term under Section 1 of the Israeli Land Taxation Law (Appreciation and Acquisition), 5723-1963.

(k) Each of the Company and the Subsidiaries is a resident for Tax purposes solely in its country of incorporation, and neither the Company nor any Subsidiary is nor has it ever been subject to Tax in any jurisdiction other than its country of incorporation whether by virtue of having employees, a permanent establishment (within the meaning of an applicable Tax treaty), any other place of business in such jurisdiction or by virtue of exercising management and control in such jurisdiction. The Company is not, and has never been, treated as engaged in the conduct of a “trade or business” within the United States for purposes of Sections 875, 882, 884 or 1446 of the Code.

(l) Schedule 2.10(l) of the Company Disclosure Schedule sets forth a true, correct and complete list of any Tax exemption, Tax holiday or other Tax-sharing arrangement or order that the Company has in any jurisdiction, including the nature, amount and expiration date of such Tax exemption, Tax holiday or other Tax-sharing arrangement. The Company is in compliance with all terms and conditions required to maintain such Tax exemption, Tax holiday or other Tax-sharing arrangement or order of any relevant Governmental Entity and, to the Knowledge of the Company, the consummation of the transactions contemplated hereby will not have any adverse effect on the continuing validity and effectiveness of any such Tax exemption, Tax holiday or other Tax-sharing arrangement or order. The Company has never made any election to be treated or claimed any benefits as “Beneficial Enterprise” (*Mifaal Mutay*) or otherwise nor did it take any position of being a “Preferred Enterprise” (*Mifaal Muadaf*) or “Preferred Technological Enterprise” or otherwise under the Law for Encouragement of Capital Investments, 1959. The Company has not taken any position, or represented to any person, that it meets the requirements under the so called “The Angels Law” pursuant to Section 20 of the 2011-2012 Economic Policy Law (Legislation Amendments), 2011 and any amendments thereto.

(m) The Company has made available to Acquirer all documentation relating to any applicable Tax incentives. The Company and the Subsidiaries are in compliance with all the material requirements of all such Tax incentives and none of the incentives will be jeopardized by the consummation of the Transaction.

(n) The Company has not been and will not be required to include any adjustment in Taxable income for any Tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state, local or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Share Purchase.

(o) The Company does not own any interest in any controlled foreign corporation pursuant to Section 75B of the Israel Income Tax Ordinance, or other entity the income of which is required to be included in the income of the Company. The Company is not and has never been a controlled foreign corporation (as defined in Section 957 of the Code) or passive foreign investment company (as defined in Section 1297 of the Code).

(p) Neither the Company nor any Subsidiary (i) is a party to or bound by any Tax sharing, Tax indemnity, or Tax allocation agreement or (ii) have any Liability or potential Liability to another party under any such agreement, other than customary provisions in any commercial agreement entered into in the ordinary course of business that does not primarily relate to Tax matters.

(q) The Company and the Subsidiaries have disclosed on their Tax Returns any Tax reporting position taken in any Tax Return that could result in the imposition of penalties under Section 6662 of the Code (to the extent applicable) or any comparable provisions of state, local or foreign Applicable Law.

(r) Neither the Company nor any Subsidiary has participated in, and is not currently participating in, a “Listed Transaction” or a “Reportable Transaction” within the meaning of Section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b), or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign law (including Section 131(g) of the Ordinance).

(s) Neither the Company nor any predecessor of the Company is or has ever been a member of a consolidated, combined, unitary or aggregate group of which the Company or any predecessor of the Company was not the ultimate parent corporation.

(t) Neither the Company nor any Subsidiary has any Liability for the Taxes of any Person (other than the Company) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law), as a transferee or successor, by operation of Applicable Law, by Contract or otherwise.

(u) Neither the Company nor any Subsidiary will be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a Taxable period ending on or prior to the Closing Date, (ii) "closing agreement" described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) executed on or prior to the Closing Date, (iii) intercompany transactions (including any intercompany transaction subject to section 367 or 482 of the Code) or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) with respect to a transaction occurring on or prior to the Closing Date, (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) election under Section 108(i) of the Code made on or prior to the Closing Date or (vi) prepaid amount received on or prior to the Closing Date.

(v) Neither the Company nor any Subsidiary has received any private letter ruling from the IRS (or any comparable Tax ruling from any other Governmental Entity).

(w) Neither the Company nor any Subsidiary is a party to any joint venture, partnership or other Contract or arrangement that could be treated as a partnership for U.S. federal income Tax purposes.

(x) The Company has in its possession official foreign government receipts for any Taxes paid by it to any foreign Tax Authorities for which receipts have been provided or are customarily provided.

(y) Neither the Company nor any Subsidiary is, and it has ever been, a "United States real property holding corporation" within the meaning of Section 897 of the Code, and the Company has filed with the IRS all statements, if any, that are required under Section 1.897-2(h) of the Treasury Regulations.

(z) Neither the Company nor any Subsidiary has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for Tax-free treatment under Section 355 of the Code (i) in the two years prior to the Agreement Date or (ii) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Share Purchase.

(aa) The Company and the Subsidiaries have (i) complied with all Applicable Laws relating to the payment, reporting and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445, 1471, 1472 and 3406 of the Code or similar provisions under any foreign law), (ii) withheld (within the time and in the manner prescribed by Applicable Laws) from employee wages or consulting compensation and paid over to the proper Governmental Entity (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all Applicable Laws, including federal and state income Taxes, Federal Insurance Contribution Act, Medicare, Federal Unemployment Tax Act, relevant state income and employment Tax withholding laws, and (iii) timely filed all withholding Tax Returns, for all periods through and including the Closing Date.

(bb) Schedule 2.10(bb) of the Company Disclosure Schedule sets forth any entity classification election that has ever been made by or on behalf of the Company or any Subsidiary pursuant to Section 301.7701-3 of the Treasury Regulations other than the elections described in Section 1.2(b)(xxi).

(cc) The Company has delivered to Acquirer true, correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statements with the appropriate IRS Center with respect to any shares of Company Share Capital or other property issued by the Company to any of its employees, non-employee directors, consultants or other service providers initially subject to a vesting arrangement or substantial risk of forfeiture.

(dd) Schedule 2.10(dd) of the Company Disclosure Schedule lists all “nonqualified deferred compensation plans” (within the meaning of Section 409A of the Code) to which the Company is a party. Each such nonqualified deferred compensation plan to which the Company is a party complies with the requirements of paragraphs (2), (3) and (4) of Section 409A(a) by its terms and has been operated in accordance with such requirements. No event has occurred that would be treated by Section 409A(b) as a transfer of property for purposes of Section 83 of the Code. The Company is under no obligation to provide any gross up, indemnification, reimbursement or other payment for any Taxes, including any excise or additional Taxes, under Section 409A of the Code.

(ee) The exercise price of all Company Options (other than Company Options, which are subject to the treatment of Section 102 of the Ordinance and held by persons who are not and have not been U.S. taxpayers), is at least equal to the fair market value of the Company Share Capital on the date such Company Options were granted, and neither the Company nor Acquirer has incurred or will incur any Liability or obligation to withhold Taxes under Section 409A of the Code upon the vesting of any Company Options. All Company Options constitute “service recipient stock” (as defined under Treasury Regulation 1.409A-1(b)(5)(iii)) with respect to the grantor thereof.

(ff) The Company is in compliance with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology of the Company. The prices for any property or services (or for the use of any property) provided by or to the Company are arm’s length prices for purposes of all applicable transfer pricing laws, including Treasury Regulations promulgated under Section 482 of the Code and Section 85A of the Ordinance. No Tax Authority has proposed, asserted or otherwise discussed with the Company the possibility of a transfer pricing adjustment or failure to comply with any transfer pricing requirements. No transfer pricing adjustment is reasonably expected to be proposed, asserted or raised by any Tax Authority with respect to the Company either before or after the Closing Date (i) with respect to any transactions that occurred prior to the Closing Date or (ii) as a result of any transfer pricing documentation being provided to any Tax Authority by the Company prior to Closing Date.

(gg) No individual classified by the Company as a non-employee (such as, an independent contractor, leased employee or consultant) was or will be considered as an employee of the Company or any Subsidiary by an applicable Tax Authority.

(hh) Except as set forth on Schedule 2.10(hh) of the Company Disclosure Schedule, there is no agreement, plan, arrangement or other Contract covering any current or former employee or other service provider of the Company or any ERISA Affiliate to which the Company is a party or by which the Company or its assets is bound that, considered individually or considered collectively with any other such agreements, plans, arrangements or other Contracts, will, or would reasonably be expected to, as a result of the Transactions (whether alone or upon the occurrence of any additional or subsequent events), give rise directly or indirectly to the payment of any amount that would reasonably be expected to be characterized as a “parachute payment” within the meaning of Section 280G of the Code (or any corresponding or similar provision of state, local or foreign Tax law). No securities of the Company or any Company Securityholder is readily tradable on an established securities market or otherwise (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) such that the Company is ineligible to seek shareholder approval in a manner that complies with Section 280G(b)(5) of the Code.

The Company (i) does not have any obligation to provide any gross-up, indemnification, reimbursement or other payment for, and (ii) has not ever made or been required to make any such payments, or to withhold or report to the IRS, any excise Taxes under Section 280G or Section 4999 of the Code.

(ii) Each Company Option Plan that is intended to qualify as a capital gains route plan under Section 102 of the Ordinance (a “**102 Plan**”) has received a favorable determination or approval letter from, or is otherwise approved by, or deemed approved by passage of time without objection by, the ITA. Except as set forth in Schedule 2.10(ii) of the Company Disclosure Schedule, all Company Options and Company Shares that are subject to Tax under Section 102 of the Ordinance and which were issued under any 102 Plan have been granted and issued, as applicable, in compliance with the applicable requirements of Section 102 of the Ordinance (including the relevant sub-section of Section 102) and the written requirements and guidance of the ITA, including the filing of the necessary documents with the ITA, the appointment of an authorized trustee to hold the Company Options and Company Shares, and the due deposit of such Company Options and Company Shares with such trustee pursuant to the terms of Section 102 of the Ordinance and the guidance published by the ITA on July 24, 2012 and clarification dated November 6, 2012.

## 2.11 Employee Benefit Plans and Employee Matters.

(a) Employee List. Schedule 2.11(a) of the Company Disclosure Schedule contains a list of all current Company Employees as of the Agreement Date, which reflects each such Company Employee’s: (i) name, (ii) date(s) of hire, (iii) position, (iv) full-time or part-time status, (v) classification as either exempt or non-exempt from the overtime requirements under any Applicable Law, (vi) annual base salary or hourly wage rate, as applicable, (vii) target bonus or commission, as applicable, (viii) any other compensation payable or material fringe benefits to such Company Employee, including housing allowance, deferred compensation, or commission arrangements, vacation entitlement and accrued vacation or paid, time off, travel pay and car entitlement, if applicable, sick leave entitlement and accrual, recuperation pay entitlement and accrual, (ix) entitlement to pension arrangement and/or any other provident fund (including manager’s insurance, pensions fund and education fund), their respective contribution rates and the salary basis for such contributions whether such employee, is subject to Section 14 Arrangement under the Israeli Severance Pay Law - 1963 (“**Section 14 Arrangement**”), (x) notice period entitlement, if any, (xi) country and, if applicable, state of employment, (xii) country and, if applicable, state of residence and (xiii) whether the employee is on leave (and if so, the category of leave, the date on which such leave commenced and the date of expected return to work). Except for the employees listed in Section 2.11(a) who hold senior positions and therefore are exempt from the provisions of the Working Hours and Rest Law, 1951, all Company Employees in Israel receive a monthly salary that includes a global overtime component equal to 28%-30% of each Company Employee’s monthly salary. The Company has not made any promises or commitments to any of the Company Employees, whether in writing or not, with respect to any future changes or additions to any of their compensation or benefits. Other than as listed in Schedule 2.11(a) of the Company Disclosure Schedule, (i) there are no other employees employed by the Company, and (ii) all current and former employees of the Company have signed an employment agreement substantially in the form delivered or made available to Acquirer. No employee of the Company is entitled (whether by virtue of any law, contract or otherwise) to any benefits, entitlement or compensation that is not listed in Schedule 2.11(a) or Schedule 2.11(k) of the Company Disclosure Schedule or that should be reclassified as part of their determining salary for all intent and purposes, including for the social contributions. Except as set forth in Schedule 2.11(a) of the Company Disclosure Schedule, all Company Employees who are subject to a Section 14 Arrangement have been subject to such arrangement from the commencement date of their employment and on their entire salary. As of the Agreement Date, there is no Person who has accepted an offer of employment made by the Company or any Subsidiary but whose employment has not yet started. Except as set forth in Section 2.11(a) of the Company Disclosure Schedule,

no senior management level employee of the Company has been dismissed in the last 12 months prior to the Agreement Date.

(b) Schedule 2.11(b) of the Company Disclosure Schedule contains a list of all the current Company Contractors and each such individual's compensation and material fringe benefits (if any), the location where such Company Contractor performs services, the initial date of such individual's engagement, the term of engagement and any notice period related to the termination of such engagement. No promises or commitments have been made to any of the Company Contractors, whether in writing or orally, with respect to any future changes or additions to their compensation or benefits. All Company Contractors are properly classified as Company Contractors and would not reasonably be expected to be reclassified by any Governmental Entity as employees of the Company, and all such Persons' agreements contain provisions which state that no employer-employee relations exist between such Persons and the Company. No Company Contractor is entitled to any rights under any applicable labor laws. All current and former Company Contractors have received all of their rights to which they are and were entitled according to Applicable Laws and their Contracts with the Company. Neither the Company nor any Subsidiary engages any personnel through manpower agencies.

(c) Neither the Company nor any Subsidiary sponsors or maintains any self-funded Company Employee Plan, including any plan to which a stop-loss policy applies. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has either obtained from the Internal Revenue Service a favorable determination letter as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, or has applied (or has time remaining in which to apply) to the Internal Revenue Service for such a determination letter prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination or has been established under a standardized prototype or volume submitter plan for which an Internal Revenue Service opinion or advisory letter has been obtained by the plan sponsor and is valid as to the adopting employer. The Company has made available to Acquirer a true, correct and complete copy of the most recent Internal Revenue Service, or other authorized Tax Authority determination or opinion letter issued with respect to each such Company Employee Plans, and nothing has occurred since the issuance of each such letter that would reasonably be expected to cause the loss of the Tax-qualified status of any Company Employee Plan subject to Section 401(a) of the Code. The Company has made available to Acquirer all registration statements and prospectuses prepared in connection with each Company Employee Plan. Any Company Employee Plan intended to be qualified under the Tax laws and regulations of Israel fulfills all applicable requirements for such qualification and nothing has occurred that would reasonably be expected to cause the loss of any such tax-qualified status. The Company has made available to Acquirer true and complete copies of any ITA or other authorized Tax Authority letter or ruling issued with respect to any such Company Employee Plans.

(d) None of the Company Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") or similar law of any state of foreign jurisdiction and the Company and the Subsidiaries have complied in all material respects with the requirements of COBRA. Each Company Employee Plan complies, in both form and operation, in all material respects, with its terms and with all Applicable Laws, and no condition exists or event has occurred with respect to any such plan which would reasonably be expected to result in the incurrence by the Company, Parent or Acquirer of any liability, fine or penalty.

(e) Each Company Employee Plan (other than individual employment agreements) can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms,



without liability to Parent or Acquirer (other than ordinary administrative expenses typically incurred in a termination event).

(f) Neither the Company nor any current or former ERISA Affiliate currently maintains, sponsors, participates in or contributes to, or has ever maintained, established, sponsored, participated in, or contributed to, any pension plan (within the meaning of Section 3(2) of ERISA) that is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(g) Neither the Company nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any “multiemployer plan” as such term is defined in Section 3(37) of ERISA or any “multiple employer plan” as such term is defined in Section 413(c) of the Code.

(h) The Company and the Subsidiaries have duly maintained and been contributing to all mandatory and contractual employee saving funds, pension and severance accounts (including any manager’s insurance, pension fund and education fund) in compliance with all Applicable Laws and employment agreements.

(i) The Company and the Subsidiaries are, and since January 1, 2012 have been, operated in compliance in all material respects with all Applicable Laws relating to employment, termination of employment and labor matters, including but not limited to, discrimination in employment, terms and conditions of employment, worker classification (including the proper classification of workers as independent contractors, consultants and advisors), wages, pay slips, working hours, overtime and overtime payments, working during rest days, social benefits contributions, termination and severance payment and engaging employees through services providers (including manpower employees and service providers in accordance with the Israeli Law for Strengthening the Enforcement of Labor Laws-2011 ), collective bargaining, extension orders, civil rights, safety and health, immigration, work-authorization, privacy issues, fringe benefits, employment practices and the collection and payment of withholding or social security taxes and any similar tax. Neither the Company nor any Subsidiary has any outstanding obligations with respect to non-payment of wages. Since January 1, 2012, neither the Company nor any Subsidiary has received written notice of complaints, charges or claims against the Company or any Subsidiary, and there are no controversies, complaints, charges or claims pending or, to the Knowledge of the Company, threatened, between the Company or any Subsidiary and any current or former Company Employees, based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by the Company or any Subsidiary, of any individual or Company Contractors, which controversies have resulted or would reasonably be expected to result in a Legal Proceeding before any Governmental Entity.

(j) Each service provider of the Company or any Subsidiary who requires a visa, employment pass or other permit to work in the country in which he or she provides services has a current visa, employment pass or other permit for such purpose, and to the Knowledge of the Company, all necessary permissions to remain and perform services in such country. The Company and the Subsidiaries, as applicable, maintain accurate and complete Form I-9s with respect to each of their former and current employees in accordance with Applicable Laws concerning immigration and employment eligibility verification obligations.

(k) Schedule 2.11(k) of the Company Disclosure Schedule lists, with respect to the Company and any trade or business (whether or not incorporated) that is treated as a single employer with the Company (an “*ERISA Affiliate*”) within the meaning of Section 414(b), (c), (m) or (o) of the Code, each Company Employee Plan other than individual agreements entered into using a form of agreement provided to Parent and Acquirer. All Company Employees have executed the employment agreement and

restrictive covenants agreement in substantially the standard form of the Company or the Subsidiaries (as applicable) as in effect from time to time and made available to Acquirer. No Company Contractor was engaged by the Company or its Subsidiaries without a written Contract. The Company has made available to Acquirer true, correct and complete copies of each of the following (including where applicable, any agreements which deviate from the Company's standard form): (i) all Company Employee Plan documents including any amendments thereto, and related trust documents, services or insurance contracts or other funding vehicles and a written description of such Company Employee Plan if such plan is not set forth in a written document, (ii) forms of offer letters and forms of employment agreements and severance agreements; forms of services agreements and agreements with current Company Contractors; agreements relating to acceleration of vesting rights with respect to any Company Employee, (iii) forms of confidentiality, non-competition or inventions agreements between the Company and current Company Employees and Company Contractors, (iv) management organization chart(s), (v) all current agreements and/or insurance binders, which insurance binders shall provide a complete and correct summary of the underlying insurance policies, providing for the indemnification of any officers or directors of the Company and the Subsidiaries, (vi) employee manuals and handbooks, policies and guidelines relating to the engagement of employees and contractors, (vii) written summary of all unwritten policies, practices and customs, and (viii) summary of liability for termination payments to current and former directors, officers and employees of the Company and the Subsidiaries. To the Knowledge of the Company, since January 1, 2012, no allegations of sexual harassment have been made against any employee at the level of vice president or above, and neither the Company nor any Subsidiary has, since January 1, 2012, entered into any settlement agreement related to the allegation of sexual harassment or misconduct by any employee at the level of vice-president or above.

(l) Neither the Company nor any Subsidiary is or, since January 1, 2012, has been a party to or bound by any collective bargaining agreement (other than according to "extension orders" applicable to all employees in Israel) or other contract or arrangement with any labor union, work council trade union or other organization or body involving any of its employees or employee representative, or is otherwise required (under any law, contract or otherwise) to provide benefits or working conditions under any of the foregoing. No collective bargaining agreement is being negotiated by the Company nor any Subsidiary and neither the Company nor any Subsidiary has any duty to bargain with any labor organization. Neither the Company nor any Subsidiary is subject to and no current Company Employee benefits from any extension order (*tzavei harchava*) except for extension orders which generally apply to all employees in Israel, and there are no labor organizations representing, and to the Knowledge of the Company there are no labor organizations purporting to represent or seeking to represent, any current Company Employees. To the Knowledge of the Company, there are no activities or proceedings of any labor union to organize any current Company Employees. There is no, and since January 1, 2012 has been no, any labor dispute, strike or work stoppage or question concerning representation by or with respect to any of the employees of the Company or any Subsidiary whether in the past or now pending or, to the Knowledge of the Company, threatened that may interfere with the conduct of the Business. Neither the Company nor any Subsidiary is or, since January 1, 2012, has been a member of any employers' association or organization. Neither the Company nor any Subsidiary has, since January 1, 2012, paid, been required to pay nor been requested to pay any payment (including professional organizational handling charges) to any employers' association or organization. Neither the Company nor any Subsidiary nor any of their respective Representatives has committed any unfair labor practice in connection with the conduct of the Business, and there is no charge or complaint in writing against the Company or any Subsidiary by the National Labor Relations Board or any comparable Governmental Entity pending or, to the Knowledge of the Company, threatened. Neither the Company nor any Subsidiary has unsatisfied obligations of any nature to any of its former Company Employees or Company Contractors.

