

**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 **September 28, 2018**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number **001-05560**

**SKYWORKS SOLUTIONS, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of incorporation or organization)*

**04-2302115**

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

**20 Sylvan Road, Woburn, Massachusetts**

*(Address of principal executive offices)*

**01801**

*(Zip Code)*

Registrant's telephone number, including area code: **(781) 376-3000**

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value \$0.25 per share	Nasdaq Global Select Market

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 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 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

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

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant (based on the closing price of the registrant's common stock as reported on the Nasdaq Global Select Market on the last business day of the registrant's most recently completed second fiscal quarter March 30, 2018) was approximately \$18.2 billion. The number of outstanding shares of the registrant's common stock, par value \$0.25 per share, as of November 7, 2018, was 177,531,995.

**DOCUMENTS INCORPORATED BY REFERENCE**

Part of Form 10-K	Documents from which portions are incorporated by reference
Part III	Portions of the Registrant's Proxy Statement relating to the Registrant's 2018 Annual Meeting of Stockholders (to be filed) are incorporated by reference into Items 10, 11, 12, 13 and 14 of this Annual Report on Form 10-K.

SKYWORKS SOLUTIONS, INC.  
ANNUAL REPORT ON FORM 10-K  
FOR THE YEAR ENDED SEPTEMBER 28, 2018

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## CAUTIONARY STATEMENT

This Annual Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), and is subject to the “safe harbor” created by those sections. Any statements that are not statements of historical fact should be considered to be forward-looking statements. Words such as “anticipates”, “believes”, “continue”, “could”, “estimates”, “expects”, “intends”, “may”, “plans”, “potential”, “predicts”, “projects”, “seek”, “should”, “targets”, “will”, “would”, and similar expressions or variations or negatives of such words are intended to identify forward-looking statements, but are not the exclusive means of identifying forward-looking statements in this Annual Report. Additionally, forward-looking statements include, but are not limited to:

- our plans to develop and market new products, enhancements or technologies and the timing of these development and marketing plans;
- our estimates regarding our capital requirements and our needs for additional financing;
- our estimates of our expenses, future revenues and profitability;
- our estimates of the size of the markets for our products and services;
- our expectations related to the rate and degree of market acceptance of our products; and
- our estimates of the success of other competing technologies that may become available.

Although forward-looking statements in this Annual Report reflect the good faith judgment of our management, such statements can only be based on facts and factors currently known and understood by us. Consequently, forward-looking statements involve inherent risks and uncertainties and actual financial results and outcomes may differ materially and adversely from the results and outcomes discussed in or anticipated by the forward-looking statements. A number of important factors could cause actual financial results to differ materially and adversely from those in the forward-looking statements. We urge you to consider the risks and uncertainties discussed elsewhere in this report and in the other documents filed by us with the Securities and Exchange Commission (“SEC”) in evaluating our forward-looking statements. We have no plans, and undertake no obligation, to revise or update our forward-looking statements to reflect any event or circumstance that may arise after the date of this report. We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made.

This Annual Report also contains estimates made by independent parties and by us relating to market size and growth and other industry data. These estimates involve a number of assumptions and limitations and you are cautioned not to give undue weight to such estimates. In addition, projections, assumptions and estimates of our future performance and the future performance of the industries in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of important factors, including those described in “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. These and other factors could cause results to differ materially and adversely from those expressed in the estimates made by the independent parties and by us.

In this document, the words “we”, “our”, “ours”, “us”, “Skyworks”, and “the Company” refer only to Skyworks Solutions, Inc., and its consolidated subsidiaries and not any other person or entity. In addition, the following is a list of industry standards that may be referenced throughout the document:

- BiFET (Bipolar Field Effect Transistor): integrates indium gallium phosphide based heterojunction bipolar transistors with field effect transistors on the same gallium arsenide substrate
- DC (Direct Current): unidirectional flow of an electrical charge
- CMOS (Complementary Metal Oxide Semiconductor): a technology of constructing integrated circuits
- GaAs (Gallium Arsenide): a compound of the elements gallium and arsenic that is used in the production of semiconductors
- HBT (Heterojunction Bipolar Transistor): a type of bipolar junction transistor which uses differing semiconductor materials for the emitter and base regions, creating a heterojunction
- IoT (Internet of Things): is the interconnection of uniquely identifiable embedded computing devices within the existing internet infrastructure
- LED (Light Emitting Diode): a two-lead semiconductor light source
- LTE (Long Term Evolution): 4th generation (“4G”) radio technologies designed to increase the capacity and speed of mobile telephone networks

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- pHEMT (Pseudomorphic High Electron Mobility Transistor): a type of field effect transistor incorporating a junction between two materials with different band gaps
- RF (Radio Frequency): electromagnetic wave frequencies that lie in the range extending from around 3 kHz to 300 GHz
- SAW (Surface Acoustic Wave): electrical input signal is converted to an acoustic wave for filtering and converted back into an electrical signal by interdigitated transducers on a piezoelectric substrate.
- SOI (Silicon On Insulator): technology refers to the use of layered silicon-insulator-silicon substrate in place of conventional silicon substrates in semiconductor manufacturing
- TC-SAW (Temperature Compensated Surface Acoustic Wave): SAW filters that have been designed to reduce shift in frequency over temperature.