(m) To the Knowledge of the Company, no current Company Employee is in violation of any term of any employment agreement, invention assignment agreement, patent disclosure agreement,

non-competition agreement, non-solicitation agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company or any Subsidiary because of the nature of the Business or to the use of trade secrets or proprietary information of others. To the Knowledge of the Company, no Company Contractor is in violation of any term of any invention assignment agreement, patent disclosure agreement, non-competition agreement, non-solicitation agreement or any restrictive covenant to a former employer relating to the right of any such Company Contractor to be providing services to the Company or any Subsidiary because of the nature of the Business or to the use of trade secrets or proprietary information of others. Except as set forth on Schedule 2.11(m) of the Company Disclosure Schedule, no current Company Employee has given notice to the Company or the Subsidiary and, to the Knowledge of the Company, no current Company Employee, intends to terminate his or her employment with the Company or any Subsidiary. To the Knowledge of the Company, no Company Employee has received an offer to join a business that may be competitive with the Business. Except as set forth on Schedule 2.11(m) of the Company Disclosure Schedule, the employment of each of the current Company Employees is in accordance with the Applicable Law and neither the Company nor any Subsidiary has any obligation to provide a written prior notice prior to terminating the employment of any current Company Employee or to provide any severance or other termination payment upon the termination of any current Company Employee's employment except, in each case, as set forth on Schedule 2.11(m) of the Company Disclosure Schedule or as required by Applicable Law. As of the Agreement Date, neither the Company nor any Subsidiary has, and to the Knowledge of the Company, no other person has, (i) entered into any Contract that obligates or purports to obligate Acquirer to make an offer of employment or engagement to any present or former employee or Company Contractor of the Company or any Subsidiary and/or (ii) promised or otherwise provided any assurances (contingent or otherwise, whether written or not) to any present or former employee or Company Contractor of any terms or conditions of employment with Acquirer following the Closing.

(n) Other than as expressly contemplated by this Agreement, or set forth on Schedule 2.11(n) of the Company Disclosure Schedule, none of the execution and delivery of this Agreement, the consummation of the Share Purchase or any other transaction contemplated hereby or any termination of employment or service or any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of some other event, (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any Person, (ii) increase or otherwise enhance any amount of compensation or benefits otherwise payable by the Company or any Subsidiary thereof, (iii) result in the acceleration of the time of payment, funding or vesting of any such amount of compensation or benefits, except as required under Section 411(d)(3) of the Code, (iv) require any contributions or payments to fund any obligations to any present or former employee, Company Contractor or director of the Company or any Subsidiary under any Company Employee Plan, or (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company or any Subsidiary thereof to any Person.

(o) Without derogating from any of the above representations, the Company's and the Subsidiaries' liability towards Company Employees regarding severance pay, accrued vacation and contributions to all Company Employee Plans are fully funded or, if not required by any source to be funded, are accrued on the Company's financial statements as of the date of such financial statements. The Section 14 Arrangement was properly applied for in accordance with the terms of the general permit issued by the Israeli Minister of Labor regarding all former and current employees of the Company who reside in Israel based on their full salaries and from their commencement date of employment. All amounts that the Company or any Subsidiary are legally or contractually required to either (i) deduct from its employees' salaries and any other compensation or benefit or to transfer to such employees' Company Employee Plan or (ii) withhold from employees' salaries and any other compensation or benefit and to pay to any Governmental Entity as required by any Applicable Laws have in either case been duly deducted, transferred, withheld and paid, and neither the Company nor any Subsidiary has any outstanding obligation

to make any such deduction, transfer, withholding or payment (other than routine payments, deductions or withholdings to be timely made in the ordinary course of business and consistent with past practice).

(p) Neither the Company nor any Subsidiary is liable for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business, consistent with past practice). There are no pending claims against the Company or any Subsidiary under any workers' compensation plan or policy or for short or long term disability, other than routine sick leave entitlements.

(q) Other than as detailed in Schedule 2.11(q) of the Company Disclosure Schedule, neither the Company nor any Subsidiary currently engages any employee or Contractor, whose employment or engagement, to the Knowledge of the Company, requires special visas, licenses or permits.

2.12 Interested Party Transactions. Except as set forth in Section 2.12 of the Company Disclosure Schedule, none of the Key Employees, officers or directors of the Company or any Subsidiary or, to the Company's Knowledge, any Company Shareholder, Company Employees or any immediate family member or other closely related Person of any officer, director, employee or shareholders of the Company or any Subsidiary, has any direct or indirect ownership, participation, royalty or other interest in, or is an officer, director, employee of or consultant or contractor for any firm, partnership, entity or corporation that competes with, or does business with, or has any contractual arrangement with, the Company or any Subsidiary (except with respect to any interest in less than 5% of the shares of any corporation whose shares are publicly traded). Except as set forth in Schedule 2.12 of the Company Disclosure Schedule, no such Person, or any members of their immediate families or other closely related Persons, is a party to, or to the Knowledge of the Company, otherwise directly or indirectly interested in, any Contract to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any of their respective assets or properties may be bound or affected, except for normal compensation for services as an officer, director or employee thereof and for Contracts relating to the grant of Company Options or issuance of Company Shares to such Persons. All trade between the Company and its officers, directors, employees or stockholders, members of their immediate families or other closely related Persons has been conducted on ordinary market terms ("*arm's length*"). To the Knowledge of the Company, no such Person, or immediate family members or other closely related Persons has any interest in any property, real or personal, tangible or intangible (including any Intellectual Property) that is used in, or that relates to, the business of the Company or any Subsidiary, except for the rights of stockholders under Applicable Law. To the Knowledge of the Company, all transactions between the Company and interested parties that require approval pursuant to Sections 268 to 284 of the Israeli Companies Law, or pursuant to the Charter Documents or Contracts have been so approved.

2.13 Insurance. Schedule 2.13 of the Company Disclosure Schedule lists all insurance policies (by policy number, insurer, location of property insured, annual premium, expiration date, and amount and scope of coverage) held by the Company and the Subsidiaries, copies of which have been made available to Acquirer. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid and the Company and the Subsidiaries are otherwise in compliance with the terms of such policies and bonds. All such policies and bonds remain in full force and effect, and the Company has no Knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

2.14 Books and Records. The Company made available to Acquirer true, correct and complete copies of (i) all documents identified on the Company Disclosure Schedule, (ii) the Charter Documents, (iii) the complete minute books containing records of all material proceedings, consents, actions and

meetings of the Company Board of Directors, committees of the Company Board of Directors and the Company Shareholders, and (iv) the shareholders register, journal and other records reflecting all share issuances and transfers and all share option and warrant grants and agreements of the Company. The minute books of the Company made available to Acquirer contain a true, correct and complete summary of all resolutions of the Company Board of Directors and of the Company Shareholders, or actions by written consent since the time of incorporation of the Company through the Agreement Date. There has not been any violation of any of the provisions of the Charter Documents, including all amendments thereto, and the Company has not taken any action that is inconsistent in any material respect with any resolution adopted by the Company Shareholders or the Company Board of Directors. The books, records and accounts of the Company (A) are true, correct and complete in all material respects, and (B) have been maintained in accordance with reasonable business practices on a basis consistent with prior years.

2.15 Material Contracts.

(a) Except for this Agreement and the Contracts specifically identified in Schedule 2.15 of the Company Disclosure Schedule, neither the Company nor any Subsidiary is a party to or bound by any of the following Contracts (each, as may be amended from time to time, a “**Material Contract**”):

(i) any distributor, original equipment manufacturer, reseller, value added reseller, sales, advertising, agency or manufacturer’s representative Contract pursuant to which any Person markets, resells or distributes Company Products resulting in revenue to the Company of more than \$100,000 annually;

(ii) any continuing Contract for the purchase, sale or license of materials, supplies, equipment, services, software, Intellectual Property or other assets involving in the case of any such Contract more than \$100,000 annually;

(iii) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(iv) any Contract for capital expenditures in excess of \$10,000 in the aggregate;

(v) any Contract limiting the freedom of the Company or any Subsidiary to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or to make use of any Company IP, or any Contract granting most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights and/or terms to any Person, or any Contract otherwise limiting the right of the Company or any Subsidiary to sell, distribute or manufacture any products or services or to purchase or otherwise obtain any software, components, parts, subassemblies or services;

(vi) any Contract pursuant to which the Company or any Subsidiary is a lessor or lessee of any real property or any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property involving in excess of \$25,000 per annum;

(vii) any Contract other than ordinary course employment Contracts and offer letters (A) with any of its officers, directors, employees or shareholders or any member of their immediate families or other closely related Persons or (B) with any Person with whom the Company or any Subsidiary does not deal at arm’s length;

(viii) any Contract of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to and/or statements regarding, the obligations, Liabilities or indebtedness of any other Person, other than Intellectual Property and other indemnities granted by the Company or any Subsidiary pursuant to any Contract listed in Schedule 2.15(a)(ix) or Schedule 2.15(a)(x) of the Company Disclosure Schedule or any other Contract entered into in the ordinary course of business, consistent with the Company's past practices;

(ix) other than licenses granted to customers for the use of Company Products pursuant to the Company's standard, unmodified form of end user agreement (a copy of which has been made available to Acquirer), all licenses, sublicenses and other Contracts as to which the Company or any Subsidiary is a party and pursuant to which (A) any Person is authorized to use any Company-Owned IP, (B) the Company or any Subsidiary has agreed to any restriction on the right of the Company or any Subsidiary to use or enforce any Company-Owned IP or (C) the Company or any Subsidiary agrees to encumber, transfer or sell rights in or with respect to any Company-Owned IP;

(x) other than "shrink wrap" and similar generally available commercial end-user licenses to software that is not redistributed with or used in the development or provision of the Company Products and that have an individual acquisition cost of \$10,000 or less, all licenses, sublicenses and other Contracts to which the Company or any Subsidiary is a party and pursuant to which the Company or any Subsidiary acquired or is authorized to use any Third Party Intellectual Property rights;

(xi) any Contract providing for the development of any software, content, technology or Intellectual Property, independently or jointly, by or for the Company or any Subsidiary;

(xii) any Contracts relating to the membership of, or participation by, the Company or any Subsidiary in, or the affiliation of the Company or any Subsidiary with, any industry standards group or association;

(xiii) any Contract to license or authorize any third party to manufacture any of the Company Products;

(xiv) (A) any joint venture Contract, (B) any Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons or (C) any Contract that involves the payment of royalties to any other Person in excess of \$10,000 per annum;

(xv) any Company Product warranty, other than standard warranties of Company or any Subsidiary included in the packaging of Company Products;

(xvi) any Contract for the employment of any director, officer, employee or consultant of the Company or any other type of Contract with any officer, employee or consultant of the Company or any Subsidiary that either (A) requires at least 60 days' notice or payment of severance for a termination without cause or constructive termination, or (B) requires a payment to any director, officer, employee or consultant on account of the Share Purchase or any transaction contemplated by this Agreement (whether alone or in combination with any other event);

(xvii) any Contract or plan (including any share option, merger and/or share bonus plan) relating to the sale, issuance, grant, exercise, award, purchase, repurchase or redemption of any shares of Company Share Capital or any other securities of the Company or any Subsidiary or any options, warrants, convertible notes or other rights to purchase or otherwise acquire any such shares, other securities or options, warrants or other rights therefor;

(xviii) any Contract under which the Company or any Subsidiary provides standalone advice or services to any third party, including any consulting Contract, professional Contract or software implementation, deployment or development services Contract, or support services Contract;

(xix) any Contract with any labor union or any collective bargaining agreement or similar contract with its employees;

(xx) any Contract with any investment banker, broker, advisor or similar party, or any accountant, legal counsel or other Person retained by the Company, in connection with this Agreement and the transactions contemplated hereby;

(xxi) any Contract pursuant to which the Company or any Subsidiary has acquired a business or entity, or assets of a business or entity, whether by way of merger, consolidation, purchase of shares, purchase of assets, license or otherwise, or any contract pursuant to which it has any material ownership interest in any other Person (other than the Subsidiaries);

(xxii) any Contract with any Governmental Entity or any Company Authorization;

(xxiii) any confidentiality, secrecy or non-disclosure Contract other than any such Contract entered into by the Company or any Subsidiary in the ordinary course of its business consistent with past practice;

(xxiv) any settlement agreement;

(xxv) any Contract pursuant to which rights of any third party are triggered or become exercisable, or under which any other consequence, result or effect arises, in connection with or as a result of the execution of this Agreement or the consummation of the Share Purchase or the other Transactions, either alone or in combination with any other event;

(xxvi) any Contract with a customer pursuant to which such customer receives any discount, rebate, setoff, allowance, free trial or other similar arrangement (whether or not in writing); or

(xxvii) any other oral or written Contract or obligation not listed in clauses (i) through (xxvi) that individually had or has a value or payment obligation in excess of \$100,000 annually or is otherwise material to the Company or any Subsidiary or their respective businesses, operations, financial condition, properties or assets.

(b) All Material Contracts are in written form and have been entered into in the ordinary course of the Company's or any Subsidiary's businesses. Each of the Material Contracts is in full force and effect, subject only to the effect, if any, of applicable bankruptcy and other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies. There exists no material default nor any event of default or event, occurrence, condition or act, with respect to the Company or any Subsidiary or, to the Knowledge of the Company, with respect to any other contracting party, which, with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to (i) become a material default or an event of default under any Material Contract or (ii) give any third party the right to (A) declare a default or exercise a material remedy under any Material Contract, (B) a rebate, chargeback, refund, credit, penalty or change in delivery schedule under any Material Contract, (C) accelerate the maturity or performance of any material obligation of the Company or any Subsidiary under any Material Contract or (D) cancel, terminate or

modify any Material Contract. Neither the Company nor any Subsidiary has received any notice or other communication in writing or, to the Company's Knowledge, otherwise, regarding any actual or possible material breach of, or material default under, or intention to cancel or modify any Material Contract. True, correct and complete copies of all Material Contracts have been made available to Acquirer prior to the Agreement Date.

2.16 No Brokers. Neither the Company nor any Subsidiary is or will be obligated for any finder's or broker's fee or commission in connection with this Agreement or the Transactions.

2.17 Foreign Corrupt Practices. None of the Company, its Subsidiaries, their respective directors, officers, and employees, and, to the Knowledge of the Company, any agents or any Company Shareholder acting on their behalf, has (i) taken any action directly or indirectly in furtherance of an offer, payment, promise to pay, or authorization or approval of any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person (including any Governmental Entity (or employee or representative thereof), government owned or controlled enterprise, public international organization, political party and candidate for public office) private or public, regardless of what form, whether in money, property, or services (A) to obtain favorable treatment for business or Contracts secured, (B) to pay for favorable treatment for business or Contracts secured, (C) to obtain special concessions or for special concessions already obtained, (D) to improperly influence or induce any act or decision, (E) to secure any improper advantage or (F) in violation of Applicable Law (including the U.S. Foreign Corrupt Practices Act or Section 291(a) of the Israeli Penal Code of 1977) or (ii) established or maintained any fund or asset that has not been accurately recorded in the books and records of the Company. The Company has established adequate internal controls and procedures to promote and achieve compliance with the U.S. Foreign Corrupt Practices Act and Section 291(a) of the Israeli Penal Code of 1977 and with the representation and warranty contained in the first sentence of this Section 2.17 and has made available to Acquirer all such documentation. The Company has not conducted or initiated an internal investigation, made a voluntary or other disclosure to a Governmental Entity, or received notice that it is the subject of any Legal Proceedings or governmental inquires or received any written notice or citation from any Governmental Entity related to alleged violations of applicable criminal law including anti-bribery and anti-money laundering laws such as the U.S. Foreign Corrupt Practices Act. No governmental official and, to the Company's Knowledge, no close relative or family member of a governmental official (i) holds or will hold an ownership or other economic interest, direct or indirect in the Company, (ii) serves as a Representative of the Company or (iii) will receive any economic benefit from the Company as a result of the Share Purchase or any of the other Transactions.

2.18 Environmental, Health and Safety Matters. Neither the Company nor any Subsidiary is in violation of any Applicable Law relating to the environment or occupational health and safety, and no material expenditures are required in order to comply with any such Applicable Law. No Hazardous Materials (as defined below) are used or have been used, stored, or disposed of by the Company or, to the Knowledge of the Company, by any other Person on any property owned, leased or used by the Company. For the purposes of the preceding sentence, "**Hazardous Materials**" shall mean (a) materials that are listed or otherwise defined as "hazardous" or "toxic" under any applicable local, state, federal and/or foreign Applicable Law that govern the existence and/or remedy of contamination on property, the protection of the environment from contamination, the control of hazardous wastes, or other activities involving hazardous substances, including building materials, or (b) any petroleum products or nuclear materials.

2.19 Export Control Laws.

(a) The Company, its Subsidiaries, their respective directors, officers, and employees, and, to the Knowledge of the Company, any agents acting on their behalf, have conducted its export transactions in accordance in all respects with applicable provisions of United States export and re-export



controls, including the Export Administration Act and Regulations, the Foreign Assets Control Regulations, the International Traffic in Arms Regulations and other controls administered by the United States Department of Commerce and/or the United States Department of State and all other applicable import/export controls in other countries in which the Company conducts business. Without limiting the foregoing: (i) the Company has obtained all necessary export and import licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings with any Governmental Entity required for (A) the export, import and re-export of products, services, software and technologies and (B) releases of technologies and software to foreign nationals located in the United States and abroad (collectively, “*Export Approvals*”), (ii) the Company is in compliance with the terms of all applicable Export Approvals, (iii) there are no pending Legal Proceedings or, to the Knowledge of the Company, threatened claims against the Company with respect to such Export Approvals, and (iv) there are no actions, conditions or circumstances pertaining to the Company’s export transactions that would reasonably be expected to give rise to any future claims. The Company does not use or develop, or engage in, technology with military applications, or other technology whose development, commercialization or export is restricted under Israeli Law, and no Company business requires the Company to obtain a license from the Israeli Ministry of Defense or an authorized body thereof pursuant to Section 2(a) of the Control of Products and Services Declaration (Engagement in Encryption), 1974, as amended or Control of Products and Services Order (Export of Warfare Equipment and Defense Information), 1991, as amended.

(b) The Company and each of its Subsidiaries is, and at all times has been, in compliance in all material respects with Applicable Law of the United States and other jurisdictions in which the Company and its Subsidiaries operate or to which it is subject with respect to import and export control and economic sanctions, including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, and the U.S. Department of the Treasury Office of Foreign Asset Control (“*OFAC*”) economic sanctions regulations. Neither the Company nor any of its Subsidiaries is, or has at any time been, counterparty to any commercial agreement with any Person who is the target of, or listed as a designated person in respect of, any economic sanction administered by OFAC or the U.S. Department of Commerce or has engaged, directly or indirectly, in any business with or related to any country or territory that is the subject of any comprehensive economic or financial sanctions or trade embargoes administered or enforced by OFAC (currently Crimea, Cuba, Iran, Sudan, Syria, and North Korea), unless otherwise authorized by OFAC or the U.S. Department of Commerce.

## 2.20 Customers and Suppliers.

(a) Neither the Company nor any Subsidiary has any outstanding material disputes concerning its products and/or services with any customer or distributor who, in the year ended December 31, 2018 or the nine-month period ended on the Company Balance Sheet Date, was one of the 25 largest sources of revenues for the Company and the Subsidiaries, on a consolidated basis, based on amounts paid or payable during such periods (each, a “*Significant Customer*”), and the Company has no Knowledge of any material dissatisfaction on the part of any Significant Customer. Each Significant Customer is listed on Schedule 2.20(a) of the Company Disclosure Schedule. Neither the Company nor any Subsidiary has been notified in writing, or to the Company’s Knowledge, otherwise, by any Significant Customer that such customer shall not continue as a customer of the Company or any Subsidiary (or Parent or Acquirer) after the Closing or that such customer intends to terminate or materially modify existing Contracts with the Company or any Subsidiary (or Parent or Acquirer). The Company has not had any of its products returned by a purchaser thereof except for normal warranty returns consistent with past history and properly reserved for in the Company’s books and records.

(b) Neither the Company nor any Subsidiary has any outstanding material dispute concerning products and/or services provided by any supplier who, in the year ended December 31, 2018

or the nine-month period ended on the Company Balance Sheet Date, was one of the 10 largest suppliers of products and/or services to the Company and the Subsidiaries, on a consolidated basis, based on amounts paid or payable during such periods (each, a “*Significant Supplier*”), and the Company has no Knowledge of any material dissatisfaction on the part of any Significant Supplier. Each Significant Supplier is listed on Schedule 2.20(b) of the Company Disclosure Schedule. Neither the Company nor any Subsidiary has been notified in writing, or to the Company’s Knowledge, otherwise, by any Significant Supplier that such supplier shall not continue as a supplier to the Company or any Subsidiary (or Parent or Acquirer) after the Closing or that such supplier intends to terminate or materially modify existing Contracts with the Company or any Subsidiary (or Parent or Acquirer). The Company and the Subsidiaries have access, on commercially reasonable terms, to all products and services reasonably necessary to carry on their respective businesses, and the Company has no Knowledge of any reason why they will not continue to have such access on commercially reasonable terms.

2.21 Accounts Receivables. The accounts receivable shown on the Company Financial Statements arose in the ordinary course of business, consistent with past practices, represented bona fide claims against debtors for sales and other charges, and have been collected or are collectible in the book amounts thereof, less an amount not in excess of the allowances for doubtful accounts provided for in the Company Financial Statements. Allowances for doubtful accounts and warranty returns have been prepared in accordance with GAAP. The accounts receivable of the Company and the Subsidiaries arising after the Company Balance Sheet Date and before the Closing Date arose or shall arise in the ordinary course of business, consistent with past practices, represented or shall represent bona fide claims against debtors for sales and other charges and have been collected or are collectible into the book amounts thereof, less the allowances for doubtful accounts and warranty returns determined in accordance with GAAP. None of the accounts receivable of the Company or any Subsidiary is subject to any claim of offset, recoupment, setoff or counter-claim, and the Company has no Knowledge of any specific facts or circumstances (whether asserted or unasserted) that could give rise to any such claim. No material amount of accounts receivable is contingent upon the performance by the Company or any Subsidiary of any obligation or Contract other than normal warranty repair and replacement. No Person has any lien on any of such accounts receivable, and no agreement for deduction or discount has been made with respect to any of such accounts receivable. Schedule 2.21 of the Company Disclosure Schedule sets forth an aging of the Company’s and the Subsidiaries’ accounts receivable in the aggregate and by customer as of the Agreement Date, and indicates the amounts of allowances for doubtful accounts and warranty returns. Each account receivable is free and clear of all Encumbrances (other than Permitted Encumbrances). No accounts receivable of the Company and the Subsidiaries are subject to asserted warranty claims by customers.

2.22 Shareholder Notice. No notice to be given by the Company to the Company Shareholders pursuant to Israeli Law or the Charter Documents, if any, or otherwise and any amendment or supplement thereto (other than any of the information supplied or to be supplied by Acquirer for inclusion therein), will contain, as of the date of the mailing of such document, any untrue statement of a material fact, or, to the Knowledge of the Company, will omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY SHAREHOLDERS**

Each Company Shareholder, severally and not jointly with the other Company Shareholders, represents and warrants to Parent and Acquirer in respect of itself, as follows:

3.1 Power and Capacity. Such Company Shareholder possesses all requisite power, legal capacity and authority necessary to enter into this Agreement, consummate the Share Purchase and carry out the Transactions that are required to be carried out by such Company Shareholder.