Skyworks and the Skyworks symbol are trademarks or registered trademarks of Skyworks Solutions, Inc. or its subsidiaries in the United States and other countries. Third-party brands and names are for identification purposes only, and are the property of their respective owners.

## PART I

### ITEM 1. BUSINESS.

Skyworks Solutions, Inc., together with its consolidated subsidiaries (“Skyworks” or the “Company”), is empowering the wireless networking revolution. The Company’s highly innovative analog semiconductors are connecting people, places, and things, spanning a number of new and previously unimagined applications within the aerospace, automotive, broadband, cellular infrastructure, connected home, industrial, medical, military, smartphone, tablet and wearable markets.

Our key customers include Amazon, Apple, Arris, Bose, Cisco, DJI, Ericsson, Foxconn, Garmin, Gemalto, General Electric, Google, Honeywell, HTC, Huawei, Itron, Lenovo, LG Electronics, Microsoft, Motorola, Netgear, Northrop Grumman, OPPO, Rockwell Collins, Samsung, Sierra Wireless, Sonos, Technicolor, VIVO, Xiaomi and ZTE. Our competitors include Analog Devices, Broadcom, Maxim Integrated Products, Murata Manufacturing, NXP Semiconductors, QUALCOMM and Qorvo.

We are a Delaware corporation that was formed in 1962. We changed our corporate name from Alpha Industries, Inc. to Skyworks Solutions, Inc. on June 25, 2002, following a business combination. We operate worldwide with engineering, manufacturing, sales and service facilities throughout Asia, Europe and North America. Our Internet address is [www.skyworksinc.com](http://www.skyworksinc.com). We make available free of charge on our website our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports as soon as practicable after we electronically submit such material to the SEC. The information contained on our website is not incorporated by reference in this Annual Report. Our SEC filings are also available to the public at [www.sec.gov](http://www.sec.gov).

In August 2018, we acquired Avnera Corporation (“Avnera”) and expanded our leadership in wireless connectivity by adding ultra-low power analog circuits to enable smart interfaces via acoustic signal processing, sensors and integrated software. We expect the acquisition of Avnera to enable us to capitalize on the rapid proliferation of audio functionality and its convergence with our advanced connectivity solutions. With our global sales channels, strong customer relationships and operational scale, we plan to leverage Avnera’s innovative product portfolio and systems expertise to increase our footprint in automotive, industrial, home automation, enterprise and high-end consumer markets.

In August 2016, we acquired the remaining 34 percent interest in a joint venture that was initially created in August 2014 with Panasonic Corporation, through its Automotive & Industrial Systems Company (“Panasonic”) for the design, manufacture and sale of Panasonic’s SAW and TC-SAW filter products. The joint venture was dissolved and is now a wholly-owned subsidiary of the Company. With the overall demand for SAW and TC-SAW filters increasing and as technology and product architectures become more complex and the number of required bands grows, this investment assists us in securing a consistent supply of SAW and TC-SAW filters, in addition to allowing us to integrate filters into the design and production of our own products.

### INDUSTRY BACKGROUND

Mobile connectivity is exploding on a global basis. With wireless platforms serving as virtual hubs for e-commerce, enterprise to the cloud, social media, gaming and entertainment, these devices are enabling a new, multi-trillion dollar economy. Popular apps including Amazon, Facebook, Netflix, Spotify, Uber, Waze and YouTube all require ultra-fast, highly secure, low-latency, always-on connectivity plus GPS location-based services. As a result, semiconductor solutions are becoming increasingly relevant, resolving the daunting analog and RF complexities that are challenging the capabilities of existing hardware and the supporting network infrastructure. Semiconductor devices continue becoming smaller, more powerful, and easier to integrate across multiple communication protocols, which in turn is enabling mobile and IoT ecosystems.

Skyworks facilitates ubiquitous data creation, delivery and storage as smartphones transmit and receive immense amounts of content supporting multimedia streaming, social networking, virtual reality and emerging frictionless commerce. To enable these applications, we deliver highly integrated solutions leveraging our amplification, filtering, tuning, power management, audio processing and packaging capabilities to continuously push the performance envelope.