3.2 Enforceability; Noncontravention.

(a) The execution and delivery of this Agreement and the consummation of the Share Purchase and any of the other Transactions have been, to the extent applicable, duly authorized by all necessary corporate actions on the part of the Company Shareholder. This Agreement has been duly executed and delivered by such Company Shareholder and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and legally binding obligation of such Company Shareholder enforceable against such Company Shareholder in accordance with its terms, except as may be limited by and subject only to the effect, if any, of (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution, delivery and performance by such Company Shareholder of this Agreement, or its otherwise being bound by it, does not, and the consummation of the Transactions will not conflict with, or result in any violation of or default under (with or without notice or lapse of time or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person, or result in the creation of any Encumbrance upon the Company Shares pursuant to (i) any Contract or Order to which the Company Shareholder is subject or (ii) any Applicable Law, except where such conflict, violation, default, termination, cancellation or acceleration, individually or in the aggregate, would not be material to such Company Shareholder's ability to consummate the Share Purchase or to perform its obligations under this Agreement.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by such Company Shareholder in connection with the execution and delivery of this Agreement or the consummation of the Transactions that, if not obtained or made, would reasonably be expected to adversely affect the ability of such Company Shareholder to consummate the Share Purchase or any of the other Transactions.

3.3 Title to Shares. Such Company Shareholder owns of record, and except with respect to the 102 Trustee, is the beneficial owner of the Company Shares as set forth opposite their name on Schedule 2.2(a) of the Company Disclosure Schedule, and has good and valid title to such Company Shares, free and clear of all Encumbrances and, at the Closing, shall deliver to Acquirer good and valid title to such Company Shares, free and clear of all Encumbrances and Taxes. As of the Closing, such Company Shareholder has examined the Spreadsheet and is entitled only to the distribution set forth therein, and such Company Shareholder waives any right to receive consideration in respect of Company Shares, Company Options or Company Warrants other than as set forth therein. Such Company Shareholder does not own, and does not have the right to acquire, directly or indirectly, any other Company Share Capital, except as set forth in Schedule 2.2(a) of the Company Disclosure Schedule. Such Company Shareholder is not a party to any option, warrant, purchase right, or other Contract or commitment that could require such Company Shareholder to sell, transfer, or otherwise dispose of any Company Share Capital (other than this Agreement or any agreement permitting the Company to repurchase Company Shares from such Company Shareholder). Such Company Shareholder is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any share capital of the Company, except as set forth on the Company Disclosure Schedule.

3.4 Litigation. There are no actions, suits, arbitrations, mediations, proceedings or claims pending or, to the knowledge of such Company Shareholder, threatened against such Company Shareholder or any of his, her or its assets or properties that seek to restrain or enjoin the consummation of the Transactions.

3.5 Solvency. Such Company Shareholder is not bankrupt or insolvent and has not proposed a voluntary arrangement or made or proposed any arrangement or composition with such Company Shareholder's creditors or any class of such creditors, and no petition in respect of any such arrangement or composition has been presented. The consummation of the Share Purchase and the other Transactions shall not constitute a fraudulent transfer by such Company Shareholder under applicable bankruptcy and other similar laws relating to bankruptcy and insolvency of such Company Shareholder.

3.6 Acknowledgement. Such Company Shareholder acknowledges that such Company Shareholder has received a copy of this Agreement and familiarized himself, herself or itself with the terms and conditions contained herein, including provisions relating to payment of the portion of the Aggregate Consideration to be paid to such Company Shareholder pursuant to Section 1.1(a) and the indemnification obligations of the Indemnifying Parties pursuant to Article 9.

3.7 Tax Withholding Information. Any and all information made available to Acquirer by or on behalf of such Company Shareholder for purposes of enabling Acquirer to determine the amount to be deducted and withheld from the consideration payable to such Company Shareholder pursuant to this Agreement under Applicable Law is true, correct and complete.

#### **ARTICLE 4**

##### **REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUIRER**

Parent and Acquirer represent and warrant to the Company as follows:

4.1 Organization and Standing. Each of Parent and Acquirer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of Parent and Acquirer is not in violation of any of the provisions of its articles or certificate of incorporation, as applicable, or bylaws or equivalent organizational or governing documents.

4.2 Authority; Noncontravention.

(a) Parent and Acquirer have all requisite corporate power and authority to enter into this Agreement and to consummate the Transactions. The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of Parent and Acquirer. This Agreement has been duly executed and delivered by Parent and Acquirer and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of Parent and Acquirer, enforceable against Parent and Acquirer in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by Parent and Acquirer does not, and the consummation of the Transactions will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under, or require any consent, approval or waiver from any Person pursuant to, (i) any provision of the articles or certificate of incorporation, as applicable, or bylaws or other equivalent organizational or governing documents of Parent and Acquirer, in each case as amended to date, or (ii) Applicable Law, except where such conflict, violation, default, termination, cancellation or acceleration, individually or in the aggregate, would not be material to Parent's or Acquirer's ability to consummate the Share Purchase or to perform their respective obligations under this Agreement.

(c) Except as required by applicable Israeli Law or United States federal and state securities laws in connection with the Assumed Options, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by or with respect to Parent or Acquirer in connection with the execution and delivery of this Agreement or the consummation of the Transactions that, if not obtained or made, would reasonably be expected to adversely affect the ability of Parent or Acquirer to consummate the Share Purchase or any of the other Transactions.

4.3 Aggregate Consideration. Acquirer has, and will have available to it as of the Closing, sufficient funds to consummate the Transactions, including payment of all cash amounts comprising the Aggregate Consideration. All shares of Parent Common Stock that may be issued upon the valid exercise of Assumed Options (and payment of the aggregate exercise price therefor) will be, when issued in accordance with the term thereof, duly authorized, validly issued, fully paid and non-assessable.

## ARTICLE 5 CONDUCT PRIOR TO THE CLOSING

5.1 Conduct of the Business of the Company. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Closing, except with the prior written consent of Acquirer:

(a) the Company shall, and shall cause each Subsidiary to, conduct its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in material compliance with Applicable Law (except to the extent expressly provided otherwise in this Agreement);

(b) the Company shall, and shall cause each Subsidiary to, (i) pay all of its debts and Taxes when due, subject to good faith disputes over such debts or Taxes, (ii) pay or perform its obligations when due, (iii) use its commercially reasonable efforts consistent with past practice and policies to collect accounts receivable when due and not extend credit outside of the ordinary course of business consistent with past practice, (iv) use its commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organizations, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, and (v) not take any action that would render, or that would reasonably be expected to render, any representation or warranty made by the Company in this Agreement inaccurate at the Closing;

(c) the Company shall promptly notify Acquirer of any change, occurrence or event that, individually or in the aggregate with any other changes, occurrences and events, would reasonably be expected to cause any of the conditions to the Closing set forth in Sections 7.1 and 7.3 to not be satisfied;

(d) the Company shall, and shall cause each Subsidiary to, assure that each new Contract it enters into after the Agreement Date will not require the procurement of any consent, waiver or novation or provide for any change in the obligations of any party thereto in connection with, or terminate as a result of the consummation of, the Share Purchase;

(e) the Company shall, and shall cause each Subsidiary to, maintain each of its leased premises in accordance with the terms of the applicable lease; and

(f) the Company shall use commercially reasonable efforts to obtain duly executed Converting Instruments from all Company Shareholders pursuant to a proxy surrendering all of the Converting Instruments.

5.2 Restrictions on Conduct of the Business of the Company. Without limiting the generality or effect of the provisions of Section 5.1, during the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Closing, neither the Company nor any Subsidiary shall do, cause or permit any of the following (except to the extent expressly provided otherwise herein or as consented to in writing by Acquirer):

(a) (i) make any payments to any Company Employees (other than any payment of accrued standard base salary or wages and benefits in accordance with the Company's standard payroll practices and employment agreements) or forgive or issue any loans, (ii) hire any officers or Company Employees, (iii) terminate the employment (other than for cause), or change the title, office or position, benefits or reduce the responsibilities of any Key Employee or Company Employee at the management level or above, or make any change to the compensation of any Company Employee, (iv) enter into, amend or extend the term of any employment or consulting agreement with any officer, employee, consultant or independent contractor, including to provide for any increase in the compensation or consulting fees, bonus, pension, welfare, fringe or other benefits, severance or termination pay of the foregoing, or (v) grant any bonus, incentive compensation or other awards or otherwise establish, enter into, amend, modify, terminate, or take any action to accelerate the vesting or payment of any existing compensation or benefits under any Company Employee Plan;

(b) make any dividend or other distributions (whether in cash, shares or property) in respect of any of its share capital, or split, combine or reclassify any of its share capital or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its share capital;

(c) transfer or license from any Person any rights to any Intellectual Property or transfer or license to any Person any Company-Owned IP other than nonexclusive licenses to customers granted in the ordinary course of business, or transfer or provide a copy of any Company Source Code to any Person;

(d) enter into any Contract that would constitute a Material Contract, or violate, terminate, adversely amend, or otherwise adversely modify (including by entering into a new Contract with such party or otherwise) or waive any of the terms of any of its Material Contracts;

(e) issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of Company Share Capital or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other Contracts of any character obligating it to issue any such shares or other convertible securities;

(f) sell, lease, license or otherwise dispose of or encumber any of its properties or assets, other than sales and nonexclusive licenses of Company Products in the ordinary course of business consistent with past practice;

(g) incur or commit to any new material Liabilities or make any pre-payments on existing Liabilities (including Company Debt) outside of the ordinary course of business;

(h) make any capital expenditures, capital additions or capital improvements in excess of \$10,000 individually or \$25,000 in the aggregate;

(i) materially change the amount of, or terminate, any insurance coverage;

(j) commence a lawsuit other than (i) for the routine collection of bills or (ii) in such cases where it in good faith determines that failure to commence suit would result in the material

impairment of a valuable aspect of its business, provided that it consults with Acquirer prior to the filing of such a suit;

(k) make or change any material election in respect of Taxes, file any income Tax Return or any other material Tax Return other than pursuant to Section 6.12(c), adopt or change any accounting method in respect of Taxes (unless such change is required by Applicable Law), file any amendment to a federal, state, or foreign income Tax Return or any other material Tax Return, enter into any Tax sharing or similar agreement or closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(l) change accounting methods or practices or revalue any of its assets, except in each case as required by changes in GAAP after notice to Acquirer;

(m) cause, propose or permit any amendments to the Charter Documents or equivalent organizational or governing documents;

(n) merge or consolidate itself with any other Person or adopt a plan of complete or partial liquidation, dissolution, consolidation, restructuring, recapitalization or other reorganization;

(o) take any action regarding a patent, patent application or other Intellectual Property right, other than filing continuations for existing patent applications or completing or renewing registrations of existing patents, domain names, trademarks or service marks in the ordinary course of business consistent with past practice;

(p) cancel, release or waive any claims or rights held by the Company or any Subsidiary;

(q) enter into any Contract that, if entered prior to the Agreement Date, would be required to be listed in Section 2.12 (Interested Party Transaction) of the Company Disclosure Schedule; and

(r) Other. Take or agree in writing or otherwise to take, (1) any of the actions described in clauses (a) through (p) in this Section 5.2, or (2) any action that would reasonably be expected to make any of the Company's representations or warranties contained herein untrue or incorrect (such that the condition set forth in the first sentence of Section 7.3(a) would not be satisfied) or prevent the Company from performing or cause the Company not to perform one or more covenants, agreements or obligations required hereunder to be performed by the Company (such that the condition set forth in the second sentence of Section 7.3(a) would not be satisfied).

5.3 Notices of Developments. The Company will promptly notify Acquirer of any change outside the ordinary course of business of the Company or any Subsidiary. No disclosure pursuant to this Section 5.3 will be deemed to amend or supplement the Company Disclosure Schedule or to prevent or cure any inaccuracy, misrepresentation, breach of warranty or breach of this Agreement.

**ARTICLE 6**  
**ADDITIONAL AGREEMENTS**

6.1 Filings and Consents.

(a) Filings. Each party (other than the Shareholders' Agent) shall use commercially reasonable efforts to file, as soon as practicable after the Agreement Date (but, with respect to the filing under the HSR Act, in no event later than three Business Days (unless otherwise agreed to by the parties)), all notices, reports and other documents required to be filed by such party with any Governmental Entity with respect to the Share Purchase and other transactions contemplated hereunder, and to submit promptly any additional information requested by any such Governmental Entity. The parties shall request early termination for merger control filings in jurisdictions where early termination is possible. The parties shall respond as promptly as practicable to any inquiries or requests received from any state attorney general, antitrust authority or other Governmental Entity in connection with antitrust or related matters. Subject to the confidentiality provisions of the Confidentiality Agreement, Acquirer and the Company each shall promptly supply the other with any information which may be required in order to effectuate any filings (including applications) pursuant to (and to otherwise comply with its obligations set forth in) this Section 6.1(a). Except where prohibited by Applicable Law or any Governmental Entity, and subject to the confidentiality provisions of the Confidentiality Agreement, the parties shall: (i) cooperate with one another with respect to any filings with any Governmental Entity made by Parent or Acquirer in connection with the Transactions; and (ii) inform one another of any questions, information requests or requests for payments, fees or penalties received from any Governmental Entity in connection with any such filings and, in the case of the Company, not make such payment until it has received Parent's or Acquirer's consent thereto (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) Efforts. Subject to Section 6.1(c), Parent, Acquirer and the Company, as applicable, shall use commercially reasonable efforts to take, or cause to be taken, all actions necessary to consummate the Transactions. Without limiting the generality of the foregoing, but subject to Section 6.1(c), each party to this Agreement: (i) shall make all filings (if any) and give all notices (if any) required to be made and given by such party in connection with the Transactions; and (ii) shall use commercially reasonable efforts to obtain each consent (if any) required to be obtained (pursuant to any Applicable Law, Contract or otherwise) by such party in connection with the Transactions.

(c) Limitations. Notwithstanding anything to the contrary contained in Section 6.1(b) or elsewhere in this Agreement, neither Parent nor Acquirer shall have any obligation under this Agreement: (i) to divest or agree to divest (or cause any subsidiary to divest or agree to divest) any of its respective businesses, product lines or assets, or to take or agree to take (or cause any subsidiary to take or agree to take) any other action or to agree (or cause any subsidiary to agree) to any limitation or restriction on any of its respective businesses, product lines or assets; or (ii) to contest any Legal Proceeding relating to the Transactions.

6.2 No Solicitation.

(a) During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Closing, none of the Company and the Company Shareholders will, and none of the Company and the Company Shareholders will authorize or permit any of its or their Representatives to, directly or indirectly, (i) solicit, initiate, seek, entertain, encourage, facilitate, support or induce the making, submission or announcement of any inquiry, expression of interest, proposal or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, (ii) enter into, participate in, maintain or continue any communications (except solely to provide written notice as to the existence of these provisions) or negotiations regarding, or deliver or make available to any Person any



non-public information with respect to, any inquiry, expression of interest, proposal or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, (iii) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention or desire to agree to, accept, approve, endorse or recommend) any Acquisition Proposal, (iv) enter into any letter of intent or any other Contract contemplating or otherwise relating to any Acquisition Proposal, (v) submit any Acquisition Proposal to the vote of any Company Securityholders or (vi) enter into any other transaction or series of transactions, the consummation of which would impede, interfere with, or prevent the consummation of the Share Purchase or the other Transactions. Each of the Company and the Company Shareholders will, and will cause their Representatives to, (A) immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Persons conducted prior to or on the Agreement Date with respect to any Acquisition Proposal and (B) immediately revoke or withdraw access of any Person (other than Acquirer and its Representatives) to any data room (virtual or actual) containing any non-public information with respect to the Company in connection with an Acquisition Proposal and request from each Person (other than Acquirer and its Representatives) the prompt return or destruction of all non-public information with respect to the Company previously provided to such Person in connection with an Acquisition Proposal. If any Representative takes any action that the Company or a Company Shareholder is obligated pursuant to this Section 6.2 not to authorize or permit such Representative to take, then the Company and the Company Shareholders, respectively, shall be deemed for all purposes of this Agreement to have breached this Section 6.2.

(b) The Company shall immediately (but in any event, within 24 hours) notify Parent and Acquirer orally and in writing after receipt by it (or, to the Knowledge of it, by any of its Representatives), of (i) any Acquisition Proposal, (ii) any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) any request for non-public information relating to the Company or for access to any of the properties, books or records of the Company by any Person or Persons other than Acquirer and its Representatives. Such notice shall describe (A) the material terms and conditions of such Acquisition Proposal, inquiry, expression of interest, proposal, offer, notice or request and (B) the identity of the Person or Group making any such Acquisition Proposal, inquiry, expression of interest, proposal, offer, notice or request. The Company shall keep Acquirer fully informed of the status and details of, and any modification to, any such inquiry, expression of interest, proposal or offer and any correspondence or communications related thereto and shall provide to Acquirer a copy of such inquiry, expression of interest, proposal or offer and any amendments related thereto, if it is in writing, or a reasonable written summary thereof, if it is not in writing. The Company shall provide Acquirer with 48 hours prior notice (or such lesser prior notice as is provided to the members of the Company Board of Directors) of any meeting of the Company Board of Directors at which the Company Board of Directors is reasonably expected to discuss any Acquisition Proposal.

### 6.3 Confidentiality; Public Disclosure.

(a) The parties hereto acknowledge that Parent and the Company have previously executed a Mutual Confidentiality Agreement, dated as of August 14, 2019 (the “*Confidentiality Agreement*”), which shall continue in full force and effect in accordance with its terms.

(b) The Company shall not issue any press release or other public communications relating to the terms of this Agreement or the Transactions or use Parent’s or Acquirer’s name or refer to Parent or Acquirer directly or indirectly in connection with Parent’s or Acquirer’s relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Parent or Acquirer, unless required by Applicable Law (in which event the Company shall promptly notify Parent and Acquirer and shall disclose only such information which the Company is advised by its counsel it is legally required to disclose). Notwithstanding anything to the contrary contained

herein or in the Confidentiality Agreement, Parent or Acquirer may make such public communications regarding this Agreement or the Transactions as they may, in their reasonable discretion, determine are required by Applicable Law, the SEC or NASDAQ, subject to the review and comment by the Company if and to the extent commercially practicable.

6.4 Reasonable Best Efforts. Each of the parties hereto agrees to use its reasonable best efforts, and to cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Share Purchase and the other Transactions, including the satisfaction of the respective conditions set forth in Article 7, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Share Purchase and the other Transactions.

6.5 Third-Party Consents; Notices; Other Actions. If and to the extent requested by Parent or Acquirer, the Company shall use its reasonable best efforts to obtain prior to the Closing, and deliver to Acquirer at or prior to the Closing, all consents, waivers and approvals under each Contract listed or described on Schedule 2.3(b) of the Company Disclosure Schedule and take all actions set forth on Schedule 6.5.

6.6 Litigation. Until the earlier of the termination of this Agreement and the Closing, the Company will (i) notify Acquirer in writing promptly after learning of any Legal Proceeding initiated by or against it, or known by the Company to be threatened against the Company, or any of its directors, officers or employees or the Company Shareholders in their capacity as such (a "***New Litigation Claim***"), (ii) notify Acquirer of ongoing material developments in any New Litigation Claim and (iii) consult in good faith with Acquirer regarding the conduct of the defense of any New Litigation Claim.

6.7 Access to Information. Through the Closing Date, the Company and the Subsidiaries will afford to Acquirer and its authorized representatives reasonable access during normal business hours and upon reasonable notice as Acquirer may reasonably request to the facilities, offices, properties, technology, processes, books, business and financial records, business plans, budgets and projections, and other information of each of the Company and the Subsidiaries, and the workpapers of the Company's independent accountants, and otherwise provide such assistance as may be reasonably requested by Acquirer in order that Acquirer have a full opportunity to make such investigation and evaluation as it reasonably desires to make of the business and affairs of each of the Company and the Subsidiaries. Subject to Applicable Law, and the avoidance of loss of privilege to the Company, Acquirer will have full access to the personnel records (including performance appraisals, disciplinary actions, grievances and medical records) of the Company and the Subsidiaries.

6.8 Spreadsheet. No less than three Business Days prior to Closing, the Company shall prepare and deliver to Acquirer a spreadsheet (the "***Spreadsheet***") in the form and substance reasonably satisfactory to Acquirer, which spreadsheet shall be dated as of the Closing Date and shall set forth all of the following information (in addition to the other required data and information specified therein), as of immediately prior to the Closing:

(a) the names of all Company Shareholders, Company Optionholders and Company Warranholders, and their respective street and e-mail addresses (if available), telephone number (if available), Israeli identification number (if available), taxpayer identification numbers (if any) and (other than in respect of Company Securityholders whose Company Options or Company Shares are held by the 102 Trustee in respect of which the bank information shall be that of the 102 Trustee) bank information (if available) (including the respective bank name and number, branch name and address, swift number, account number and other wire transfer information);

- (b) the number, class and series of Company Shares held by such Persons and the respective certificate numbers;
- (c) the number, class and series of Company Shares subject to, and if applicable, the exercise price per share in effect for, each Company Option and Company Warrant;
- (d) the number of shares of Parent Common Stock subject to the Assumed Options;
- (e) the vesting status, schedule and whether such Company Optionholder has delivered a duly executed Option Cancellation and Conversion Agreement to Acquirer with respect to Company Options and Unvested Company Shares;
- (f) for each Company Option that was exercised prior to the date of delivery of the Spreadsheet, (i) the Tax status of such Company Option and the shares acquired thereby under Section 422 of the Code, if applicable, or any applicable foreign Tax law, (ii) the date of such exercise and whether such Company Option was granted and is subject to Tax pursuant to Section 3(i) of the Ordinance or Section 102 of the Ordinance and the applicable subsection of Section 102 of the Ordinance;
- (g) the calculation of the (i) Aggregate Consideration, (ii) the Company Series A Preferred Shares Aggregate Liquidation Preference, (iii) the Company Series A-1 Preferred Shares Aggregate Liquidation Preference, (iv) Company Series A and Company Series A-1 Aggregate Preferred Shares Liquidation Preference, (v) the Fully-Diluted Company Series A Shares, (vi) the Fully-Diluted Company Series A-1 Shares, (vii) the Participating Consideration, (viii) the Fully-Diluted Company Shares, (ix) the Participating Per Share Payment Amount (including, in respect of the holders of Unvested Company Shares, the number of Unvested Company Shares and the Unvested Cash), (x) Company Series A Preferred Per Share Payment Amount, (xi) Company Series A-1 Preferred Per Share Payment Amount, (xii) in respect of Company Employees who hold Unvested Company Options, the number of Assumed Options, and (xiii) each Indemnifying Party's Pro Rata Share of the Adjustment Escrow Amount, the Indemnity Escrow Fund and the Shareholders' Agent Expense Amount (expressed in both in dollars and as a percentage); and
- (h) a funds flow memorandum setting forth applicable wire transfer instructions and other information reasonably requested by Acquirer.

6.9 Expenses. Whether or not the Share Purchase is consummated, except as otherwise set forth herein, all costs and expenses incurred in connection with this Agreement and the Transactions (including Transaction Expenses) shall be paid by the party incurring such expense; provided, however, that, if the Share Purchase is consummated, Acquirer shall pay all Transaction Expenses on the Company's behalf to the extent such Transaction Expenses are set forth on the Company Closing Financial Certificate; provided, further, that Parent shall be responsible for 50% of the cost of the R&W Insurance Policy Premium (with Parent's portion not to exceed \$500,000), with any additional R&W Insurance Policy Premium to be treated as Transaction Expenses for all purposes of this Agreement ("**Company R&W Fee**").

6.10 Employee Matters.

(a) Notwithstanding anything to the contrary, nothing in this Agreement shall (i) confer on Acquirer or its Affiliates any obligation to make an offer of employment or continued service to any Company Employee or Company Contractor; (ii) guarantee receipt of any specific employee benefit or constitute an amendment to or any other modification of any benefit plan, (iii) alter or limit Acquirer or any of its Affiliates ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement or (iv) confer upon any individual (including employees, retirees or dependents or beneficiaries of employees or retirees) any right as a third-party beneficiary of this Agreement.

(b) With respect to matters described in this Section 6.10, the Company will consult with Acquirer (and will consider in good faith the advice of Acquirer) prior to sending any notices or other communication materials to its employees. Effective no later than immediately prior to the Closing (or at such other time designated by Acquirer), the Company shall terminate the employment or service of each Company Employee and Company Contractor who has either (i) not received an offer of continued employment or service with Acquirer or its Affiliates prior to the Closing Date; or (ii) not accepted or declined an offer of continued employment with the Acquirer or any Affiliate (such Company Employees, the “**Designated Employees**”) and such Company Contractors (the “**Designated Contractors**”) in each case effective no later than immediately prior to the Closing and shall use commercially reasonable efforts to enter into a legally enforceable general waiver and release of claims with such Designated Employee and Designated Contractor, as applicable, in a form approved by Acquirer (the “**Designated Employee Waiver**”).

(c) During the period on the Closing Date and concluding on the one-year anniversary of the Closing Date, Acquirer shall, or shall cause its applicable Affiliates to, provide to each Company Employee who continues to be employed by Parent or its Affiliate after the Closing Date (other than the Key Employees, the “**Continuing Employees**”) who remain employed during such period with compensation and employee benefits that are substantially similar in the aggregate to those provided by the Company to such Continuing Employees as of immediately prior to the Closing (excluding for purposes of this sentence any equity-based incentive compensation, cash bonus payments, severance and pension benefits).

(d) As soon as practicable following the Closing Date, Parent shall grant to Continuing Employees restricted stock units covering shares of Parent Common Stock having an aggregate value of at least \$15,000,000 (assuming for such purpose that each such restricted stock unit has a value equal to the Parent Trading Price), to be allocated by Parent following reasonable consultation with the Company’s CEO, on the terms and conditions consistent with Parent’s 2012 Equity Incentive Plan, as amended from time to time.

6.11 Termination of Company Employee Plans. Effective as of the day immediately preceding the Closing Date, the Company shall adopt resolutions by the Company Board of Directors to terminate any Company Employee Plans intended to include a Code Section 401(k) arrangement (unless Acquirer provides written notice to the Company no later than five Business Days prior to the Closing Date that such 401(k) plans shall not be terminated) and, effective as of the Closing Date, any other Company Employee Plans requested by Parent or Acquirer to be terminated. The Company shall provide Acquirer with evidence that such Company Employee Plan(s), including the Company Option Plan have been terminated (effective no later than the day immediately preceding the Closing Date) pursuant to resolutions of the Company Board of Directors or any applicable committee thereof. The form and substance of such resolutions shall be subject to review and approval of Acquirer. The Company shall also take such other actions in furtherance of terminating such Company Employee Plan(s) as Acquirer may reasonably require. In the event that termination of any of the Company Employee Plans would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees then the Company shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Acquirer.

6.12 Tax Matters.

(a) Each of Parent, Acquirer, the Shareholders’ Agent, the Company Shareholders and the Company shall cooperate fully, as and to the extent reasonably requested by any of the others, in connection with the filing of Tax Returns and any Legal Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request therefor) the provision of records and information

reasonably relevant to any such Legal Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Parent, Acquirer, the Company, the Shareholders' Agent and the Company Shareholders agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations of the respective taxable periods, and to abide by all applicable record retention laws, regulations and agreements entered into with any Tax Authority.

(b) The Company shall cause each Company Securityholder, to further agree, upon request, to use their reasonable best efforts to obtain any certificate or other document from any Governmental Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the Transactions).

(c) The Company shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns of the Company and the Subsidiaries for all periods ending on or before the Closing Date that are required to be filed prior to the Closing Date, shall provide drafts of each such income or other material Tax Return to Parent or Acquirer not less than 30 days prior to the due date for such Tax Return (taking into account any validly obtained extensions of time to file), and shall make any reasonable changes requested by Acquirer in good faith. Parent or Acquirer shall prepare or cause to be prepared and file or cause to be filed all other Tax Returns of the Company that are due (taking into account any validly obtained extensions) after the Closing Date, whether such Tax Returns are for taxable periods ending before, on or after the Closing Date. With respect to Tax Returns relating to any Taxable period ending on or before the Closing Date, Parent shall prepare or cause to be prepared such Tax Returns in a manner consistent with the Company's past practices, except as Parent determines in good faith to be otherwise required by applicable Tax law.

(d) Parent shall file, on behalf of the Company, the IRS Forms 8832 described in Section 1.2(b)(xx) within 70 days of the Closing Date. As a result of such elections, each of the Parent, Acquirer and the Company acknowledge and agree that the Share Purchase is intended to be treated as a sale of a partnership interest described in Rev. Rul. 99-6, Situation 2.

6.13 Termination or Waiver of Company Shareholders Rights. Each Company Shareholder, by execution of this Agreement, waives and agrees to terminate, as of and contingent upon the Closing and the receipt of the consideration specified in Section 1.1(a), any rights of first refusal, rights to any liquidation preference, redemption rights and rights of notice, including but not limited to those set forth in the Charter Documents.

6.14 280G Shareholder Approval. Promptly following the execution of this Agreement, and in any event prior to the Closing Date no later than three Business Days, the Company shall submit to the Company Shareholders for approval (in a manner reasonably satisfactory to Parent), by such number of holders of Company Shareholders as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments and/or benefits that may separately or in the aggregate, constitute "parachute payments" pursuant to Section 280G of the Code ("**Section 280G Payments**") (which determination shall be made by the Company and shall be subject to review and approval by Acquirer, such approval not to be unreasonably withheld, conditioned or delayed), such that such payments and benefits shall not be deemed to be Section 280G Payments, and prior to the Closing, and the Company shall deliver to Acquirer notification and documentation reasonably satisfactory to Acquirer that (i) a vote of the holders of Company Share Capital was solicited in conformance with Section 280G of the Code and the regulations promulgated thereunder and the requisite shareholder approval was obtained with respect to any payments and/or benefits that were subject to the shareholder vote (the "**280G Shareholder Approval**") or (ii) that the 280G Shareholder Approval was not obtained and as a consequence, that such payments and/or benefits shall not

be made or provided to the extent they would cause any amounts to constitute Section 280G Payments, pursuant to the waivers of those payments and/or benefits that were executed by the affected individuals prior to the vote of the holders of Company Share Capital pursuant to this [Section 6.14](#).

6.15 [Promised Equity](#). Prior to the Closing, the Company shall ensure that any representations by the Company to grant equity awards (the “*Promised Equity Grants*”) to any individual (a “*Promised Equity Grantee*”) are resolved by obtaining an executed non-revocable waiver and consent in the form attached hereto as [Exhibit P](#) (a “*Promised Equity Waiver*”) from each Promised Equity Grantee or by such other method as mutually agreed by the Company and Parent, and shall cooperate with Parent in such process. The Company shall keep Parent fully informed of the status and details of the Promised Equity Grants. All agreements, notices, or other documents prepared by the Company in connection with the Promised Equity Grants (including the Promised Equity Waivers) shall be subject to the prior review, comment, and approval of Parent (which approval shall not be unreasonably withheld, conditioned, or delayed).

6.16 [R&W Insurance Policy](#). In connection with the transactions contemplated hereby, Parent shall use commercially reasonable efforts to obtain or cause to be obtained, and the Company shall cooperate with Parent and Acquirer prior to the Closing in order to obtain the R&W Insurance Policy to provide additional coverage for Parent and Acquirer with respect to Indemnifiable Damages. Without limiting [Section 6.1](#) and [Section 6.7](#), if and to the extent any additional legal, regulatory, financial or other due diligence matters are reasonably requested by Parent in connection with securing such coverage after the Agreement Date and prior to the Closing, the Company shall promptly provide such materials.

6.17 [Post-Signing Shareholders, Section 341 of the Israeli Companies Law; Bring-Along](#).

(a) Promptly after the Agreement Date and for as long as this Agreement is not duly terminated or the Transactions contemplated hereby are consummated, the Company shall use commercially reasonable efforts to obtain from all Post-Signing Shareholders, including any Company Optionholder who exercises a Company Option and becomes a Company Shareholder between the Agreement Date and the Closing Date, a Joinder Agreement under which each such Post-Signing Shareholder becomes bound by and subject to the provisions of this Agreement as a Signing Shareholder. The Company agrees to (i) communicate promptly to Acquirer any update to the Company’s efforts to obtain a Joinder Agreement from a Post-Signing Shareholder, and (ii) to include as a Signing Shareholder any Company Shareholder not listed on [Schedule A](#) as of the Agreement Date who has signed the Agreement thereafter, in each case without the need to the consent of the Signing Shareholders.

(b) [Shareholder Meeting](#). Promptly after the Agreement Date, the Company shall take all action necessary under Applicable Law and the Company’s Charter Documents to give notice of an extraordinary meeting of the Company’s Shareholders, to be conducted no more than seven Business Days after the Agreement Date, at which the Company Shareholders will be presented with and given the opportunity approve resolutions to adopt this Agreement and approve the Transactions. Such notice will include a statement to the effect that the Company Board of Directors unanimously recommends that the Company Shareholders adopt this Agreement and approve the Transactions. The Signing Shareholders, constituting the Required Company Vote, shall vote in favor of and support the adoption of such resolutions. Upon the Company Shareholder’s adoption of such resolutions, the Company shall deliver to Acquirer and Parent minutes of such meeting of the Company Shareholders evidencing that the Transactions were approved by the Required Company Vote.

(c) [Section 341 of the Israeli Companies Law; Bring-Along](#).

(i) By executing this Agreement, the Signing Shareholders, who collectively hold (a) a majority of the issued and outstanding shares of the Company, on an as converted basis, and (b) a majority of the issued and outstanding Company Series A Preferred Shares, Company Series A-1 Preferred Shares and Company Series B-1 Preferred Share (acting together as a single class on an as-converted basis) have accepted an offer by Acquirer to purchase their Company Shares in accordance with the terms set forth in this Agreement, in accordance with Section 341 of the Israeli Companies Law and the bring-along provision set forth in Section 27 of the Charter Documents, as currently in effect (the “**Bring-Along Provision**”).

(ii) This Agreement shall be deemed, for the purpose of Section 341(a) of the Israeli Companies Law and the Bring-Along Provision, to constitute (i) an offer by Acquirer for the purchase of all of the Company Share Capital which is conditioned upon the sale of all of the Company Share Capital and (ii) an acceptance of such offer by all Signing Shareholders who have duly executed this Agreement initially or pursuant to Section 6.17(a).

(iii) Promptly (but in any event within four Business Days) following the Agreement Date, Acquirer will, in accordance with Section 341(a) of the Israeli Companies Law and the Bring-Along Provision, provide a written notice in the form attached hereto as Exhibit Q (the “**Bring-Along Notice**”) and a Joinder Agreement to each Post-Signing Shareholder that has not duly executed and delivered this Agreement or countersigned this Agreement in accordance with Section 6.17(a) setting forth the information required by Section 341(a) of the Israeli Companies Law and the Bring-Along Provision and stating Acquirer’s requirement to purchase such Post-Signing Shareholder’s Company Shares under the terms and conditions of this Agreement. The Company shall assist Acquirer to dispatch the Bring-Along Notice to each Post-Signing Shareholder. Acquirer and the Company shall fully coordinate any correspondence to which each may be a party which concerns the Bring-Along Notice. Acquirer and the Company shall take such other actions as may be necessary in order to complete the transfer of all of the outstanding Company Shares pursuant to Section 341 of the Israeli Companies Law, the Bring-Along Provision and under the terms and conditions of this Agreement, including in making all reasonable filings and taking such other reasonable action which is necessary to effect the Transactions with respect to all the Company Shares in compliance with Section 341 of the Israeli Companies Law and the Bring-Along Provision. After satisfactory completion of the necessary procedures under Section 341 of the Israeli Companies Law and the Bring-Along Provision, and provided that no Order against the Transactions was issued by a Governmental Entity that was not subsequently removed and no 341 Legal Proceeding shall be pending before the applicable Governmental Entity in a manner that prevents the consummation of the Share Purchase, at the Closing the Company shall register Acquirer as owner of all the Company Shares held by all Signing Shareholders and Post-Signing Shareholders as of the Closing against delivery by Acquirer to the Paying Agent (in accordance with Section 1.3) of the amount in cash as fully described in Section 1.1(a) (for the avoidance of doubt, it is clarified that Acquirer may deduct any withholding amounts from such Signing Shareholders and Post-Signing Shareholders as further described in Section 1.1(e)).

(iv) All Company Shareholders that execute this Agreement or the Joinder Agreement after the date hereof and prior to Closing shall be deemed Signing Shareholders by virtue of execution of this Agreement or the Joinder Agreement, and, to the extent permitted under Section 341 and the Bring-Along Provision, all Company Shareholders who shall have not executed a Joinder Agreement shall be deemed Signing Shareholders by virtue of Section 341 of the Companies Law and the Bring-Along Provision.

(v) Each Signing Shareholder represents and warrants that it has not entered into, and agrees not to enter into at any time prior to the termination of this Agreement, any agreement or commitment with any Person the effect of which would violate or be inconsistent with the provisions and agreements set forth in this Section 6.17.

(vi) In furtherance of each Signing Shareholder's agreement in this Section 6.17, such Signing Shareholder hereby appoints the Company's Chief Executive Officer as such Signing Shareholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Signing Shareholder, to vote all Company Shares owned by such Signing Shareholder at any meeting of Company Shareholders or any adjournment or postponement thereof, however called, or to execute one or more written consents in respect of such Signing Shareholder's Company Shares in favor of approval of this Agreement, the Transactions and any other actions and proposals required, or submitted for approval at any meeting of Company Shareholders, in furtherance thereof.

(vii) The proxy granted in Section 6.17(c) shall be valid until, and automatically terminate upon, the termination of this Agreement. Each Signing Shareholder represents that any and all other proxies heretofore given in respect of the Company Shares owned by such Signing Shareholder are revocable, and that such other proxies have been revoked. Each Signing Shareholder affirms that the foregoing proxy is (x) given in connection with the execution of this Agreement to secure the performance of such Signing Shareholder's duties under this Section 6.17 and (y) coupled with an interest and may not be revoked except as otherwise provided in this Agreement. All authority herein conferred shall survive the death or incapacity of any Signing Shareholder that is an individual and shall be binding upon the heirs, estate, administrators, personal representatives, successors and assigns of such Signing Shareholder.

(viii) Notwithstanding Section 6.17(c), each Signing Shareholder may vote its Company Shares strictly in accordance with Section 6.17(b) at any meeting of Company's Shareholders (or any adjournment or postponement thereof), by proxy or otherwise.

(ix) Each Signing Shareholder shall use its reasonable best efforts to defend any actions brought by a Company Shareholder or its Affiliates that seeks to restrain, enjoin or prohibit the Transactions, and shall, to the extent permitted by Applicable Law, use its reasonable best efforts to enforce any such Company Shareholder's obligations (to the extent that they are not in compliance therewith) under the Bring-Along Provision and, to the extent applicable, Section 341 of the Companies Law, which shall include the commencement of Legal Proceedings or bringing of a counterclaim against such Company Shareholder or its Affiliates as may be reasonably necessary or desirable in order to ensure due compliance by such Company Shareholder of its obligations.

(x) If a non-executing Company Shareholder objects to or fails to execute a Joinder Agreement, fails to take any actions necessary and reasonable to effect this Agreement and the Transactions, takes any action that would result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Company hereunder, or which could result in any of the conditions to the Company's obligations hereunder not being fulfilled or that would otherwise impair the ability of the Company to properly and timely consummate the Transactions, each such non-executing Company Shareholder shall be deemed to have irrevocably appointed and constituted the Chief Executive Officer of the Company, as their attorney in fact with full power of substitution, to execute for and on behalf of such non-executing Company Shareholder all instruments and documents necessary to transfer title of its Company Shares, in accordance with the provisions of the Charter Documents.

(xi) Subject to the terms of this Agreement, following the execution of this Agreement and prior to the Closing Date, if the Company shall issue any Company Shares (which, for the avoidance of doubt, shall be subject to Acquirer's prior written consent pursuant to Section 5.2), then the Company shall promptly: (i) inform Acquirer of such an issuance, (ii) amend Schedule B so that such Person will be deemed a Post-Signing Shareholder, (iii) use commercially reasonable efforts to obtain from such holder of Company Shares, a counter signature to this Agreement under which he, she or it becomes bound by and subject to the provisions of this Agreement, and (iv) if such a Person does not execute this



Agreement, assist Acquirer, to the extent necessary, in the dispatch of a Bring-Along Notice to such new Post-Signing Shareholders such that said notice will cover all of the Company Share Capital.

(xii) For purposes of this Agreement, the term “Company Shareholder” shall include all Post-Signing Shareholders and each such Post-Signing Shareholder shall be deemed to be subject to the terms and conditions of this Agreement, except to the extent that doing so would be inconsistent with the provisions of Section 341 of the Israeli Companies Law or the Bring-Along Provision.

6.18 Alternative Transaction Form.

(a) Parent, Acquirer, the Company (on behalf of itself and its Representatives) and the Signing Shareholders irrevocably agree and covenant that, if prior to the Closing a Post-Signing Shareholder initiates a (i) 341 Legal Proceeding that is not rejected by the applicable court within 10 Business Days after such 341 Legal Proceeding is initiated or (ii) Legal Proceeding challenging the Share Purchase and the Transactions, then promptly following (a) Acquirer’s written demand to the Company and the Shareholders’ Agent, or (b) the Company’s written demand to the Acquirer and the Shareholders’ Agent, which demand must be delivered to the Company or Acquirer, as the case may be, and the Shareholders’ Agent no later than 10 Business Days after the end of such 10 Business Day period or after notice is given of the Legal Proceeding (a “**Merger Notice**”), the Company and the Acquirer shall amend, within 20 Business Days after delivery of the Merger Notice as set forth above (the “**Execution Period**”), the structure set forth in this Agreement into a merger and execute a merger agreement (such agreement having substantially the same terms and conditions as the terms and conditions of this Agreement) (the “**Merger Agreement**”) and shall take any action required under the Israeli Companies Law to consummate a merger as soon as possible following the execution of the Merger Agreement, but in any event no later than 60 days thereafter, pursuant to which the Company, as the absorbing company (*HaChevra Ha’Koletet*), and the Acquirer (or another subsidiary of Acquirer or Parent), as the target company (*Chevrat Ha’Ya’ad*) shall merge such that the target company will cease to exist, and the Company will continue as the surviving corporation and become a direct or indirect wholly owned subsidiary of Acquirer or Parent, in accordance with the Israeli Companies Law (the “**Merger**”), provided, that, the consummation of the Merger shall require the satisfaction of the conditions to the Closing set forth in Article 7, with only such adjustments as are necessitated by such changed structure.

(b) The Merger Agreement will contain the same terms and conditions as this Agreement, other than any amendments required in order to change the structure of the transaction to a merger or which derive from such change in structure (e.g., certain required filings and certain periods that need to elapse before the Merger can be consummated). If the Company and the Acquirer are unable to reach agreement on any term of the Merger Agreement following good faith negotiations, either party shall have the right to refer such dispute to arbitration in accordance with the terms of Section 10.13 no later than five Business Days prior to the end of the Execution Period. The arbitrator shall resolve such dispute within five Business Days, based on the market standard for transactions of this type with the intent of observing the parties’ agreement that the Merger Agreement shall have substantially the same terms and conditions as the terms and conditions of this Agreement and shall reflect to the maximum extent possible the economic result intended by this Agreement. The determination made by the arbitrator of the terms of the Merger Agreement that are in dispute shall be non-appealable, binding and conclusive upon the parties to this Agreement. The fees and expenses of the arbitrator shall be allocated equally between Acquirer, on the one hand, and the Company, on the other hand.

6.19 Directors’ and Officers’ Insurance.

(a) Prior to the Closing, the Company shall purchase tail insurance coverage under the Company’s current existing directors’ and officers’ liability policy in effect as of the Agreement Date (the

“**Tail Insurance Coverage**”) for the current and former directors and officers of the Company and its Subsidiaries as of the Closing Date (the “**Covered Persons**”), which (i) shall provide the Covered Persons with coverage for seven years following the Closing Date, and (ii) contains coverage under terms comparable to those applicable to the current directors and officers of the Company. Subject to the Closing, Acquirer shall cause the Company and its successors and assigns not to cancel, reduce or adversely modify the terms of the Tail Insurance Coverage and continue to honor the obligations thereunder in accordance with its terms, to the extent permitted by Applicable Law, until the seventh anniversary of the Closing Date.