Demand for connectivity across emerging markets around the world also continues to grow as the industry drives toward connecting the billions of people who remain unconnected. According to The GSMA Foundation, there will be 5.9 billion mobile subscribers by 2025, representing almost three-quarters of the world’s population. Subscriber growth over this period is forecast to be driven primarily by large markets in Asia, such as India, which alone is expected to add 310 million new unique subscribers by 2020.

At the same time, connectivity is proliferating into an adjacent set of IoT markets. From smart homes to the smart grid and from industrial to wearables, the number of connected devices is rapidly proliferating. In fact, IHS Markit Ltd. projects the IoT market to grow from an installed base of 15 billion units in 2015 to more than 75 billion units by 2025. Skyworks is enabling these opportunities with highly customized system solutions supporting a broad set of wireless protocols including cellular LTE, Wi-Fi, Bluetooth®, LoRa®, Thread and Zigbee®.

Looking ahead to 5G, we see a market that presents a massive growth opportunity for our industry and certainly for Skyworks. 5G data rates will approach ten to 100 times the fastest 4G speeds of today with near zero latency. To put this in perspective, downloading a full-length HD movie in 3G took one day; in 4G, the same file took minutes. On a 5G network, this content will be downloaded in mere seconds. By 2020 a single autonomous car is expected to consume 4,000 gigabytes of data per day in real-time diagnostics, positioning and vehicle-to-vehicle communications—that is equivalent to the daily data consumed by more than 2,000 smartphone users today.

We expect the key catalysts for Skyworks to be the insatiable demand for data and the profitable usage model for both Mobile and IoT applications, as each connection becomes more valuable and vital particularly as the world embraces 5G.

### **Solving Connectivity Challenges**

The transition to ubiquitous connectivity creates challenges to existing architectures. RF solutions in ultra-thin, high performance consumer products must increase data rates, solve signal interference problems, and occupy minimal board space while at the same time increasing battery life. Meeting these design challenges requires broad competencies including signal transmission and conditioning, the ability to ensure seamless hand-offs between multiple standards, power management, voltage regulation, battery charging, filtering and tuning, among others. This complexity plays directly to our strengths. We have a strong heritage in analog systems design and have spent the last decade investing in key technologies and resources. We are at the forefront of advanced multi-chip module integration and offer unmatched technology breadth, providing deep expertise in CMOS, SOI, GaAs and filters, and maintain strategic partnerships with outside independent wafer fabrication facilities.

### **SKYWORKS' STRATEGY**

Our ambitious vision is to connect everyone and everything, all the time. To this end, key elements of our strategy include:

#### **Industry-Leading Technology**

As the industry migrates to more complex LTE and 5G architectures across a multitude of wireless broadband applications, we are uniquely positioned to help mobile device manufacturers handle growing levels of system complexity in the transmit and receive chain. The trend towards increasing front-end and analog design challenges in smartphones and other mobile devices plays directly into our core strengths and positions us to address these challenges. We believe that we offer the broadest portfolio of radio and analog solutions from the transceiver to the antenna as well as all required manufacturing process technologies. We also hold strong technology leadership positions in passive devices, advanced integration including proprietary shielding and 3-D die stacking as well as SAW and TC-SAW filters. Our product portfolio is reinforced by a library of approximately 3,000 worldwide patents and other intellectual property that we own and control. Together, our industry-leading technology enables us to deliver the highest levels of product performance and integration.

#### **Customer Relationships**

Given our scale and technology leadership, we are engaged with key original equipment manufacturers (“OEMs”), smartphone providers and baseband reference design partners. Our customers value our supply chain strength, our innovative technology and our system engineering expertise, resulting in deep customer loyalty. We partner with our customers to support their long-term product road maps and are valued as a system solutions provider rather than just a point product vendor.

#### **Diversification**

We are diversifying our business in three areas: our addressed markets, our customer base and our product offerings. By leveraging core analog and mixed signal technologies, we are expanding our family of solutions to a set of increasingly diverse end markets and customers. We are steadily growing our business beyond just mobile devices (where we support all top-tier manufacturers, including the leading smartphone suppliers and key baseband vendors) into additional high-performance analog markets, including automotive, home and factory automation, infrastructure, medical, smart energy and wireless networking. In these markets we leverage our scale, intellectual property and worldwide distribution network, which spans over 2,500 customers and over 2,500 analog components.

## **Delivering Operational Excellence**

We vertically integrate our supply chain where we can differentiate with highly specialized internal manufacturing capabilities, or enter into alliances and strategic relationships for leading-edge technologies. This hybrid manufacturing model allows us to better balance our manufacturing capacity with the demand of the marketplace. Our internal capacity utilization remains high, resulting in an increase of our gross margin and the return on invested capital on a broader range of revenue.

Additionally, we continue to drive reductions in product design and manufacturing cycle times and further improve product yields. The combination of agile, flexible capacity and world-class module manufacturing and scale advantage allows us to achieve low product costs while integrating multiple technologies into highly sophisticated multi-chip modules.