(b) Subject to the Closing, until the seventh anniversary of the Closing Date, Acquirer shall, and shall cause the Company and any successor and assigns, to the extent permitted by Applicable Law, to, fulfill and honor in all respects the obligations of the Company and its Subsidiaries pursuant to indemnification, insurance and exculpation provisions under their respective Charter Documents or written indemnification agreements between the Company or one of its Subsidiaries and such Covered Persons that are listed on Schedule 2.15(a)(viii) of the Company Disclosure Schedule, as in effect as of the date hereof, to the Covered Persons as of immediately prior to the Closing to the extent relating to claims arising from or related to facts or events that occurred at or before the Closing Date but are asserted after the Closing Date. In the event that, following the Closing, Parent, Acquirer or the Company (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that either the successors or assigns of Parent, Acquirer or the Company, as the case may be, shall assume the obligations set forth in this Section 6.19. However, in the event that a director or officer is also a Company Shareholder, then such director or officer may not seek recovery from Parent, Acquirer, the Company, the Subsidiaries or their respective successors, pursuant to the provisions of this Section 6.19(b) with respect to any claim for indemnification made by an Indemnified Person pursuant to Article 9.

6.20 No Reliance. Each of Parent and Acquirer represent, warrant, acknowledge and agree that (a) the representations and warranties of (i) the Company set forth in Article 2 are the only representations and warranties made by the Company regarding the Company, its properties, its business, or otherwise in connection with the Transactions, and (ii) the Company Shareholders set forth in this Agreement are the only representations and warranties made by the Company Shareholders in connection with the Transactions and (b) Parent and Acquirer are relying solely on, and disclaim reliance on any representation, warranty, statement or information provided thereto, express or implied, at law or in equity, other than the representations and warranties of the Company and the Company Shareholders set forth in this Agreement in deciding to enter into this Agreement. Each of the Company and the Company Shareholders represent, warrant, acknowledge and agree that (x) the representations and warranties of Parent and Acquirer set forth in Article 4 are the only representations and warranties made by Parent and Acquirer in connection with the Transactions and (y) the Company and the Company Shareholders are relying solely on, and disclaim reliance on any representation, warranty, statement or information provided thereto, express or implied, at law or in equity, other than the representations and warranties of Parent and Acquirer set forth in Article 4 in deciding to enter into this Agreement.

## ARTICLE 7 CONDITIONS TO THE SHARE PURCHASE

7.1 Conditions to Obligations of Each Party to Effect the Share Purchase. The respective obligations of each party hereto to consummate the Transactions shall be subject to the satisfaction or waiver in writing at or prior to the Closing of each of the following conditions:

(a) Illegality. No Order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Share Purchase shall be in effect,

and no action shall have been taken by any Governmental Entity seeking any of the foregoing, and no Applicable Law or Order shall have been enacted, entered, enforced or deemed applicable to the Share Purchase that makes the consummation of the Share Purchase illegal.

(b) Governmental Approvals. All approvals of Governmental Entities required to be obtained in connection with the Share Purchase shall have been obtained without any conditions thereto, and the applicable waiting period under the HSR Act, and under the antitrust law of each jurisdiction that has been identified by Parent in writing to the Company, shall have expired or early termination of such waiting period shall have been granted.

(c) R&W Insurance Policy. The R&W Insurance Policy shall be bound effective and contingent upon the Closing.

7.2 Additional Conditions to Obligations of the Company and Company Shareholders. The obligations of the Company and the Company Shareholders to consummate the Transactions shall be subject to the satisfaction or waiver in writing at or prior to the Closing of each of the following conditions (it being understood that each such condition is solely for the benefit of the Company and may be waived by the Company in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The representations and warranties made by Parent and Acquirer herein shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such dates (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). Parent and Acquirer shall have performed and complied in all material respects with each of the covenants, agreements and obligations herein required to be performed and complied with by them at or prior to the Closing.

(b) Receipt of Closing Deliveries. The Company shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(a).

7.3 Additional Conditions to the Obligations of Parent and Acquirer. The obligations of Parent and Acquirer to consummate the Transactions shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions (it being understood and agreed that each such condition is solely for the benefit of Parent and Acquirer and may be waived by Parent (on behalf of itself and/or Acquirer) in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The representations and warranties made by the Company and the Company Shareholders herein shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality or Material Adverse Effect, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Closing Date as though such representations and warranties were made on and as of such dates (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). The Company and each of the Company Shareholders shall have performed and complied in all material respects with each of the covenants, agreements and obligations herein required to be performed and complied with by the Company and the Company Shareholders at or prior to the Closing.

(b) Receipt of Closing Deliveries. Acquirer shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(b); provided that such receipt shall not be deemed to be an agreement by Acquirer that the amounts set forth on the Company Closing Financial Certificate or the Spreadsheet or any of the other agreements, instruments, certificates or documents set forth in Section 1.2(b) is accurate and shall not diminish Parent's or Acquirer's remedies hereunder if any of the foregoing documents is not accurate.

(c) No Legal Proceedings. No Governmental Entity or other Person shall have commenced or threatened to commence any Legal Proceeding challenging or seeking the recovery of a material amount of damages in connection with the Share Purchase or the other Transactions or seeking to prohibit or limit the exercise by Parent or Acquirer of any material right pertaining to ownership of Equity Interests of the Company. No Order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition limiting or restricting Parent's or Acquirer's ownership, conduct or operation of the Business following the Closing shall be in effect.

(d) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect.

(e) Joinder Agreements. The Company Shareholders (including Company Optionholders or Company Warrantholders who exercise a Company Option or Company Series A Warrant between the Agreement Date and the Closing Date) holding no fewer than 95% of the Company Share Capital shall have duly executed this Agreement or a Joinder Agreement;

(f) Employees.

(i) Each Key Employee shall have signed an Offer Letter and a Non-Compete Agreement, each of which shall continue to be in full force and effect and no action shall have been taken by any such individual to rescind any of such agreements.

(ii) No fewer than 85%, excluding the Key Employees for purposes of the numerator and denominator, of the Company Employees who have received permanent offers of employment (or amended offers, as applicable) from Parent, Acquirer (or one of their Affiliates), the Company or its Subsidiaries shall have remained continuously employed with the Company or its Subsidiaries from the Agreement Date through the Closing and shall become Continuing Employees and no action shall have been taken by any such individual to rescind any of such employment agreements.

## **ARTICLE 8**

### **TERMINATION**

8.1 Termination. At any time prior to the Closing, this Agreement may be terminated and the Share Purchase abandoned by authorized action taken by the terminating party:

(a) by mutual written consent duly authorized by Parent, Acquirer and the Company Board of Directors;

(b) by either Parent or Acquirer, on the one hand, or the Company, on the other hand, by written notice to the other, if the Closing shall not have occurred on or before seventy days from the Agreement Date or such other date that Parent, Acquirer and the Company may agree upon in writing (the "**Agreement Termination Date**"); provided that the Agreement Termination Date shall be subject to automatic extension for a period of four months if on the Agreement Termination Date, the condition set forth in Section 7.1(b) (Governmental Approvals) are not satisfied but all of the other conditions to Closing

have been satisfied (other than such conditions as may, by their terms, only be satisfied at Closing); provided that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose breach of any covenant, agreement or obligation hereunder will have been the principal cause of, or shall have directly resulted in, the failure of the Closing to occur on or before the Agreement Termination Date;

(c) by either Parent or Acquirer, on the one hand, or the Company, on the other hand, by written notice to the other if any Order of a Governmental Entity of competent authority preventing the consummation of the Share Purchase shall have become final and non-appealable;

(d) by either Parent or Acquirer, by written notice to the Company, if (i) there shall have been an inaccuracy in any representation or warranty made by, or a breach of any covenant, agreement or obligation of the Company or any of the Company Shareholders herein, and such inaccuracy or breach shall not have been cured within five Business Days after receipt by the Company of written notice of such inaccuracy or breach and, if not cured within such period and at or prior to the Closing, such inaccuracy or breach would result in the failure of any of the conditions set forth in Section 7.1 or Section 7.3 to be satisfied (provided that no such cure period shall be available or applicable to any such breach that by its nature cannot be cured), (ii) there shall have been a Material Adverse Effect or (iii) the Company shall have breached Section 6.2 or Section 6.3; or

(e) by the Company, by written notice to Parent and Acquirer, if there shall have been an inaccuracy in any representation or warranty made by, or a breach of any covenant, agreement or obligation of, Parent or Acquirer herein and such inaccuracy or breach shall not have been cured within five Business Days after receipt by Parent or Acquirer of written notice of such inaccuracy or breach and, if not cured within such period and at or prior to the Closing, such breach would result in the failure of any of the conditions set forth in Section 7.1 or Section 7.2 to be satisfied (provided that no such cure period shall be available or applicable to any such inaccuracy or breach that by its nature cannot be cured);

8.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no Liability on the part of Parent, Acquirer, the Company or their respective officers, directors, shareholders or Affiliates; provided that (i) Section 6.3 (Confidentiality; Public Disclosure), Section 6.9 (Expenses), this Section 8.2 (Effect of Termination), Section 9.7(b) (Exculpation and Indemnification of the Shareholders' Agent), Article 10 (General Provisions) and any related definition provisions in or referenced in Exhibit A and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (ii) nothing herein shall relieve any party hereto from Liability in connection with any material breach of such party's representations, warranties, covenants, agreements or obligations contained herein.

## ARTICLE 9 INDEMNITY ESCROW FUND AND INDEMNIFICATION

### 9.1 Sources of Recovery.

(a) Indemnity Escrow Fund. On the terms and subject to the conditions set forth in this Article 9, the Indemnity Escrow Fund shall be available to compensate Acquirer (on behalf of itself or any other Indemnified Person) for Indemnifiable Damages pursuant to the indemnification obligations of the Company Shareholders (collectively, the "Indemnifying Parties") under this Article 9. Subject to Section 9.4 the Escrow Agent shall hold the Indemnity Escrow Fund until 11:59 p.m. Pacific time on the date that is 12 months after the Closing Date (the "Escrow Release Date"). No portion of the Indemnity Escrow Fund, nor any beneficial interest therein, may be pledged, subjected to any Encumbrance, sold,

assigned or transferred by any Indemnifying Party or be taken or reached by any legal or equitable process in satisfaction of any debt or other Liability of any Indemnifying Party, in each case prior to the distribution of the Indemnity Escrow Fund to any Indemnifying Party in accordance with Section 9.4.

(b) Order of Recovery. Subject to the limitations set forth in this Article 9, Indemnifiable Damages shall be recoverable:

(i) With respect to any claim for indemnification under Section 9.2(a)(i) or (ii) (other than Fundamental Claims and FCPA Claims): (A) first, from the Indemnity Escrow Fund until the depletion, or reservation for outstanding claims, of all amounts then held therein and (B) thereafter, against the R&W Insurance Policy in accordance with the procedures, and subject to the terms set forth, therein.

(ii) With respect to Fundamental Claims and FCPA Claims, (A) first from the Indemnity Escrow Fund until the depletion, or reservation for outstanding claims, of all amounts then held therein, (B) if and to the extent covered by the terms of the R&W Insurance Policy, thereafter against the R&W Insurance Policy in accordance with the procedures and subject to the terms set forth therein, and (C) finally, if the amounts recovered in accordance with clauses (A) and (B) of this Section 9.2(b)(ii) are insufficient to cover Indemnifiable Damages, then from the Indemnifying Parties in accordance with this Article 9.

(iii) Notwithstanding anything to the contrary contained herein, the amounts that an Indemnified Person recovers from the Indemnity Escrow Fund pursuant to Fundamental Claims or FCPA Claims shall not reduce the amount that an Indemnified Person may recover with respect to claims that are not Fundamental Claims or and FCPA Claims. By way of illustration and not limitation, assuming there are no other claims for indemnification, compensation or reimbursement, in the event that Indemnifiable Damages resulting from a Fundamental Claim or a FCPA Claim are first satisfied from the Indemnity Escrow Fund and such recovery fully depletes the Indemnity Escrow Fund, the maximum amount recoverable by an Indemnified Person pursuant to a subsequent claim that is not a Fundamental Claim or a FCPA Claim shall continue to be the full dollar value of the Indemnity Escrow Fund irrespective of the fact that the Indemnity Escrow Fund was used to satisfy such Fundamental Claim or FCPA Claims, such that the amount recoverable for such two claims would be the same regardless of the chronological order in which they were made.

## 9.2 Indemnification.

(a) Subject to the limitations and exceptions set forth in this Article 9, from and after the Closing, the Indemnifying Parties shall, severally (based on their respective Pro Rata Shares) and not jointly (other than with respect to claims against the Indemnity Escrow Fund, which shall be made on a several and joint basis), indemnify and hold harmless Parent, Acquirer, the Company and their respective officers, directors, agents and employees, and each Person, if any, who controls or may control Parent or Acquirer within the meaning of the Securities Act (each of the foregoing being referred to individually as an "**Indemnified Person**" and collectively as "**Indemnified Persons**") from and against any and all claims (whether or not, in the case of Third-Party Claims, such third party is successful on the merits of such claim), losses, liabilities, claims, damages, fees, costs, interest, awards, judgments, penalties and expenses, settlements, including costs of investigation and defense and reasonable fees and expenses of lawyers, experts and other professionals (collectively, "**Indemnifiable Damages**"), directly or indirectly, whether or not due to a Third-Party Claim, arising out of, resulting from or in connection with:

(i) any failure of any representation or warranty made by the Company or any of the Company Shareholders in this Agreement or in the Company Disclosure Schedule to be true and

correct as of the Agreement Date and as of the Closing Date (provided that for recovery beyond the Indemnity Escrow Fund and the R&W Insurance Policy, the sole source of recovery of the Indemnified Persons for any failure of any representation or warranty made by a Company Shareholder in their personal capacity to be true and correct shall be against such Company Shareholder);

(ii) any failure of any certification, representation or warranty made by the Company or any of the Company Shareholders in any certificate (other than the Spreadsheet and the Company Closing Financial Certificate) required to be delivered to Parent or Acquirer at the Closing pursuant to any provision of this Agreement to be true and correct as of the date such certificate is delivered to Parent or Acquirer;

(iii) any breach of, or failure to perform, any of the covenants, agreements or obligations made by the Company or the Company Shareholders herein or in any other agreements contemplated by this Agreement, the Share Purchase or the other Transactions (provided that for recovery beyond the Indemnity Escrow Fund, the sole source of recovery of the Indemnified Persons for any breach or default of any of the covenants, agreements or obligations of a Company Shareholder in their personal capacity shall be against such breaching Company Shareholder);

(iv) any inaccuracy in any information contained in the Spreadsheet;

(v) any Pre-Closing Taxes and Taxes described in Section 1.5 to the extent not included in the calculation of Company Net Working Capital; and

(vi) any Fraud by or on behalf of the Company, its Representatives or any Indemnifying Party.

(b) For purposes of determining whether a breach of or default in connection with any representation, warranty or covenant (or failure of any representation or warranty to be true and correct) exists, and for determining the amount of any Indemnifiable Damages with respect to such breach, default or failure, all qualifications and limitations as to materiality, Material Adverse Effect, and words of similar import shall be disregarded. Any indemnity payments made under this Agreement shall be treated as purchase price adjustments for federal and state income tax purposes. The Indemnifying Parties shall not have (x) any right of contribution, indemnification or right of advancement from the Company or Acquirer with respect to any Indemnifiable Damages claimed by an Indemnified Person or (y) any right of subrogation against the Company, Parent or Acquirer with respect to any indemnification of a Indemnified Person by reason of any of the matters set forth in this Section 9.2.

### 9.3 Recourse; Limitations.

(a) If the Share Purchase is consummated, recovery from the Indemnity Escrow Fund shall constitute the sole and exclusive source of Indemnifiable Damages against the Indemnifying Parties under this Agreement for Indemnifiable Damages for the matters listed in clauses (i) and (ii) of Section 9.2(a), except with respect to (A) any failure of any of the representations and warranties of the Company contained in Section 2.1 (Organization, Standing, Power and Subsidiaries), Section 2.2 (Capital Structure), Section 2.3 (Authority; Non-contravention), Section 2.10 (Taxes) or Section 2.16 (No Brokers) to be true and correct, or of the Company contained in any certificate delivered to Parent or Acquirer pursuant to this Agreement that are within the scope of those covered by the foregoing Sections to be true and correct as aforesaid, (B) any Fraud in connection with any representation or warranty of the Company contained in this Agreement, and (C) any failure of any representation or warranty made by a Company Shareholder in their personal capacity to be true and correct ((A), (B) and (C) collectively, the “*Special Representations*” and together with clauses (iii)-(vi) of Section 9.2(a), the “*Fundamental Claims*”), and

(D) any failure of any of the representations and warranties of the Company contained in Section 2.17 (Foreign Corrupt Practices) to be true and correct (“**FCPA Claims**”).

(b) In the case of Fundamental Claims, each Indemnifying Party shall have Liability for such Indemnifying Party’s Pro Rata Share of the amount of any Indemnifiable Damages resulting therefrom; provided that such Liability shall be limited to the aggregate amount of cash to which such Indemnifying Party is entitled to receive pursuant to Section 1.1; provided that in the case of Fraud committed by or on behalf of such Indemnifying Party, recourse against such Indemnifying Party shall be without any limitation and may, at the discretion of Parent or Acquirer, be made directly against such Indemnifying Party without first seeking recourse against the Indemnity Escrow Fund. In the case of FCPA Claims, the total liability of each Indemnifying Party shall be limited to such Indemnifying Party’s Pro Rata Share of the FCPA Claims Cap.

(c) In the event of breaches of representations and warranties under Article 3 or in any representations, warranties or covenants in any agreement entered into by such Company Shareholder in its personal capacity in connection with the Transactions, no Company Shareholder shall be liable for any breach by any other Company Shareholder (including fraud). Recourse against such Indemnifying Party shall be, at the discretion of Parent or Acquirer, directly against such Indemnifying Party or against such Indemnifying Party’s Pro Rata Share of the Indemnity Escrow Fund.

(d) Notwithstanding anything to the contrary contained herein (i) no Indemnifying Party shall have any right of indemnification, contribution or right of advancement from Parent, Acquirer, the Company or any other Indemnified Person with respect to any Indemnifiable Damages claimed by any Indemnified Person, (ii) the rights and remedies of the Indemnified Persons after the Closing shall not be limited by (x) any investigation or disclosure made by or on behalf of any Indemnified Person prior to the Closing regarding any failure, breach or other event or circumstance or (y) any waiver of any condition to the Closing related thereto and (iii) the Indemnifying Parties shall not have any right of subrogation against the Company, Parent or Acquirer with respect to any indemnification of an Indemnified Person by reason of any of the matters set forth in Section 9.2.

(e) The Indemnified Persons may only make claims for Indemnifiable Damages arising out of, resulting from or in connection with the matters listed in clauses (i) and (ii) of Section 9.2(a), if and insofar as one or more Officer Certificate(s) identifying (A) each individual Indemnifiable Damages that exceeds \$25,000 (the “**Minimum Threshold**”), and (B) Indemnifiable Damages in an aggregate amount of \$800,000 (the “**Threshold**”) have been delivered (it being understood and agreed that only Indemnifiable Damages that exceed the Minimum Threshold shall be taken into account in determining whether the Threshold has been met), in which event, subject to the other conditions and limitations contained herein, the Indemnifying Parties shall be liable to indemnify the Indemnified Persons for all the Indemnifiable Damages including the amount of the Minimum Threshold and the Threshold. For clarity, the Threshold shall not apply to claims for Indemnifiable Damages other than claims arising out of, resulting from or in connection with the matters listed in clauses (i) and (ii) of Section 9.2(a) and shall not apply to any Fundamental Claims (though shall apply to claims for any FCPA Claims).

(f) For purposes of this Article 9, notwithstanding anything to the contrary contained herein, Indemnifiable Damages shall not include, and no Indemnified Person shall otherwise be compensated hereunder for, punitive damages (except to the extent such damages are awarded by a Governmental Entity in connection with a Third-Party Claim), or consequential damages (unless and to the extent reasonably foreseeable in accordance with Applicable Laws).



9.4 Period for Claims; Other Limitations.

(a) Except as otherwise set forth in this Section 9.4, the period (the “*Claims Period*”) during which claims may be made (i) against the Indemnity Escrow Fund for Indemnifiable Damages arising out of, resulting from or in connection with the matters listed in clauses (i) and (ii) of Section 9.2(a) (other than with respect to any of the Special Representations) shall commence at the Closing and terminate at 11:59 p.m. Pacific time on the date that is 12 months following the Closing Date, and (ii) for Indemnifiable Damages arising out of, resulting from or in connection with all other matters, including Fundamental Claims, shall commence at the Closing and terminate at 11:59 p.m. Pacific time on the date that is 90 days following the expiration of the applicable statute of limitations for the matter that is subject of such claim; provided that the Claims Period and survival period for claims for Fraud shall be indefinite. Notwithstanding anything to the contrary contained herein, such portion of the Indemnity Escrow Fund at the Escrow Release Date, less the aggregate amount of any unresolved or unsatisfied claims for Indemnifiable Damages specified in any Officer’s Certificate delivered to the Shareholders’ Agent on or prior to the Escrow Release Date shall remain in the Indemnity Escrow Fund until such claims for Indemnifiable Damages have been resolved or satisfied. Notwithstanding anything to the contrary contained herein, the Claims Period for claims for Indemnifiable Damages arising out of, resulting from or in connection with Fraud shall not be limited.

(b) Notwithstanding anything contained herein to the contrary, such portion of the Indemnity Escrow Fund as of the Escrow Release Date as in the reasonable judgment of Acquirer shall be necessary to satisfy any unresolved or unsatisfied claim for Indemnifiable Damages specified in any Officer’s Certificate delivered to Acquirer and the Shareholders’ Agent on or prior to the Escrow Release Date shall be retained by the Escrow Agent until such claim for Indemnifiable Damages has been resolved or satisfied. On the day following the Escrow Release Date, the remainder of the Indemnity Escrow Fund, if any, less any amounts remaining in respect of unresolved or unsatisfied claims pursuant to the previous sentence, shall be released and distributed to the Indemnifying Parties promptly (and in any event within five Business Days) in accordance with each such Indemnifying Party’s respective Pro Rata Share. With respect to any amounts retained following such distribution, such amounts shall be released to the Indemnifying Parties based on their respective Pro Rata Shares within five Business Days following the resolution or satisfaction of all such claims, net of any amounts therefrom used to satisfy each such Indemnifying Party’s indemnification obligations with respect to such claims, in accordance with this Article 9.