## **Maintaining a Performance Driven Culture**

We consider our people and corporate culture to be a major competitive advantage and a key driver of our overall strategy. We create key performance indicators that align employee efforts with corporate strategy and link responsibilities with performance measurement. Accountability is paramount and we compensate our employees through a pay-for-performance methodology. We strive to be an employer-of-choice among peer companies and have created a work environment in which turnover is below geographic and industry averages.

## **Generating Superior Operating Results and Shareholder Returns**

We seek to generate financial returns that are comparable to a highly diversified analog semiconductor company. Given our product volume and overall utilization we strive to achieve a best-in-class return on investment and operating income to reward shareholders.

## **OUR PRODUCT PORTFOLIO**

Our product portfolio consists of various solutions, including:

- Amplifiers: the modules that strengthen the signal so that it has sufficient energy to reach a base station
- Antenna Tuners: aperture and impedance tuning products that improve antenna performance across frequencies
- Attenuators: circuits that allow a known source of power to be reduced by a predetermined factor (usually expressed as decibels)
- Circulators/Isolators: ferrite-based components commonly found on the output of high-power amplifiers used to protect receivers in wireless transmission systems
- DC/DC Converters: an electronic circuit which converts a source of direct current from one voltage level to another
- Demodulators: a device or an RF block used in receivers to extract the information that has been modulated onto a carrier or from the carrier itself
- Detectors: devices used to measure and control RF power in wireless systems
- Diodes: semiconductor devices that pass current in one direction only
- Directional Couplers: transmission coupling devices for separately sampling the forward or backward wave in a transmission line
- Diversity Receive Modules: devices used to improve receiver sensitivity in high data rate applications
- Filters: devices for recovering and separating mixed and modulated data in RF stages
- Front-end Modules: two or more functions co-packaged to optimize the performance, cost and application suitability in products, including intermediate or radio frequency signal paths
- Hybrid: a type of directional coupler used in radio and telecommunications
- LED Drivers: devices which regulate the current through a light emitting diode or string of diodes for the purpose of creating light
- Low Noise Amplifiers: devices used to reduce system noise figure in the receive chain
- Mixers: devices that enable signals to be converted to a higher or lower frequency signal and thereby allowing the signals to be processed more effectively
- Modulators: devices that take a baseband input signal and output a radio frequency modulated signal
- Optocouplers/Optoisolators: semiconductor devices that allow signals to be transferred between circuits or systems while ensuring that the circuits or systems are electrically isolated from each other
- Phase Locked Loops: closed-loop feedback control system that maintains a generated signal in a fixed phase relationship to a reference signal
- Phase Shifters: designed for use in power amplifier distortion compensation circuits in base station applications
- Power Dividers/Combiners: utilized to equally split signals into in-phase signals as often found in balanced signal chains and local oscillator distribution networks
- Receivers: electronic devices that change a radio signal from a transmitter into useful information

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- Switches: components that perform the change between the transmit and receive function, as well as the band function for cellular handsets
- Synthesizers: devices that provide ultra-fine frequency resolution, fast switching speed, and low phase-noise performance
- Technical Ceramics: polycrystalline oxide materials used for a wide variety of electrical, mechanical, thermal and magnetic applications
- Voltage Controlled Oscillators/Synthesizers: fully integrated, high performance signal source for high dynamic range transceivers
- Voltage Regulators: generate a fixed level which ideally remains constant over varying input voltage or load conditions

We believe we possess broad technology capabilities and one of the most complete wireless communications product portfolios in the industry.

## **MARKETING AND DISTRIBUTION**

Our products are sold globally through a direct sales force, electronic component distributors and independent sales representatives. Certain distributors have agreements with us which allow for certain sales returns, stock rotations and price protection on certain inventory if we lower the price of those products (see [“Critical Accounting Estimates”](#) in Part II, Item 7 - Management’s Discussion and Analysis of Financial Condition and Results of Operations and [Note 2](#) to Item 8 of this Annual Report on Form 10-K for further detail on revenue reserves). As is customary in the semiconductor industry, our distributors may also market other products that compete with ours.

Our sales engagement begins at the earliest stages of the design of an existing or potential customer’s product. We collaborate technically with our customers and reference design partners at the inception of new programs. These relationships allow our team to facilitate customer-driven solutions, which leverage the unique strength of our intellectual property and product portfolio while providing high value and greatly reducing time-to-market.

We believe the technical and complex nature of our products and markets demand an extraordinary commitment to maintain close ongoing relationships with our customers. As such, we strive to expand the scope of our customer relationship to include design, engineering, manufacturing, procurement, logistics and project management. We also employ a collaborative approach in developing these relationships by combining the support of our design teams, applications engineers, manufacturing personnel, sales and marketing staff and senior management. Lastly, we leverage our customer relationships with cross-selling opportunities across product lines in order to maximize revenue.

We believe that maintaining frequent and interactive contact with our customers is paramount to our continuous efforts to provide world-class sales and service support. By listening and responding to feedback, we are able to mobilize resources to raise our level of customer satisfaction, improve our ability to anticipate future product needs, and enhance our understanding of key market dynamics. We are confident that diligently following this path positions us to participate in numerous opportunities for growth in the future.

## **CUSTOMER CONCENTRATION**

A small number of OEMs historically has accounted for a significant portion of our net revenue. In the fiscal year ended September 28, 2018 (“fiscal 2018”), Apple Inc. (“Apple”), through sales to multiple distributors, contract manufacturers and direct sales for multiple applications including smartphones, tablets, desktop and notebook computers, watches, and other devices) constituted more than ten percent of our net revenue. In the fiscal year ended September 29, 2017 (“fiscal 2017”), three customers—Apple, Samsung Electronics (“Samsung”), and Huawei Technology Co., Ltd. (“Huawei”)—each constituted ten percent or more of our net revenue. In the fiscal year ended September 30, 2016 (“fiscal 2016”), two customers—Apple and Samsung—each constituted more than ten percent of our net revenue. For further information regarding customer concentrations see [Note 17](#) to Item 8 of this Annual Report on Form 10-K.

## **INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS**

We own or have a license to use numerous United States and foreign patents and patent applications related to our products and our manufacturing operations and processes. In addition, we own a number of trademarks and service marks applicable to certain of our products and services. We believe that our intellectual property, including patents, patent applications, trade secrets and trademarks, is of material importance to our business. We rely on patent, copyright, trademark, trade secret and other intellectual property laws, as well as non-disclosure and confidentiality agreements and other methods, to protect our confidential and proprietary technologies, designs, devices, algorithms, processes and other intellectual property. Our efforts may not meaningfully protect our intellectual



property, or others may independently develop substantially equivalent or superior proprietary technologies, designs, devices, algorithms, processes or other intellectual property. In addition, the laws of some foreign countries do not protect proprietary rights to the same extent as the laws of the United States, and effective copyright, patent, trademark and trade secret protection may not be available in those jurisdictions. In addition to protecting our intellectual property, we strive to strengthen our intellectual property portfolio to enhance our ability to obtain cross-licenses of intellectual property from others, to obtain access to intellectual property we do not possess and to more favorably resolve potential intellectual property claims against us. Due to rapid technological changes in the industry, we believe establishing and maintaining a technological leadership position depends primarily on our ability to develop new, innovative products through the technical competence of our engineering personnel.

## **COMPETITIVE CONDITIONS**

The competitive environment in the semiconductor industry is in a constant state of flux, with new products continually emerging and existing products approaching technological obsolescence. We compete on the basis of time-to-market, new product innovation, quality, performance, price, compliance with industry standards, strategic relationships with customers and baseband vendors, personnel and protection of our intellectual property. We participate in highly competitive markets against numerous competitors that may be able to adapt more quickly than we can to new or emerging technologies and changes in customer requirements, or may be able to devote greater resources to the development, promotion and sale of their products than we can.

Erosion of average selling prices of established products is typical of the semiconductor industry. Consistent with trends in the industry, we anticipate that average selling prices for our established products will continue to decline over time. We mitigate the gross margin impact of declining average selling prices with efforts to increase unit volumes, reduce material costs and lower manufacturing costs of existing products and by introducing new and higher value-added products.

## **RESEARCH AND DEVELOPMENT**

Our products and markets demand rapid technological advancements requiring a continuous effort to enhance existing products and develop new products and technologies. Accordingly, we maintain a high level of research and development activity. We invested \$404.5 million, \$355.2 million and \$312.4 million in research and development during fiscal 2018, fiscal 2017 and fiscal 2016, respectively. The growth in research and development expenses were the result of increases in our internal product designs and product development activity for our target markets in each of these fiscal years. Our research and development expenses include new product development and innovations in integrated circuit design, investment in advanced semiconductor manufacturing processes, development of new packaging and test capabilities and research on next generation technologies and product opportunities. We maintain close collaborative relationships with many of our customers to help identify market demands and target our development efforts to meet those demands.

## **RAW MATERIALS**

Raw materials for our products and manufacturing processes are generally available from several sources. It is our intent not to depend on a sole source of supply unless market or other conditions dictate otherwise. However, there are limited situations where we procure certain components and services for our products from single or limited sources, and we are currently dependent on a limited number of sole source suppliers. We purchase materials and services primarily pursuant to individual purchase orders. However, we have entered into certain supply agreements for the purchase of raw materials or other manufacturing related services that specify minimum prices and purchase quantity based on our anticipated future requirements. Such amounts are reviewed and included in our contractual obligations and commitments as required. Certain of our suppliers consign raw materials to us at our manufacturing facilities to which we take title as needed in our manufacturing process. We believe we have adequate sources for the supply of raw materials and components for our manufacturing needs with suppliers located around the world.