9.5 Claims.

(a) On or before the last day of the applicable Claims Period, Acquirer may deliver to the Shareholders’ Agent (with a copy to the Escrow Agent if prior to the Escrow Release Date) one or more certificates signed by any officer of Acquirer (an “*Officer’s Certificate*”):

(i) stating that an Indemnified Person has incurred, paid, reserved or accrued, or reasonably anticipates that it may incur, pay, reserve or accrue, Indemnifiable Damages (or, with respect to any Tax matters, that any Tax Authority is reasonably anticipated to raise such matter in audit of Parent or Acquirer or any of their respective subsidiaries, which would reasonably be expected to give rise to Indemnifiable Damages);

(ii) stating the amount of such Indemnifiable Damages (which, in the case of Indemnifiable Damages not yet incurred, paid, reserved or accrued, may be the maximum amount reasonably anticipated by Acquirer to be incurred, paid, reserved, accrued or demanded by a third party); and

(iii) specifying in reasonable detail (based upon the information then possessed by Acquirer) the individual items of such Indemnifiable Damages included in the amount so stated and the nature of the claim to which such Indemnifiable Damages are related.

(b) No delay in providing such Officer's Certificate within the applicable Claims Period shall affect an Indemnified Person's rights hereunder, unless (and then only to the extent that) the Indemnifying Parties are materially prejudiced thereby. Nothing herein shall impair or prohibit Acquirer from updating or amending any Officer's Certificate upon discovery of any additional facts or circumstances with respect to any underlying claim(s) set forth therein.

9.6 Resolution of Objections to Claims.

(a) If the Shareholders' Agent objects in writing to any claim or claims by Acquirer made in any Officer's Certificate within the 20-day period following delivery of the Officer's Certificate, Acquirer and the Shareholders' Agent shall attempt in good faith for 45 days after Acquirer's receipt of such written objection to resolve such objection. If Acquirer and the Shareholders' Agent shall so agree, and there are amounts remaining in the Indemnity Escrow Fund, a joint written instruction setting forth such agreement shall be prepared and signed by both parties and delivered to the Escrow Agent. Acquirer shall be entitled to conclusively rely on any such joint written instruction and Acquirer shall reclaim an amount of cash from the Indemnity Escrow Fund in accordance with the terms of such joint written instruction.

(b) If no such agreement can be reached during the 45-day period for good faith negotiation, but in any event upon the expiration of such 45-day period, either Acquirer or the Shareholders' Agent may submit the dispute to mandatory, final and binding arbitration to be held in accordance with Section 10.13 and the decision of the arbitrator as to the validity and amount of any claim in the relevant Officer's Certificate shall be nonappealable, binding and conclusive upon the parties to this Agreement.

9.7 Shareholders' Agent.

(a) At the Closing, Shareholder Representative Services LLC shall be constituted and appointed as the Shareholders' Agent by virtue of the Company Shareholders' execution of this Agreement or a Joinder Agreement. The Shareholders' Agent shall be the representative, agent and attorney-in-fact for all purposes in connection with this Agreement and any agreements ancillary hereto for and on behalf of the Indemnifying Parties including without limitation to: (i) execute, as the Shareholders' Agent, this Agreement, the Escrow Agreement and any agreement or instrument entered into or delivered in connection with the Transactions, (ii) give and receive notices, instructions and communications permitted or required under this Agreement, the Escrow Agreement, or any other agreement, document or instrument entered into or executed in connection herewith, for and on behalf of any Indemnifying Party, to or from Parent or Acquirer (on behalf of itself or any other Indemnified Person) relating to this Agreement, the Escrow Agreement or any of the Transactions and any other matters contemplated by this Agreement or by such other agreement, document or instrument (except to the extent that this Agreement expressly contemplates that any such notice or communication shall be given or received by each Indemnifying Party individually), (iii) review, negotiate and agree to and authorize Acquirer to reclaim funds from the Escrow Fund in satisfaction of claims asserted by Acquirer (on behalf of itself or any other Indemnified Person, including by not objecting to such claims) pursuant to this Article 9, (iv) object to such claims pursuant to Section 9.6, (v) consent or agree to, negotiate, enter into, or, if applicable, contest, prosecute or defend, settlements and compromises of, and demand arbitration and comply with Orders of courts and awards of arbitrators with respect to, such claims, resolve any such claims, take any actions in connection with the resolution of any dispute relating hereto or to the Transactions by arbitration, settlement or otherwise, and take or forego any or all actions permitted or required of any Indemnifying Party or necessary in the judgment of the

Shareholders' Agent for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement, (vi) consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Indemnifying Parties, (vii) consent or agree to any amendment to this Agreement or to waive any terms and conditions of this Agreement providing rights or benefits to the Indemnifying Parties in accordance with the terms hereof and in the manner provided herein and (viii) take all actions necessary or appropriate in the judgment of the Shareholders' Agent for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance. Acquirer and its Affiliates (including after the Closing, the Company) shall be entitled to rely on the appointment of Shareholder Representative Services LLC as the Shareholders' Agent, or any subsequent appointee, and treat such Shareholders' Agent as the duly appointed attorney-in-fact of each Indemnifying Party and as having the duties, power and authority provided for in this Section 9.7. The Indemnifying Parties shall be bound by all actions taken and documents executed by the Shareholders' Agent in accordance with this Agreement, and Parent, Acquirer and the other Indemnified Persons shall be entitled to rely exclusively on any action or decision of the Shareholders' Agent. The Shareholders' Agent may resign at any time. The Person serving as the Shareholders' Agent may be removed or replaced from time to time, or if such Person resigns from its position as the Shareholders' Agent, then a successor may be appointed, by the holders of a majority in interest of the aggregate amount of cash then held in the Escrow Fund (or, in the event that there is no cash then held in the Escrow Fund by the Indemnifying Parties collectively having an Pro Rata Share greater than fifty percent (50%)) upon not less than 30 days' prior written notice to Acquirer. No bond shall be required of the Shareholders' Agent.

(b) The Shareholders' Agent will incur no liability of any kind with respect to any action or omission by the Shareholders' Agent in connection with the Shareholders' Agent's services pursuant to this Agreement and any agreements ancillary hereto, except in the event of liability directly resulting from the Shareholders' Agent's gross negligence, bad faith or willful misconduct. The Shareholders' Agent shall not be liable for any action or omission pursuant to the advice of counsel. The Indemnifying Parties severally (based on such Indemnifying Party's Pro Rata Share) will indemnify, defend and hold harmless the Shareholders' Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "**Agent Loss**") arising out of or in connection with the Shareholders' Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Agent Loss is suffered or incurred; provided, that in the event that any such Agent Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Shareholders' Agent, the Shareholders' Agent will reimburse the Indemnifying Parties the amount of such indemnified Agent Loss to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Shareholders' Agent by the Indemnifying Parties, any such Agent Losses may be recovered by the Shareholders' Agent from the Shareholders' Agent Expense Amount and, after it is depleted, from the portion of the Escrow Fund otherwise distributable to the Indemnifying Parties (and not distributed or distributable to an Indemnified Person or subject to a pending indemnification claim of an Indemnified Person) on the Escrow Release Date pursuant to the terms hereof, at the time of distribution; provided, that while this section allows the Shareholders' Agent to be paid from the aforementioned sources of funds, this does not relieve the Indemnifying Parties from their obligation to promptly pay such Agent Losses as they are suffered or incurred, nor does it prevent the Shareholders' Agent from seeking any remedies available to it at law or otherwise. In no event will the Shareholders' Agent be required to advance its own funds on behalf of the Indemnifying Parties or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Indemnifying Parties set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Shareholders' Agent under this section.

The foregoing indemnities will survive the Closing, the resignation or removal of the Shareholders' Agent or the termination of this Agreement.

(c) The Shareholders' Agent Expense Fund will be used for the purposes of paying directly, or reimbursing the Shareholders' Agent for, any third party expenses pursuant to this Agreement and the agreements ancillary hereto. The Indemnifying Parties will not receive any interest or earnings on the Shareholders' Agent Expense Fund and irrevocably transfer and assign to the Shareholders' Agent any ownership right that they may otherwise have had in any such interest or earnings. The Shareholders' Agent will not be liable for any loss of principal of the Shareholders' Agent Expense Fund other than as a result of its gross negligence or willful misconduct. The Shareholders' Agent will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Shareholders' Agent's responsibilities, the Shareholders' Agent will deliver any remaining balance of the Shareholders' Agent Expense Fund to the Paying Agent for further distribution to the Indemnifying Parties.

(d) Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Shareholders' Agent that is within the scope of the Shareholders' Agent's authority under Section 9.7 shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction all the Indemnifying Parties and shall be final, binding and conclusive upon each such Indemnifying Party; and each Indemnified Person shall be entitled to rely exclusively upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Indemnifying Party.

#### 9.8 Third-Party Claims.

(a) In the event that Acquirer becomes aware of a potential claim by a third party (a "**Third-Party Claim**") that Acquirer believes may result in a claim for Indemnifiable Damages by or on behalf of an Indemnified Person, Acquirer shall have the right in its sole discretion to conduct the defense of and to settle or resolve such Third-Party Claim (and the costs and expenses incurred by Acquirer in connection with such investigation, defense, settlement or resolution, including reasonable attorneys' fees, other professionals' and experts' fees and court or arbitration costs shall be included in the Indemnifiable Damages for which Acquirer shall be entitled to receive indemnification pursuant to a claim made hereunder, regardless of the outcome of such Third-Party Claim). The Shareholders' Agent shall have the right to receive copies of all pleadings, notices and communications with respect to such Third-Party Claim to the extent that receipt of such documents does not affect any privilege relating to any Indemnified Person, subject to execution by the Shareholders' Agent of Acquirer's (and, if required, such third party's) standard non-disclosure agreement (and the Shareholders' Agent may communicate such information only to the extent needed to the Company Shareholders, provided that any such recipients are subject to the same confidentiality obligations) to the extent that such materials contain confidential or proprietary information. The Shareholders' Agent shall be entitled, at the Company Shareholders' expense, to participate in, but not to determine or conduct, any defense of the Third-Party Claim or settlement negotiations with respect to the Third-Party Claim.

(b) In the event that the Shareholders' Agent has consented to the amount of any settlement or resolution by Acquirer of any such claim, which consent shall not be unreasonably withheld, conditioned or delayed and which consent shall be deemed to have been given unless the Shareholders' Agent shall have objected within 15 days after a written request for any such settlement or resolution, such

settlement or resolution of any such claim with any third party claimant shall be determinative of the existence of or amount of Indemnifiable Damages relating to such matter and neither the Shareholders' Agent nor any Indemnifying Party shall have any power or authority to object under this Article 9 to the amount of any claim by or on behalf of any Indemnified Person against the Escrow Fund for indemnity with respect to such settlement or resolution.

9.9 Treatment of Indemnification Payments. The Indemnifying Parties, Parent the Shareholders' Agent and Acquirer agree to treat (and cause their respective Affiliates to treat) any payment received by the Indemnified Persons pursuant to this Article 9 as adjustments to the Aggregate Consideration for all Tax purposes, to the maximum extent permitted by Applicable Law.

9.10 Exclusive Remedy. Subject to Section 10.11, but notwithstanding any other provision to the contrary in this Agreement or in any other instrument or certificate delivered under this Agreement, the parties to this Agreement acknowledge and agree that from and after the Closing, the provisions of this Article 9 are the sole and exclusive remedy of Parent, Acquirer, the other Indemnified Persons for all Indemnifiable Damages or other monetary damages based on, or arising out of this Agreement, or any other agreement, instrument or certificate delivered hereunder or thereunder (other than the Non-Compete Agreements and any employment agreements including the Offer Letters), and the consummation of the transactions contemplated hereunder, except (i) with respect to any Company Shareholder, any Fraud by such Company Shareholder in making any representation or warranty in such this Agreement or any other written agreement, certificate or instrument delivered on or prior to the Closing Date by such Company Shareholder pursuant to this Agreement in its personal capacity (and not in the name of, on behalf of, or by virtue of its office with the Company) and (ii) that nothing herein shall limit any Person's right to seek and obtain any equitable remedy, including a preliminary or permanent injunction or specific performance.

## ARTICLE 10 GENERAL PROVISIONS

10.1 Survival of Representations and Warranties. If the Share Purchase is consummated, the representations and warranties made by the Company and the Company Shareholders contained herein, in the Company Disclosure Schedule (including any Exhibit to or Schedule of the Company Disclosure Schedule), and in the other certificates contemplated by this Agreement shall survive the Closing and remain in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto, until the date that is 12 months following the Closing Date; provided that the Special Representations and the representations and warranties of the Company contained in any certificate required to be delivered to Parent or Acquirer regarding the same subject matter as those covered by the Special Representations pursuant to any provision of this Agreement, will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto, until the date that is 90 days following the expiration of the statute of limitations for the matter that is the subject of such claim for claims against the Indemnifying Parties which seek recovery of Indemnifiable Damages arising out of, resulting from or in connection with an inaccuracy or breach of such representations or warranties; provided, further, that no right to indemnification pursuant to Article 9 in respect of any claim that is set forth in an Officer's Certificate delivered to Acquirer or the Shareholders' Agent on or prior to the applicable expiration date of such representation and warranty shall be affected by the expiration of such representations and warranties; provided, further, that such expiration shall not affect the rights of any Indemnified Person or otherwise to seek recovery of Indemnifiable Damages arising out of, resulting from or in connection with any Fraud by or on behalf of the Company, its Representatives or any Indemnifying Parties relating to the Share Purchase or this Agreement, for which the survival period shall be indefinite. If the Share Purchase is consummated, the representations and warranties of Acquirer and Parent contained in this Agreement shall terminate at the Closing.

10.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Acquirer, to:

Proofpoint, Inc.  
892 Ross Drive  
Sunnyvale, CA 94089  
Attention: General Counsel  
Facsimile No.: (408) 517-4711  
Telephone No.: (408) 517-4710  
Email: miyang@proofpoint.com

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

Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Attention: Kris S. Withrow  
Email: kwithrow@fenwick.com

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

Meitar Liquornik Geva Leshem Tal  
16 Abba Hillel Road  
Ramat Gan 52506, Israel  
Attention: Mike Rimon  
Email: mrimon@meitar.com

(b) If to the Company, to:

Observe IT Ltd.  
200 Clarendon Street, 12<sup>th</sup> Floor  
Boston, Massachusetts 02116  
Attention: Chief Executive Officer  
Email: mmckee@observeit.com

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

DLA Piper LLP  
33 Arch St # 26  
Boston, MA 02110  
Attention: Itai Nevo / Douglas Boggs  
Email: itai.nevo@dlapiper.com / doug.boggs@dlapiper.com

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

Amit, Pollak, Matalon & Co.  
APM House, 18 Raoul Wallenberg Street, Building D  
Tel Aviv, 6971915, Israel  
Attention: Ian Rostowsky  
Email: ian\_ro@apm-law.com

(c) If to the Shareholders' Agent, or the Company Shareholders (after Closing), to:

Shareholder Representative Services LLC  
950 17th Street, Suite 1400  
Denver, CO 80202  
Attention: Managing Director  
Email: deals@srsacquiom.com

Any notice given as specified in this Section 10.2 (i) if delivered personally or sent by facsimile transmission shall conclusively be deemed to have been given or served at the time of dispatch if sent or delivered on a Business Day or, if not sent or delivered on a Business Day, on the next following Business Day and (ii) if sent by commercial delivery service or mailed by registered or certified mail (return receipt requested) shall conclusively be deemed to have been received on the third Business Day after the post of the same.

### 10.3 Appointment of Process Agents.

(a) Each party hereto that is not incorporated or resident in the U.S. shall ensure that there is at all times appointed an agent for service of process on it in the U.S. in relation to any matter arising out of this Agreement or any of the other agreements to be entered into pursuant to this Agreement, service upon whom shall be deemed completed whether or not forwarded to or received by such party, and the appointing party shall notify each other party hereto of the name of such agent and their contact details.

(b) Any party hereto required to make an appointment pursuant to Section 10.3(a) may from time to time appoint a new process agent acceptable to the other parties hereto (acting reasonably) to receive service of process in the U.S. pursuant to Section 10.3(a).

(c) Any party hereto that has made an appointment under Section 10.3(a) shall inform the other parties hereto, in writing, of any change in the address of its process agent within 28 days.

(d) If any process agent appointed by any party hereto pursuant to Section 10.3(a) ceases to have an address in the U.S., such party irrevocably agrees to appoint a new process agent acceptable to the other parties hereto (acting reasonably) and to deliver to the other parties hereto within 14 days a copy of a written acceptance of appointment by its new process agent.

10.4 Interpretation. When a reference is made herein to Articles, Sections, subsections, Schedules or Exhibits, such reference shall be to an Article, Section or subsection of, or a Schedule or an Exhibit to this Agreement unless otherwise indicated. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." Where a reference is made to a Contract, instrument or Applicable Law, such reference is to such Contract, instrument or Applicable Law as amended, modified or supplemented, including (in the case of Contracts or instruments) by waiver or consent and (in the case of Applicable Law)

by succession of comparable successor Applicable Law and references to all attachments thereto and instruments incorporated therein. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender and neutral forms of such words, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms “hereof,” “herein,” “hereto,” “hereunder” and derivative or similar words refer to this entire Agreement, (iv) references to clauses without a cross-reference to a Section or subsection are references to clauses within the same Section or, if more specific, subsection, (v) references to any person include the successors and permitted assigns of that person, (vi) references from or through any date shall mean, unless otherwise specified, from and including or through and including, respectively, (vii) the phrases “provide to” and “deliver to” and phrases of similar import mean that a true, correct and complete paper or electronic copy of the information or material referred to has been delivered to the party to whom such information or material is to be provided and (viii) the phrase “made available to” and phrases of similar import means, with respect to any information, document or other material of Acquirer or the Company, that such information, document or material was made available for review by the Company or Acquirer, respectively, and its Representatives in the virtual data room established by Acquirer or the Company, respectively, in connection with this Agreement at least 48 hours prior to the execution of this Agreement or actually delivered (whether by physical or electronic delivery) to the Company or Acquirer, respectively, or its Representatives at least 48 hours prior to the execution of this Agreement. The symbol “\$” refers to United States Dollars. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if.” References to a Person are also to its permitted successors and assigns. All references to “days” shall be to calendar days unless otherwise indicated as a “Business Day.” Unless indicated otherwise, all mathematical calculations contemplated by this Agreement shall be rounded to the tenth decimal place, except in respect of payments, which shall be rounded to the nearest whole United States cent.

10.5 Amendment. Subject to Applicable Law, the parties hereto may amend this Agreement by authorized action at any time pursuant to an instrument in writing signed on behalf of each of the parties hereto. To the extent permitted by Applicable Law, Parent, Acquirer and the Shareholders’ Agent may cause this Agreement to be amended at any time after the Closing by execution of an instrument in writing signed on behalf of Parent, Acquirer and the Shareholders’ Agent.

10.6 Extension; Waiver. At any time at or prior to the Closing, any party hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto owed to such party, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the covenants, agreements, obligations or conditions for the benefit of such party contained herein. At any time after the Closing, Parent, Acquirer and the Shareholders’ Agent may, to the extent legally allowed, (A) extend the time for the performance of any of the obligations of the other owed to such party, (B) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto or (C) waive compliance with any of the covenants, agreements, obligations or conditions for the benefit of such party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing that is (I) prior to the Closing with respect to the Company and/or the Company Shareholders, signed by the Shareholders’ Agent, (II) after the Closing with respect to the Indemnifying Parties and/or the Shareholders’ Agent, signed by the Shareholders’ Agent and (III) with respect to Parent or Acquirer, signed by Parent. Without limiting the generality or effect of the preceding sentence, no failure to exercise or delay in exercising any right under this Agreement shall constitute a waiver of such right, and no waiver of any breach or default shall be deemed a waiver of any other breach or default of the same or any other provision herein.

10.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts



have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood and agreed that all parties hereto need not sign the same counterpart. The delivery by facsimile or by electronic delivery in PDF format of this Agreement with all executed signature pages (in counterparts or otherwise) shall be sufficient to bind the parties hereto to the terms and conditions set forth herein. All of the counterparts will together constitute one and the same instrument and each counterpart will constitute an original of this Agreement.

10.8 Entire Agreement; Nonassignability; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the Exhibits attached hereto, the Schedules, including the Company Disclosure Schedule, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with its terms and (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder (except that Article 9 is intended to benefit Indemnified Persons) and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided herein.

10.9 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void, except that Parent and/or Acquirer may assign its rights and delegate its obligations under this Agreement to any direct or indirect wholly owned subsidiary of Parent or Acquirer without the prior consent of any other party hereto; provided that notwithstanding any such assignment, Parent and/or Acquirer, as applicable, shall remain liable for all of its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

10.10 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably necessary to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

10.11 Remedies Cumulative; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy and nothing herein shall be deemed a waiver by any party hereto of any right to specific performance or injunctive relief. It is accordingly agreed that, the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity, and the parties hereto hereby waive the requirement of any posting of a bond in connection with the remedies described herein.

10.12 Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, each Schedule and each Exhibit attached hereto, the application of any Applicable Law or rule

of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

10.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to such state's principles of conflicts of law; provided that matters involving the internal corporate affairs of the Company and the Share Purchase shall be governed by the laws of the State of Israel. Subject to Section 10.13(h) and Section 10.13(i), any dispute hereunder ("Dispute") shall be settled by arbitration in the state, county and city of New York, and, except as herein specifically stated, in accordance with the J.A.M.S. Streamlined Arbitration Rules and Procedures then in effect (the "J.A.M.S. Rules"). The arbitration provisions of this Section 10.13 shall govern over any conflicting rules that may now or hereafter be contained in the J.A.M.S. Rules. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof. The arbitrator shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a Dispute.

(a) Compensation of Arbitrator. Any such arbitration will be conducted before a single arbitrator who will be compensated for his or her services at a rate to be determined by the parties or by J.A.M.S., but based upon reasonable hourly or daily consulting rates for the arbitrator in the event the parties are not able to agree upon his or her rate of compensation.

(b) Selection of Arbitrator. The parties will cooperate with J.A.M.S. in promptly selecting from a list of arbitrators who are lawyers familiar with Delaware Law one arbitrator from the J.A.M.S. panel of neutrals; provided that (i) such arbitrator cannot work for a firm then performing services for either party, and (ii) each party will have the opportunity to make such reasonable objection to any of the arbitrators listed as such party may wish. In the event that the parties cannot agree on an arbitrator within three Business Days after either party's issuance of a written demand for arbitration, J.A.M.S. will select the arbitrator.

(c) Payment of Costs. Acquirer and the Shareholders' Agent (on behalf of the Company Shareholders) will bear the expense of deposits and advances required by the arbitrator in equal proportions, but either party may advance such amounts, subject to recovery as an addition or offset to any award. The arbitrator will award to the prevailing party all costs, fees and expenses related to the arbitration, including reasonable fees and expenses of attorneys, accountants and other professionals incurred by the prevailing party.

(d) Burden of Proof. For any Dispute submitted to arbitration, the burden of proof will be as it would be if the claim were litigated in a judicial proceeding.

(e) Award. Upon the conclusion of any arbitration proceedings hereunder, the arbitrator will render findings of fact and conclusions of law and a written opinion setting forth the basis and reasons for any decision reached and will deliver such documents to each party to this Agreement along with a signed copy of the award.

(f) Terms of Arbitration. The arbitrator chosen in accordance with the provisions of this Section 10.13 will not have the power to alter, amend or otherwise affect the provisions of this Agreement, including the terms of these arbitration provisions.

(g) Confidentiality. At the request of any party, the mediators, arbitrators, attorneys, parties to the mediation or arbitration, witnesses, experts, court reporters, or other persons present at a mediation or arbitration shall agree in writing to maintain the strict confidentiality of the proceedings.

(h) Emergency Relief. A party may apply either to a court of competent jurisdiction, or to an arbitrator if one has been appointed, for prejudgment remedies and emergency relief pending final determination of a claim in accordance with this Section 10.13. The appointment of an arbitrator does not preclude a party from seeking prejudgment remedies and emergency relief from a court of competent jurisdiction.

(i) Exclusive Process. Except as specifically otherwise provided herein, arbitration will be the sole and exclusive process of the parties for any Dispute arising out of this Agreement.

[SIGNATURE PAGE NEXT]

IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**PARENT:**

**PROOFPOINT, INC.**

By: /s/ Paul Auvil  
Name: Paul Auvil  
Title: CFO

**ACQUIRER:**

**PROOFPOINT ISRAEL HOLDINGS LIMITED**

By: /s/ Paul Auvil  
Name: Paul Auvil  
Title: Director

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[Signature Page to Share Purchase Agreement]

IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY:**

**OBSERVE IT LTD.**

By: /s/ Michael McKee  
Name: Michael McKee  
Title: Chief Executive Officer

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**SHAREHOLDERS' AGENT:**

**SHAREHOLDER REPRESENTATIVE SERVICES LLC**, SOLELY IN ITS CAPACITY AS THE SHAREHOLDERS' AGENT

By: /s/ Sam Riffe  
Name: Sam Riffe  
Title: Managing Director

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

By: /s/ Avi Amos  
Name: Avi Amos

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

**NIGHTDRAGON SECURITY, LLC**

By: /s/ David DeWalt  
Name: David DeWalt  
Title: Managing Director

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

**BAIN CAPITAL VENTURE OIT CAYMAN LTD.**

By: /s/ Paul Zurlo  
Name: Paul Zurlo  
Title: Managing Director

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

**SPRING LAKE/OIT CO-INVESTMENT LLC**

By: Spring Lake/OIT Co-Investment GP LLC  
Its Managing Member

By: Spring Lake Equity Management LLC  
Its Managing Member

By: /s/ Jeff Williams  
Name: Jeff Williams  
Title: Director

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

**SPRING LAKE EQUITY PARTNERS EXTENSION FUND LLC**

By: Spring Lake Equity GP LLC  
Its Managing Member

By: Spring Lake Equity Management LLC  
Its Managing Member

By: /s/ Jeff Williams  
Name: Jeff Williams  
Title: Director

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

By: /s/ Mike McKee  
Name: Mike McKee

**[Signature Page to Share Purchase Agreement]**

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IN WITNESS WHEREOF, Parent, Acquirer, the Company, the Company Shareholders and the Shareholders' Agent have caused this Share Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to those Company Shareholders who are individuals and the Shareholders' Agent, solely in its capacity as such), all as of the date first written above.

**COMPANY SHAREHOLDERS:**

By: /s/ Gabriel Friedlander  
Name: Gabriel Friedlander

**[Signature Page to Share Purchase Agreement]**

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## EXHIBIT A

### Definitions

As used in this Agreement, the following terms shall have the meanings indicated below. Unless indicated otherwise, all mathematical calculations contemplated hereby shall be rounded to the tenth decimal place.

“**102 Company Options**” mean Company Options granted and subject to Taxes pursuant to Section 102(b)(2) of the Ordinance.

“**102 Company Securities**” mean 102 Company Options and 102 Company Shares, collectively.

“**102 Company Shares**” mean Company Ordinary Shares issued upon vesting of or exercise of or otherwise in connection to 102 Company Options.

“**102 Trustee**” means ESOP Management and Trust Services Ltd, appointed by the Company to serve as trustee pursuant to Section 102 of the Ordinance and approved by the ITA.

“**2019 Bonus Plan**” means the Company’s cash incentive compensation plan for the Company’s fiscal year ending December 31, 2019.

“**3(i) Company Options**” means Company Option granted and subject to Taxes under Section 3(i) of the Ordinance.

“**Acquisition Proposal**” means any offer, proposal, inquiry or indication of interest (other than an offer, proposal, inquiry or indication of interest by Acquirer) contemplating or otherwise relating to any Acquisition Transaction.

“**Acquisition Transaction**” means (i) a merger, consolidation or other business combination of, with or involving the Company or any Subsidiary, (ii) a restructuring, recapitalization or liquidation of the Company or any Subsidiary or (iii) an exclusive license, an acquisition or disposition of any stock (other than upon exercise of any Company Warrants that were issued on or prior to the date hereof or pursuant to the Company Options), or material assets of the Company or any Subsidiary, or any financing transaction (including the filing of a registration statement with the Securities and Exchange Commission or similar regulatory agency) or any other similar transaction, the consummation of which would interfere with the Company’s ability to consummate the transactions contemplated hereby.

“**Adjustment Escrow Amount**” means an amount in cash equal to \$1,000,000.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, including any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person, in each case as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of more than 50% of the voting securities or by Contract or otherwise.

“**Aggregate Consideration**” means (A) \$225,000,000 less (B) the Closing Net Working Capital Shortfall, if any, plus (C) the Closing Net Working Capital Surplus, if any, less (D) any Transaction Expenses, less (E) any Company Debt, plus (F) the Aggregate Exercise Price.

“**Aggregate Exercise Price**” means the aggregate amount of the exercise price of all In the Money Vested Company Options and all In the Money Unvested Company Options that are held by Company Employees that are outstanding immediately prior to the Closing.

“**Applicable Law**” means, with respect to any Person, any federal, state, foreign, local, municipal or other law, statute, constitution, legislation, principle of common law, resolution, ordinance, code, decree, rule, directive, license, permit, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any Orders applicable to such Person or such Person’s Affiliates or to any of their respective assets, properties or businesses.

“**Assumed Option Consideration**” means an amount equal to the product of the Participating Per Share Payment Amount multiplied by the total number of Assumed Options.

“**Business**” means the business of the Company and the Subsidiaries as currently conducted and as currently proposed to be conducted by the Company or the Subsidiaries. For the purposes of the foregoing definition, the term “proposed to be conducted” means the design, development, manufacturing, reproduction, marketing, licensing, sale, offer for sale, importation, distribution, provision and/or use of any Company Product.

“**Business Day**” means a day (i) other than Saturday or Sunday and (ii) on which commercial banks are open for business in San Francisco, California or in the State of Israel.

“**Closing Net Working Capital Shortfall**” means the amount, if any, by which (A) the Company Net Working Capital is less than (B) the Closing Net Working Capital Target.

“**Closing Net Working Capital Surplus**” means the amount, if any, by which (A) the Company Net Working Capital is greater than (B) the Closing Net Working Capital Target.

“**Closing Net Working Capital Target**” means negative \$401,103.85.

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

“**Company Closing Financial Certificate**” means a certificate executed by the Chief Financial Officer of the Company, dated as of the Closing Date, certifying (A) the amount of Company Net Working Capital (including: (i) the Company’s balance sheet as of the Closing Date prepared in a manner consistent with GAAP and the Company Balance Sheet, (ii) an itemized list of each element of the Company’s consolidated current assets, (iii) an itemized list of each element of the Company’s consolidated total liabilities including all unpaid Taxes), (B) each item of Company Debt with a description of the nature of such Company Debt and the Person to whom such Company Debt is owed, and (C) each item of Transaction Expenses, with a description of the nature of such Transaction Expenses and the Person to whom such Transaction Expenses are or were owed.

“**Company Contractor**” means any current or former consultant, advisory board member and independent contractor of the Company or any Subsidiary, including services providers, manpower companies and their employees, freelancers and sub-contractors.

“**Company Data**” means all data collected, generated or received by or on behalf of the Company or any Subsidiary in connection with the marketing, delivery or use of any Company Product, including Personal Data.

“**Company Debt**” means as of the Closing Date and immediately prior to the Closing, an amount equal to the sum of all outstanding guaranties and indebtedness for borrowed money owed to third parties (whether short- or long-term, whether or not due and payable, to the extent they are owed or guaranteed by the Company or any Subsidiary), including all bank debt and all notes, fees expenses or termination payments in connection therewith.

“**Company Employee**” means any current or former employee of the Company or any Subsidiary.

“**Company Employee Plans**” means (i) all “employee benefit plans” within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (ii) each loan to an employee, (iii) all share option, share purchase, phantom share, share appreciation right, restricted share unit, or any other equity or equity-based plans, programs, arrangements or agreements, (iv) all severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care, life insurance or accident insurance plans, programs or arrangements, (v) all bonus, commission, and incentive plans (including cash incentive plans), programs and arrangements, (vi) all pension and severance arrangements (including any manager’s insurance and pension fund), profit sharing, savings (including education fund), retirement, supplemental retirement, deferred compensation plans, programs or arrangements, (vii) all other material fringe or employee benefit plans, programs or arrangements and (viii) all management, employment, consultant, advisor, director, executive compensation, relocation, repatriation, expatriation or severance agreements, written or otherwise, as to which any unsatisfied obligations of the Company remain for the benefit of, or relating to, any present or former employee, Company Contractor or non-employee director of the Company.

“**Company Net Working Capital**” means as of the Closing Date and immediately prior to the Closing (i) the Company’s consolidated current assets (as defined by and determined in accordance with GAAP) less (ii) the Company’s consolidated current liabilities (as defined by and determined in accordance with GAAP). For purposes of calculating Company Net Working Capital: (a) the Company’s consolidated current assets shall exclude cash, deferred commission, the impact from applying ASC 842 to lease-related assets, amounts related to the Employee Loan Amount (including related interest receivable) and loan origination fees, provided, however, for purposes of the Parent Closing Statement, accounts receivable of the Company as of the Closing Date shall only be included as a current asset if and to the extent (1) reflected in the Company Closing Financial Certificate, (2) if collected by Parent or the Company prior to 120 days following the Closing Date, and (3) if not collected, were subject to an adequate reserve expressly recorded as a current liability in the Company Closing Financial Certificate; and (b) the Company’s consolidated current liabilities shall include all Pre-Closing Taxes and shall exclude deferred revenue, the impact from applying ASC 842 to lease-related liabilities, Transaction Expenses and Company Debt.

“**Company Option Plan**” means the 2010 Share Option Plan, including and the US and Israeli Appendices thereto.

“**Company Optionholders**” means (i) with respect to any time before the Closing, collectively, the holders of record of Company Options outstanding as of such time and (ii) with respect to any time at or after the Closing, collectively, the holders of record of Company Options outstanding as of immediately prior to the Closing.

“**Company Options**” means options to purchase Company Ordinary Shares that are issued and outstanding as of the Closing.



“**Company Ordinary Shares**” means the Ordinary Shares of the Company of a nominal value of NIS 0.01.

“**Company Securityholders**” means, collectively, the Company Shareholders, the Company Optionholders and the Company Warrantholders.

“**Company Series A and Company Series A-1 Aggregate Preferred Shares Liquidation Preference**” means an amount equal to the sum of (a) the Company Series A Preferred Shares Aggregate Liquidation Preference plus (b) Company Series A-1 Preferred Shares Aggregate Liquidation Preference.

“**Company Series A Preferred Per Share Payment Amount**” means an amount equal to the sum of (A) \$1.77924, and (B) the Participating Per Share Payment Amount multiplied by 1.025690412252512.

“**Company Series A Preferred Shares**” means the Series A Preferred Shares of the Company of a nominal value of NIS 0.01.

“**Company Series A Preferred Shares Aggregate Liquidation Preference**” means (x) \$1.77924 multiplied by (y) the Fully-Diluted Company Series A Shares.

“**Company Series A Warrants**” means warrants to purchase Company Series A Preferred Shares.

“**Company Series A-1 Preferred Per Share Payment Amount**” means an amount equal to the sum of (A) the \$1.17782, and (B) the Participating Per Share Payment Amount.

“**Company Series A-1 Preferred Shares**” means the Series A-1 Preferred Shares of the Company of a nominal value of NIS 0.01.

“**Company Series A-1 Preferred Shares Aggregate Liquidation Preference**” means (x) \$1.17782 multiplied by (y) the Fully-Diluted Company Series A-1 Shares.

“**Company Series B Preferred Shares**” means the Series B-1 Preferred Shares and the Series B-2 Preferred Shares of the Company.

“**Company Series B-1 Preferred Shares**” means the Series B-1 Preferred Shares of the Company of a nominal value of NIS 0.01.

“**Company Series B-2 Preferred Shares**” means the Series B-2 Preferred Shares of the Company of a nominal value of NIS 0.01.

“**Company Share Capital**” means the issued and outstanding share capital of the Company.

“**Company Shareholders**” means (i) with respect to any time before the Closing, collectively, the holders of record of Company Shares outstanding as of such time and (ii) with respect to any time at or after the Closing, collectively, the holders of record of Company Shares outstanding as of immediately prior to the Closing.

“**Company Shares**” means the Company Ordinary Shares, the Company Series A Preferred Shares, the Company Series A-1 Preferred Shares, Company Series B-1 Preferred Shares and Company Series B-2 Preferred Shares.

“**Company Vested Optionholders**” means the holders of In the Money Vested Company Options.

“**Company Warrants**” means warrants to purchase shares of Company Share Capital.

“**Company Warrantholders**” means (i) with respect to any time before the Closing, collectively, the holders of record of Company Warrants outstanding as of such time and (ii) with respect to any time at or after the Closing, collectively, the holders of record of Company Warrants outstanding as of immediately prior to the Closing.

“**Contract**” means any legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, subleases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts, letters of intent and purchase orders) as of the Agreement Date or as may hereafter be in effect, including all amendments, supplements, exhibits and schedules thereto.

“**Employee Loan Amount**” means the total amount outstanding under all indebtedness of any Company Employee (including any Key Employee) to the Company or any Subsidiary.

“**Encumbrance**” means, with respect to any asset, any mortgage, easement, encroachment, equitable interest, right of way, deed of trust, lien (statutory or other), pledge, charge, security interest, title retention device, conditional sale or other security arrangement, collateral assignment, claim, community property interest, adverse claim of title, ownership or right to use, covenant not to assert, defensive revocation, right of first refusal, restriction or other similar encumbrance of any kind in respect of such asset (including any restriction on (i) the voting of any security or the transfer of any security or other asset, (ii) the receipt of any income derived from any asset, (iii) the use of any asset and (iv) the possession, exercise or transfer of any other attribute of ownership of any asset) provided that restrictions on transfer of Equity Interests under Applicable Laws shall not constitute an “Encumbrance.”

“**Equity Interests**” means, with respect to any Person, any share capital of, or other ownership, membership, partnership, joint venture or equity interest in, such Person or any indebtedness, securities, options, warrants, call, subscription or other rights or entitlements of, or granted by, such Person or any of its Affiliates that are convertible into, or are exercisable or exchangeable for, or giving any Person any right or entitlement to acquire any such capital stock or other ownership, partnership, joint venture or equity interest, in all cases, whether vested or unvested.

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

“**Escrow Agent**” means ESOP Management and Trust Services Ltd.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Exchange Ratio**” means a quotient obtained by dividing (x) the Participating Per Share Payment Amount by (y) the Parent Trading Price.

“**FCPA Claims Cap**” means an amount equal to \$10,000,000.

“**Fraud**” means Delaware common law fraud (including the element of scienter) in the making of the representations and warranties contained in this Agreement.

“**Fully-Diluted Company Series A Shares**” means the sum of (a) aggregate number of Company Series A Preferred Shares that are issued and outstanding immediately prior to the Closing plus (b) the aggregate number of shares of Company Series A Preferred Shares that are issuable upon the exercise of all Company Series A Warrants issued and outstanding immediately prior to the Closing.

“**Fully-Diluted Company Series A-1 Shares**” means the aggregate number of Company Series A-1 Preferred Shares that are issued and outstanding immediately prior to the Closing.

“**Fully-Diluted Company Shares**” means the sum, without duplication, of (i) the aggregate number of Company Ordinary Shares that are issued and outstanding immediately prior to the Closing and (ii) the aggregate number of Company Ordinary Shares that are issuable upon the exercise and/or conversion of the In the Money Vested Company Options, Assumed Options, Company Series A Preferred Shares, Company Series A-1 Preferred Shares, Company Series B Preferred Shares, and Company Series A Preferred Shares issuable upon exercise of the Company Series A Warrants, in each case, that are issued and outstanding immediately prior to the Closing.

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

“**Governmental Entity**” means any supranational, national, state, municipal, local, tribal or foreign government, any court, tribunal, arbitrator, mediator, administrative agency, commission or other governmental official, authority or instrumentality, in each case whether domestic or foreign, any stock exchange or similar self-regulatory organization or any quasi-governmental or private body exercising any regulatory, Taxing or other governmental or quasi-governmental authority (including any governmental or political division, department, agency, commission, instrumentality, official, organization, unit, body or entity, the OCS and any court or other tribunal).

“**Group**” has the meaning ascribed to such term under Section 13(d) of the Exchange Act, the rules and regulations thereunder and related case law.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**In the Money**” means (i) with respect to any Company Option that is outstanding immediately prior to the Closing, that the exercise price of such Company Option is less than the Participating Per Share Payment Amount and (ii) with respect to any Company Series A Warrant that is outstanding immediately prior to the Closing, that the exercise price of such Company Series A Warrant is less than the Company Series A Preferred Per Share Payment Amount.

“**Indemnity Escrow Amount**” means an amount in cash equal to \$2,250,000.

“**IRS**” means the United States Internal Revenue Service.

“**Israeli Companies Law**” means the Israeli Companies Law, 1999.

“**Israeli Law**” means Israeli Applicable Law.

“**ITA**” means the Israeli Tax Authority.

“**Knowledge**” of the Company, with respect to any fact or matter, means the actual knowledge of the Company’s officers and directors of such fact or matter, after due and reasonable inquiry, including after due and reasonable inquiry of such officer’s or director’s direct reports.

“**Legal Proceeding**” means any private or governmental action, inquiry, claim, counterclaim, proceeding, suit, hearing, litigation, audit or investigation, in each case whether civil, criminal, administrative, judicial or investigative, or any appeal therefrom.

“**Liabilities**” (and, with correlative meaning, “**Liability**”) means all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under Applicable Law or Order and those arising under any Contract.

“**Material Adverse Effect**” means any change, event, violation, inaccuracy, circumstance or effect (each, an “**Effect**”) that, individually or taken together with all other Effects, and regardless of whether or not such Effect constitutes a breach of the representations or warranties made by the Company in this Agreement, is, or is reasonably likely to, (i) have a materially adverse effect on the financial condition, assets (including intangible assets) and liabilities (taken together), business, operations or results of operations of the Company and its Subsidiaries, taken as a whole, or (ii) materially impede or delay the Company’s ability to consummate the transactions contemplated by this Agreement in accordance with its terms and Applicable Law; provided, however, that, no Effect resulting from any of the following shall be deemed to be or constitute, or shall be taken into account in determining whether there is, a “Material Adverse Effect”: (a) changes in the general economic, political, financial market conditions in which the Company and the Subsidiaries operate; (b) natural disasters, acts of terrorism, hostilities or war (whether or not declared), or epidemics or pandemics; (c) any actions expressly required by the terms of this Agreement; (d) the failure of the Company to meet any internal projections, estimates, budgets, predictions, plans, milestones or forecasts (but not, in each case, the causes or events underlying such failure); (e) any changes in Applicable Laws or accounting rules or principles, including changes in GAAP, or the interpretation of the foregoing, which are approved and enacted after the Agreement Date; or (f) any action taken or omitted to be taken at the prior written request or with the written consent of Acquirer; provided, that the exclusions provided in clauses (a), (b) and (e) shall not apply to the extent the Company is disproportionately adversely affected by any event relative to other participants in the industries in which the Company generally operates.

“**Nasdaq**” means the Nasdaq Global Select Market, any successor stock exchange operated by The NASDAQ Stock Market LLC or any successor thereto.

“**Open Source Materials**” means any software or other material (and version of such software and other material) that is distributed as “free software”, “open source software” or under a similar licensing or distribution terms (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License).

“**Option Cancellation and Conversion Agreement**” means an option cancellation and conversion agreement entered into between a Company Optionholder who holds In the Money Vested Company Options and Acquirer, in the form attached hereto as Exhibit R.

“**Order**” means any judgment, writ, decree, stipulation, determination, decision, award, rule, preliminary or permanent injunction, temporary restraining order or other order.

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

“**Parent Common Stock**” means the average common stock of Parent, par value of \$ 0.0001 per share.