## **BACKLOG AND INVENTORY**

Our sales are made pursuant to standard purchase orders and specified customer contracts for delivery of products, with such purchase orders officially acknowledged by us according to our own terms and conditions. We also maintain Skyworks-owned finished goods inventory at certain customer "hub" locations. We do not recognize revenue until these customers consume the Skyworks-owned inventory from these hub locations. Due to industry practice, which allows customers to cancel orders with limited advance notice to us prior to shipment, and with little or no penalty, we believe that backlog as of any particular date may not be a reliable indicator of our future revenue levels. The cancellation or deferral of product orders, the return of previously sold products, or overproduction due to a change in anticipated order volume could result in a reduction in revenue and us holding excess or obsolete inventory, which could result in inventory write-downs and, in turn, could have a material adverse effect on our financial condition.

## **ENVIRONMENTAL REGULATIONS**

Federal, state and local requirements relating to the discharge of substances into the environment, the disposal of hazardous wastes, and other activities affecting the environment have had, and will continue to have, an impact on our manufacturing operations. Most of our customers have mandated that our products comply with various local, regional and national “green” initiatives initiated by such customers or the locations in which they operate. We believe that our current expenditures for environmental capital investment and remediation necessary to comply with present regulations governing environmental protection, and other expenditures for the resolution of environmental claims, will not have a material adverse effect on our liquidity and capital resources, competitive position or financial condition. Environmental regulations are subject to change in the future, and accordingly we are unable to assess the possible effect of compliance with future requirements.

#### **SEASONALITY**

Sales of our products are subject to seasonal fluctuation and periods of increased demand in end-user consumer applications, such as smartphones and tablet computing devices. The highest demand for our products generally occurs in our first fiscal quarter ending in December and the fourth fiscal quarter ending in September. The lowest demand for our handset products generally occurs in our second fiscal quarter ending in March and the third fiscal quarter ending in June.

#### **EMPLOYEES**

As of September 28, 2018, we employed approximately 9,400 employees world-wide. Approximately 1,150 of our employees in Mexico, 260 employees in Singapore, and 240 employees in Japan are covered by collective bargaining and other union agreements.

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

You should carefully consider the risks described below in addition to the other information contained in this report before making an investment decision with respect to any of our securities. Our business, financial condition or results of operations could be materially impacted by any of these risks. The risks and uncertainties described below are not the only ones we face. Additional risks not currently known to us or other factors not perceived by us to present significant risks to our business at this time may impair our business operations, financial condition or results of operations.

##### ***We operate in the highly cyclical semiconductor industry, which is subject to significant downturns.***

We operate in the semiconductor industry, which is cyclical and subject to rapid declines in demand for end-user products in both the consumer and enterprise markets. Uncertain worldwide economic and political conditions, together with other factors such as the volatility of the financial markets, continue to make it difficult for our customers and for us to accurately forecast and plan future business activities. Uncertainty and economic weakness could result in a market contraction and, as a result, our business, financial condition and results of operations would likely be materially and adversely affected. Such periods of industry downturn are characterized by diminished product demand and revenue, manufacturing overcapacity, excess inventory levels, accelerated erosion of average selling prices, bad debt, inventory charges, restructuring charges, and asset impairment charges. Furthermore, downturns in the semiconductor industry may be prolonged, and any extended delay or failure of the market to recover from an economic downturn would materially and adversely affect our business, financial condition and results of operations beyond our current fiscal year.

##### ***Our operating results may be adversely affected by quarterly and annual fluctuations and market downturns.***

Our revenues, earnings and other operating results may fluctuate significantly on a quarterly and annual basis. These fluctuations are typically the result of a number of factors, many of which are beyond our control.

These factors include, among others:

- changes in end-user demand for the products manufactured and sold by our customers,
- the effects of competitive pricing pressures, including decreases in average selling prices of our products,
- production capacity levels and fluctuations in manufacturing yields,
- availability and cost of materials and services from our suppliers,
- the gain or loss of significant customers,
- our ability to develop, introduce and market new products and technologies on a timely basis,
- new product and technology introductions by competitors,
- increasing industry consolidation among our competitors,
- changes in the mix of products produced and sold,
- market acceptance of our products and our customer’s products, and
- intellectual property disputes, including those concerning payments associated with the licensing and/or sale of intellectual property, and related remedies (e.g., monetary damages, injunctions, or exclusion orders affecting our or our customers’ products).