**“Parent Trading Price”** means the average of the per share closing price of the Parent Common Stock on the NASDAQ as reported on Yahoo! Finance for the five trading days ending on (and inclusive of) the trading day that is three trading days immediately preceding the Closing Date.

**“Participating Consideration”** means the Aggregate Consideration less the Company Series A and Company Series A-1 Aggregate Preferred Shares Liquidation Preference.

**“Participating Per Share Payment Amount”** means (i) the Participating Consideration divided by (ii) the Fully-Diluted Company Shares.

**“Permitted Encumbrances”** means: (i) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings for which adequate reserves have been established, (ii) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (iii) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by Applicable Law, (iv) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens, (v) liens in favor of customs and revenue authorities arising as a matter of Applicable Law to secure payments of customs duties in connection with the importation of goods and (vi) non-exclusive object code licenses of software by the Company in the ordinary course of business consistent with past practice on its standard unmodified form of customer agreement (a copy of which has been provided to Acquirer).

**“Person”** means any natural person, company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, trust, estate, proprietorship, joint venture, business organization or Governmental Entity.

**“Personal Data”** means a natural person’s name, street address, telephone number, email address, photograph, social security number, driver’s license number, passport number or customer or account number, or any other piece of information relating to or being capable of being associated, directly or indirectly, with an identified or identifiable natural person or is otherwise considered personally identifiable information or personal data under Applicable Law.

**“Pre-Closing Taxes”** means any Taxes of the Company and the Subsidiaries for a Taxable period (or portion thereof) ending on or prior to the Closing Date. In the case of any Taxes of the Company or any Subsidiary that are imposed on a periodic basis and that are payable for a Taxable period that includes (but does not end on) the Closing Date, such Taxes shall (i) in the case of property, *ad valorem* or other Taxes that accrue based upon the passage of time, be deemed to be Pre-Closing Taxes in an amount equal to the amount of such Taxes for the entire Taxable period multiplied by a fraction, the numerator of which is the number of days in the Taxable period through and including the Closing Date and the denominator of which is the number of days in the entire Taxable period; provided that any such Taxes attributable to any property that was owned by the Company or any Subsidiary prior to the Closing Date, but is not owned by the Company or any Subsidiary as of the Closing Date shall be treated in their entirety as Pre-Closing Taxes, and no portion of any such Taxes attributable to any property that was owned by the Company or any Subsidiary after the Closing Date, but is not owned by the Company or any Subsidiary as of the Closing Date shall be treated as Pre-Closing Taxes, and (ii) in the case of any other Taxes, be deemed to be Pre-Closing Taxes in an amount equal to the amount of Taxes that would be payable if the relevant Taxable period ended on the Closing Date. Any credits relating to a Taxable period that includes (but does not end on) the Closing Date shall be taken into account as though the relevant Taxable period ended on the Closing Date.

**“Pro Rata Share”** means, with respect to an Indemnifying Party, the quotient obtained by dividing (a) the aggregate cash amount payable to such Indemnifying Party pursuant to [Section 1.1](#) hereof with

respect to its Company Shares by (b) the aggregate cash amount payable to all Indemnifying Parties pursuant to Section 1.1 hereof with respect to their Company Shares.

“**Process**” or “**Processing**” means, with respect to data, any operation or set of operations such as collection, recording, organization, structuring, storage, adaptation, enhancement, enrichment or alteration, retrieval, consultation, analysis, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“**Representatives**” means, with respect to a Person, such Person’s officers, directors, Affiliates, shareholders or employees (including employees of Affiliates), or any investment banker, attorney, accountant, auditor or other advisor or representative retained by any of them and acting on their behalf.

“**Required Company Vote**” means the affirmative vote of the Company Shareholders holding in the aggregate a majority of the issued and outstanding shares of the Company, on an as converted basis and the holders of majority or more of the issued and outstanding Company Series A Preferred Shares, Company Series A-1 Preferred Shares and Company Series B-1 Preferred Share voting together as a single class on an as-converted basis.

“**R&W Insurance Policy**” means a buyer-side representations and warranties insurance policy, with Indemnified Persons as the beneficiaries, with a coverage amount of not less than \$33,750,000 (in excess of the Escrow Fund retention).

“**R&W Insurance Policy Premium**” means the premiums related to, and all other costs and expenses (including broker fees, taxes and fees required by law, underwriting fees, and any other insurer or broker charges) relating to the origination of the R&W Insurance Policy.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Incident**” means (a) any unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Company Data processed on Systems managed or controlled by or on behalf of the Company or any Subsidiary or (b) any “security incident,” “security breach,” “data breach” or other similar concept as defined under Applicable Law.

“**Spousal Consent**” means the consent of the spouse of each Company Shareholder that is a married individual to the sale of the Company Shares, in the form attached hereto as Exhibit S.

“**Subsidiary**” means Observe IT Inc., a corporation incorporated under the laws of the State of Delaware, Observe IT International UK Limited, a limited liability company incorporated under the laws of United Kingdom, and Observe IT Australia Pty Limited, a limited liability company incorporated under the laws of Australia.

“**Tax**” (and, with correlative meaning, “**Taxes**” and “**Taxable**”) means (i) any net income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, fringe benefit, share capital, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, excise, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign) (each, a “**Tax Authority**”), (ii) any Liability for the payment of any amounts of the type described in clause (i) of this

sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

“**Tax Return**” means any return, statement, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) filed or required to be filed with respect to Taxes.

“**Transaction Expenses**” means, whether or not paid prior to or after the Closing (i) all third-party legal, accounting, financial advisory, consulting, finders or other fees and expenses incurred by or on behalf of the Company or any Subsidiary in connection with the Share Purchase, this Agreement and the Transactions (including fees of the Company Securityholders or Key Employees to be reimbursed by the Company), (ii) any payment or consideration arising under consents, waivers or approvals of any party under any Company’s Contract to remain in full force and effect following the Closing or resulting from agreed upon modification or early termination of contracts, (iii) the employer portion of any payroll Taxes or other Taxes arising in connection with any payment required pursuant to this Agreement or the Transactions (including with respect to the cash-out of Company Options in connection with the Closing), whether or not such liabilities for Taxes would be then due and payable, (iv) the Company R&W Fee, (v) any costs related to the Tail Insurance Coverage, (vi) any “single trigger” change-in-control success fees, bonuses, compensation (including, for clarity, any amounts received or receivable in exchange for Promised Equity Grants and payments set forth on Schedule D), accelerated payments, severance, or other costs or payments to or in respect of any employee, Affiliate or other Person, (including the employer portion of any payroll Taxes imposed on such amounts) if triggered by the Transactions, regardless of whether such payments are made prior to, at, or following the Closing, (vii) all severance paid or payable by the Company or its Subsidiaries to Company Employees who receive an offer of continued employment or service with the Company or its Affiliates prior to Closing and do not accept such offer, (viii) 50% of the first \$500,000 and 100% of any additional amounts paid or payable by the Company or any Subsidiary to the Designated Employees, Designated Contractors, or any other employees or contractors terminated by the Company or any Subsidiary prior to Closing for salaries, wages, performance or other incentive compensation, retention awards (including contingent bonuses or payments or other benefits under any Company Employee Plan that are unpaid prior to Closing or become due and payable following Closing, including unearned amounts pursuant to executory contracts or arrangements (excluding deferred commissions)) and severance and retention amounts, plus the estimated employer portion of any payroll Taxes related thereto, whether paid or payable at or following the Closing; (ix) \$50,000 in respect of the estimated out of pocket cost of preparing and filing any Tax Return of the Company and any Subsidiary after the Closing for taxable periods ending before, on or after the Closing Date, and that has not been completed prior to the Closing, and (x) all amounts payable under the 2019 Bonus Plan, calculating the aggregate of such amounts (A) for purposes of the Company Closing Financial Certificate, as though all potential bonuses under the 2019 Bonus Plan had been fully earned and were then payable; and (B) for purposes of the Parent Closing Statement, based only upon actual bonuses earned and payable.

“**Treasury Regulations**” means the United States Treasury Department’s tax regulations issued under the Code.

“**Unvested Company Options**” means Company Options that are unexpired, unexercised, unvested and outstanding as of immediately prior to the Closing.

“**Vested Company Options**” means Company Options that are unexpired, unexercised, vested and outstanding as of immediately prior to the Closing, including the Company Options of which the vesting schedule was accelerated in accordance with its terms.

“**Vested Company Warrants**” means Company Warrants that are unexpired, unexercised, vested and outstanding as of immediately prior to the Closing.

“**Warrant Termination Agreement**” means a warrant termination agreement between a Company Warrantholder and Acquirer, in the form attached hereto as Exhibit T.

Other capitalized terms defined elsewhere in this Agreement and not defined in this Exhibit A shall have the meanings assigned to such terms in the following Sections:

“**102 Plan**”2.10(ii)

“**280G Shareholder Approval**”6.14

“**401(k) Plan**”1.2(b)(xvii)

“**Acquirer**”Preamble

“**Adjustment Escrow Fund**”1.3(b)

“**Affidavit of Lost Share Certificate**”1.2(b)(i)

“**Agent Loss**”9.7(b)

“**Aggregate Consideration Shortfall**”1.6(e)

“**Aggregate Consideration Surplus**”1.6(f)

“**Agreement**”Preamble

“**Agreement Date**”Preamble

“**Agreement Termination Date**”8.1(b)

“**arm’s length**”2.12

“**Assumed Option**”1.1(b)(ii)(1)

“**Beneficiary**”1.7(a)

“**Benefits Waiver**”1.2(b)(vi)

“**Bring-Along Notice**”6.17(c)(iii)

“**Bring-Along Provision**”6.17(c)(i)

“**Charter Documents**”1.2(b)(iii)

“**Claims Period**”9.4(a)

“**Closing**”1.1(h)

“**Closing Allocation Certificate**”1.3(a)(ii)

“**Closing Date**”1.1(h)

“**COBRA**”2.11(d)

“**Company**”Preamble

“**Company Authorizations**”2.7(b)

“**Company Balance Sheet**”2.4(a)

“**Company Balance Sheet Date**”2.4(a)

“**Company Board of Directors**”Recitals

“**Company Disclosure Schedule**”Article 2

“**Company Financial Statements**”2.4(a)

“**Company IP**”2.9(a)(i)

“**Company IP Agreements**”2.9(b)(viii)

“**Company-Owned IP**”2.9(a)(ii)

“**Company Privacy Commitments**”2.9(b)(xxxix)

“**Company Products**”2.9(a)(iii)

“**Company R&W Fee**”6.9

“**Company Registered Intellectual Property**”2.9(a)(iv)

“**Company Roadmap**”2.9(a)(iii)

“**Company Source Code**”2.9(a)(v)

“**Confidential Information**”2.9(b)(xxi)

“**Confidentiality Agreement**”6.3(a)

“**Continuing Employees**”6.10(c)

“**Converting Instruments**”1.3(a)(ii)

“**Covered Persons**”6.19

“**Designated Contractors**”6.10(b)

“**Designated Employees**”6.10(b)

“**Designated Employee Waiver**”6.10(b)

“**Dispute**”10.13

“**ERISA Affiliate**”2.11(k)

“**Escrow Agreement**”1.2(a)(ii)

“**Escrow Fund**”1.3(b)

“**Escrow Release Date**”9.1(a)

“**Excess Adjustment Amount**”1.6(e)

“**Execution Period**”6.18(a)

“**Export Approvals**”2.19(a)

“**FCPA Claims**”9.3(a)



**“Final Aggregate Consideration”** 1.6(e)  
**“Fundamental Claims”** 9.3(a)  
**“Governmental Grant”** 2.9(a)(vi)  
**“Hazardous Materials”** 2.18  
**“Indemnifiable Damages”** 9.2(a)  
**“Indemnified Person”** 9.2(a)  
**“Indemnifying Parties”** 9.1(a)  
**“Indemnity Escrow Fund”** 1.3(b)  
**“Intellectual Property”** 2.9(a)(vii)  
**“Interim Options Ruling”** 1.1(e)(vi)(1)  
**“Israeli Tax Rulings”** 1.1(e)(vi)(1)  
**“J.A.M.S. Rules”** 10.13  
**“Joinder Agreement”** Recitals  
**“Key Employee”** Recitals  
**“Material Contract”** 2.15(a)  
**“Merger”** 6.18(a)  
**“Merger Agreement”** 6.18(a)  
**“Merger Notice”** 6.18(a)  
**“Minimum Threshold”** 9.3(e)  
**“New Litigation Claim”** 6.6  
**“Non-Compete Agreement”** Recitals  
**“Notice of Objection”** 1.6(b)  
**“OCS”** 2.9(a)(vi)  
**“OFAC”** 2.19(b)  
**“Offer Letter”** Recitals  
**“Officer’s Certificate”** 9.5(a)  
**“Option Payments”** 1.1(b)(i)(1)  
**“Option Tax Ruling”** 1.1(e)(vi)(1)  
**“Parachute Payment Waiver”** 1.2(b)(xvi)  
**“Parent”** Preamble  
**“Parent Closing Statement”** 1.6(a)  
**“Payee”** 1.1(e)(ii)  
**“Paying Agent”** 1.3(a)(i)  
**“Paying Agent Undertaking”** 1.1(e)(ii)  
**“Payor”** 1.1(e)(i)

**“Post-Signing Shareholder”** Recitals  
**“Promised Equity Grantee”** 6.15  
**“Promised Equity Grants”** 6.15  
**“Promised Equity Waiver”** 6.15  
**“Qualified Withholding Certificate”** 1.1(e)(ii)  
**“Released Party”** 1.7(a)  
**“Releasing Party”** 1.7(a)  
**“Reviewing Accountant”** 1.6(d)  
**“Sales Taxes”** 2.10(g)  
**“Section 14 Arrangement”** 2.11(a)  
**“Section 1542”** 1.7(d)  
**“Section 280G Payments”** 6.14  
**“Share Purchase”** Recitals  
**“Share Transfer Deed”** 1.2(b)(i)  
**“Shareholder Claim”** 1.7(a)  
**“Shareholders’ Agent”** Preamble  
**“Shareholders’ Agent Expense Amount”** 1.3(a)(vii)  
**“Shareholders’ Agent Expense Fund”** 1.3(a)(vii)  
**“Shareholders Agreement”** 1.7(c)  
**“Shareholders Letter of Transmittal”** 1.3(a)(ii)  
**“Significant Customer”** 2.20(a)  
**“Significant Supplier”** 2.20(b)  
**“Signing Shareholder”** Recitals  
**“Special Representations”** 9.3(a)  
**“Spreadsheet”** 6.8  
**“Systems”** 2.9(b)(xxxv)  
**“Tail Insurance Coverage”** 6.19(a)  
**“Third Party Intellectual Property”** 2.9(a)(viii)  
**“Third-Party Claim”** 9.8(a)  
**“Threshold”** 9.3(e)  
**“Transactions”** Recitals  
**“U.S. Optionholders”** 1.3(a)  
**“U.S. Optionholder Payments”** 1.3(a)

“*Unvested Cash*” 1.1(a)(vi)

“*Unvested Company Shares*” 2.2(a)

“*VAT*” 2.10(f)

“*Warrant Payments*” 1.1(c)(i)

“*Withholding Drop Date*” 1.1(e)(ii)



**DESCRIPTION OF PROOFPOINT'S SECURITIES REGISTERED  
PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

As of December 31, 2019, Proofpoint, Inc. (the "Company," "we" or "our") had one class of securities registered under Section 12 of the Securities Exchange Act of 1934: our common stock.

The following summary of the terms of our common stock is based upon our amended and restated certificate of incorporation and our amended and restated bylaws and applicable provisions of law. The summary is not complete, and is qualified by reference to our amended and restated certificate of incorporation and our amended and restated bylaws, which are filed as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein.

**Capitalization**

Our authorized capital stock consists of 205,000,000 shares of stock, including 200,000,000 shares of common stock, par value of \$0.0001 per share, and 5,000,000 shares of preferred stock, par value of \$0.0001 per share.

**Common Stock**

*Dividend Rights*

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine.

*Voting Rights*

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. We have not provided for cumulative voting for the election of directors in our amended and restated certificate of incorporation. Our amended and restated certificate of incorporation establishes a classified board of directors, to be divided into three classes with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

*Right to Receive Liquidation Distributions*

Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders will be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

*Other Rights and Preferences*

Our common stock is not entitled to preemptive rights, and is not subject to conversion, redemption or sinking fund provisions.

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## Anti-Takeover Provisions

The provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws could have the effect of delaying, deferring or discouraging another person from acquiring control of our Company. These provisions, which are summarized below, may have the effect of discouraging takeover bids.

### *Delaware Law*

We are subject to the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date on which the person became an interested stockholder unless:

- Prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- The interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- At or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. In general, an interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock.

### *Amended and Restated Certificate of Incorporation and Amended and Restated Bylaw Provisions*

Our amended and restated certificate of incorporation and our amended and restated bylaws include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our Company, including the following:

- *Board of Directors Vacancies.* Our amended and restated certificate of incorporation and amended and restated bylaws authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors.
  - *Classified Board.* Our amended and restated certificate of incorporation and amended and restated bylaws provide that our board is classified into three classes of directors, each with staggered three-year terms.
  - *Stockholder Action; Special Meetings of Stockholders.* Our amended and restated certificate of incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. Our amended and restated bylaws
-

further provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chairman of our board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting.

- *Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our amended and restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws also specify certain requirements regarding the form and content of a stockholder's notice.
- *No Cumulative Voting.* The Delaware General Corporation Law provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting.
- *Directors Removed Only for Cause.* Our amended and restated certificate of incorporation provides that stockholders may remove directors only for cause.
- *Amendment of Charter Provisions.* Any amendment of the above provisions in our amended and restated certificate of incorporation requires approval by holders of at least two-thirds of our outstanding common stock.
- *Issuance of Undesignated Preferred Stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to 5,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors.
- *Choice of Forum.* Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine.

### **Listing**

Our common stock is listed on the NASDAQ Global Select Market under the symbol "PFPT."

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

*List of Subsidiaries of Proofpoint Inc.**Wholly-Owned Subsidiaries*

PROOFPOINT AUSTRIA GMBH  
 PROOFPOINT CANADA INC.  
 PROOFPOINT GMBH  
 PROOFPOINT INTERNATIONAL, INC.  
 PROOFPOINT JAPAN KK  
 PROOFPOINT LIMITED  
 PROOFPOINT MALTA LTD  
 PROOFPOINT NETHERLANDS B.V.  
 PROOFPOINT PTY LTD  
 PROOFPOINT SINGAPORE PTE. LTD.  
 NEXTPAGE, INC.  
 PROOFPOINT NI LTD.  
 ABACA TECHNOLOGY CORPORATION  
 ARMORIZE TECHNOLOGIES, INC. (US)  
 SENDMAIL, INC.  
 SENDMAIL INTERNATIONAL, INC.  
 SENDMAIL SARL  
 NETCITADEL, INC.  
 NEXGATE, INC.  
 EMERGING THREATS PRO, LLC  
 META NETWORKS LTD  
 META NETWORKS, INC.  
 MOSCOW ACQUISITION CORPORATION  
 SOCIALWARE, INC.  
 OBSERVEIT LTD  
 OBSERVEIT, INC.  
 OBSERVEIT AUSTRALIA PTY LIMITED  
 OBSERVEIT INTERNATIONAL UK LIMITED  
 GABESOFT, INC.  
 ONTARIO ACQUISITION CORPORATION  
 PROOFPOINT ISRAEL LTD  
 PROOFPOINT ISRAEL HOLDINGS LTD  
 FIRELAYERS, INC.  
 CLOUDMARK, LLC  
 CLOUDMARK EUROPE LIMITED  
 BIZANGA LIMITED  
 CLOUDMARK LABS SARL  
 WEBLIFE BALANCE, INC.  
 WOMBAT SECURITY TECHNOLOGIES, INC.  
 WOMBAT SECURITY TECHNOLOGIES UK LTD  
 PROOFPOINT MIDDLE EAST FZ-LLC  
 PROOFPOINT SPAIN SEC S.L.

*Jurisdiction of Incorporation*

Austria  
 Ontario, Canada  
 Federal Republic of Germany  
 Delaware, USA  
 Japan  
 England and Wales  
 Republic of Malta  
 Netherlands  
 Commonwealth of Australia  
 Republic of Singapore  
 Delaware, USA  
 Northern Ireland  
 Delaware, USA  
 Delaware, USA  
 Delaware, USA  
 Delaware, USA  
 France  
 Delaware, USA  
 Delaware, USA  
 Indiana, USA  
 Israel  
 Israel  
 Delaware, USA  
 Delaware, USA  
 Delaware, USA  
 Israel  
 Delaware, USA  
 Commonwealth of Australia  
 England and Wales  
 Delaware, USA  
 Delaware, USA  
 Israel  
 Israel  
 Israel  
 Delaware, USA  
 Delaware, USA  
 England and Wales  
 England and Wales  
 England and Wales  
 France  
 Delaware, USA  
 Delaware, USA  
 England and Wales  
 England and Wales  
 Dubai  
 Spain

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No.333-180839, No.333-187321, No.333-194599, No.333-202312, No.333-209712, No.333-214366, No.333-216195, No.333-221870, No.333-223188, No.333-229773, No.333-231580, No.333-232883 and No.333-235302) of Proofpoint, Inc. of our report dated February 20, 2020 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 20, 2020



**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Gary Steele, certify that:

1. I have reviewed this Annual Report on Form 10-K of Proofpoint, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 20, 2020

/s/ GARY STEELE

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Gary Steele

*Chief Executive Officer*

(Principal Executive Officer)

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Paul Auvil, certify that:

1. I have reviewed this Annual Report on Form 10-K of Proofpoint, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 20, 2020

/s/ PAUL AUVIL

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Paul Auvil

*Chief Financial Officer*

(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Gary Steele, Chief Executive Officer of Proofpoint, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- the Annual Report on Form 10-K of the Company for the year ended December 31, 2019 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 20, 2020

/s/ GARY STEELE

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Gary Steele

*Chief Executive Officer*

(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by it and furnished to the Securities and Exchange Commission or its staff upon request.

**ERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Paul Auvil, Chief Financial Officer of Proofpoint, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- the Annual Report on Form 10-K of the Company for the year ended December 31, 2019 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 20, 2020

/s/ PAUL AUVIL

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Paul Auvil  
*Chief Financial Officer*  
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by it and furnished to the Securities and Exchange Commission or its staff upon request.