We employ certain methods, assumptions, estimates, and other subjective judgments in order to apply our accounting policies and to project future performance, projections which may be publicly disclosed from time to time. Changes to such methods, assumptions, estimates, and judgments, combined with other factors that are difficult to forecast, including the factors listed above, could materially and adversely affect our quarterly or annual operating results and could produce actual operating results that differ significantly from previous estimates and projections. If our operating results fail to meet the expectations of analysts or investors, it could materially and adversely affect the price of our common stock.

***Our reliance on a small number of customers for a large portion of our sales could have a material adverse effect on the results of our operations.***

Significant portions of our sales are concentrated among a limited number of customers. If we lost one or more of these major customers, or if one or more major customers significantly decreased its orders for our products, our business could be materially and adversely affected. In fiscal 2018, one customer accounted for greater than ten percent of our net revenue. In fiscal 2017, three customers each accounted for ten percent or greater of our net revenue. In fiscal 2016, two customers each accounted for ten percent or greater of our net revenue. For further discussion see [Note 17](#) to Item 8 of this Annual Report on Form 10-K.

***Our stock price has been volatile and may fluctuate in the future.***

The trading price of our common stock has and may continue to fluctuate significantly. Such fluctuations may be influenced by many factors, including:

- the volatility of the financial markets,
- uncertainty regarding the prospects of the domestic and foreign economies,
- instability in global credit and financial markets,
- our performance and prospects,
- the performance and prospects of our major customers and competitors,
- our revenue concentrations with relatively few customers,
- the depth and liquidity of the market for our common stock,
- investor perception of us and the industry in which we operate,
- changes in earnings estimates, price targets or buy/sell recommendations by analysts,
- domestic and international political conditions,
- domestic and international tax, fiscal, and trade policy decisions, and
- our ability to successfully identify, acquire and integrate acquisition candidates.

Public stock markets have experienced price and trading volume volatility. This volatility has affected, and could significantly and negatively affect, the market prices of securities of many technology companies, particularly the market price of our common stock. Such volatility could materially and adversely affect the market price of our common stock in future periods.

In addition, fluctuations in our stock price, volume of shares traded, and changes in our trading multiples may make our stock attractive to momentum, hedge or day-trading investors who often shift funds into and out of stocks rapidly, exacerbating price fluctuations in either direction. Our company has been, and in the future may be, the subject of commentary by financial news media. Such commentary may contribute to volatility in our stock price. If our operating results do not meet the expectations of securities analysts, the financial news media or investors, our stock price may decline, possibly substantially over a short period of time.

***The wireless communications and analog semiconductor markets are characterized by significant competition which may cause pricing pressures, decreased gross margins and rapid loss of market share and may materially and adversely affect our business, financial condition and results of operations.***

The wireless communications semiconductor industry, in general, and the other analog markets in which we compete are very competitive. We compete with international and United States semiconductor manufacturers of all sizes in terms of resources and market share, including, but not limited to, Analog Devices, Broadcom, Maxim Integrated Products, Murata Manufacturing, NXP Semiconductors, QUALCOMM, and Qorvo.

We currently face significant competition in our markets and expect that intense price and product competition will continue. This competition has resulted in, and is expected to continue to result in, declining average selling prices for our products and increased challenges in maintaining or increasing revenue, gross margin and market share. Furthermore, additional competitors may enter our markets as a result of growth opportunities in communications electronics, the trend toward global expansion by foreign and domestic competitors and technological and public policy changes (including national or regional policies intended to develop and support localized competitors). We believe that the principal competitive factors for semiconductor suppliers in our markets include, among others:

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- rapid time-to-market and product ramps,
- timely new product innovation,
- product quality, reliability and performance,
- product cost and selling price,
- features available in products,
- alignment with customer performance specifications,
- compliance with industry standards,
- strategic relationships with customers,
- access to, and the protection and enforcement of, intellectual property,
- ability to partner with or participate in reference designs of baseband vendors, and
- maintaining access to manufacturing capacity, raw materials, supplies and services at a competitive cost.

We might not be able to successfully address these factors. Many of our competitors benefit from:

- long presence in key markets,
- brand recognition,
- high levels of customer satisfaction,
- vertical integration,
- strong baseband partnership/participation in reference designs,
- a broad product portfolio allowing them to bundle product offerings,
- ownership or control of key technology or intellectual property, and
- strong financial, sales and marketing, manufacturing, distribution, technical or other resources.

As a result, certain competitors may be able to adapt more quickly than we can to new or emerging technologies and changes in customer requirements or may be able to devote greater resources to the development, promotion and sale of their products than we can. As a result of industry consolidation, certain competitors may be able to further exploit such benefits to strengthen their competitive position.

Our baseband reference design partners may leverage their market position by integrating additional functionality into their product offerings that compete with our solutions. If such a product offering were competitive with our solution as to performance, price and quality, our business could be adversely impacted.

Current and potential competitors have established, or may in the future establish, financial or strategic relationships among themselves or with customers, resellers or other third parties. These relationships may affect customers' purchasing decisions. Accordingly, it is possible that new competitors or alliances among competitors could emerge and rapidly acquire significant market share. We may not be able to compete successfully against current and potential competitors. Increased competition could result in pricing pressures, decreased gross margins and loss of revenue and market share and may materially and adversely affect our business, financial condition and results of operations.

***If Original Equipment Manufacturers, or OEMs, and Original Design Manufacturers, or ODMs, of communications electronics products do not design our products into their equipment, we will have difficulty selling those products. Moreover, a "design win" from a customer does not guarantee future sales to that customer.***

Our products are not sold directly to the end-user, but are components or subsystems of other products. As a result, we rely on OEMs and ODMs of wireless communications electronics products to select our products from among alternative offerings to be designed into their equipment. Without these "design wins," we would have difficulty selling our products. If a manufacturer designs another supplier's product into one of its product platforms, it is more difficult for us to achieve future design wins with that platform because changing suppliers involves significant cost, time, effort and risk on the part of that manufacturer. Also, achieving a design win with a customer does not ensure that we will receive revenue from that customer. Even after a design win, the customer is not obligated to purchase our products and can choose at any time to reduce or cease use of our products, for example, if its own products are not commercially successful, or for any other reason. We may not continue to achieve design wins or to convert design wins into actual sales, and failure to do so could materially and adversely affect our operating results. Furthermore, as a result of our lengthy product development and sales cycle, we may incur significant research and development expenses, and selling, general and administrative expenses, without generating the anticipated revenue associated with these products.

***We are subject to the risks of doing business internationally.***

A substantial majority of our net revenue is derived from shipments to customers located outside the United States, primarily in countries located in the Asia-Pacific region and Europe. In addition, we have suppliers located outside the United States, and third-party packaging, assembly and test facilities and foundries located in the Asia-Pacific region. Finally, we maintain wafer fabrication facilities in Kadoma, Japan, and Osaka, Japan, as well as packaging, assembly and test facilities in Mexicali, Mexico, and in Singapore.

Our international sales and operations are subject to a number of risks inherent in selling and operating abroad. These include, but are not limited to, risks regarding:

- currency exchange rate fluctuations, including increases or decreases in commodities prices related to such fluctuations,
- local economic and political conditions, including, but not limited to, social, economic and political instability related to the uncertainty regarding the relationships between the United States and China, Russia, Mexico, North Korea, Middle Eastern countries, other foreign countries, and the international community at large, and related to the United Kingdom's pending withdrawal from the European Union,
- labor market conditions and workers' rights,
- disruptions of capital and trading markets,
- inability to collect accounts receivable,
- restrictive governmental actions (such as restrictions on transfer of funds and trade protection measures, including export duties, quotas, customs duties, border taxes, increased import or export controls and tariffs) that could negatively impact trade between, or increase the cost of operating in, the countries in which we do business,
- changes in, or non-compliance with, legal or regulatory import/export requirements, including restrictions on selling to certain customers or into certain jurisdictions,
- natural disasters, acts of terrorism, widespread illness and war,
- unauthorized transfers of our electronic information and breaches of our information systems, as well as the potential lack of adequate remedies in certain jurisdictions,
- difficulty in obtaining distribution and support,
- cultural differences in the conduct of business,
- direct or indirect government actions, subsidies or policies aimed at supporting local industry,
- the laws and policies of the United States and other countries affecting trade, foreign investment and loans, foreign travel, and import or export licensing requirements,
- withdrawal from, or renegotiation of, existing trade agreements by the United States (or other jurisdictions) potentially affecting Mexico, China, and other countries in which we do business,
- changes in current or future tax law or regulations or new interpretations thereof, by federal or state agencies or foreign governments (including changes in certain countries in Europe and elsewhere regarding corporate taxes, transfer pricing, and tax treaty provisions),
- changes in the effective tax rate as a result of our overall profitability and mix of earnings in countries with differing statutory tax rates,
- results of audits and examination of previously filed tax returns,
- the possibility of being exposed to legal proceedings and potential penalties in a foreign jurisdiction, and/or increased compliance expense, as a result of the numerous, and sometimes conflicting, legal regimes on matters as diverse as anti-corruption, anti-bribery, import/export controls, content requirements, trade restrictions, tariffs, taxation, sanctions, immigration, internal and disclosure control obligations, securities regulation, anti-competition, data privacy and protection (including, but not limited to, the European Union's General Data Protection Regulation), employment and labor relations,
- limitations on our ability under local laws to protect or enforce our intellectual property rights in a particular foreign jurisdiction, and
- restrictions on our ability to repatriate foreign earnings and/or funds and the unfavorable tax implications related to the same.

Additionally, we are subject to risks in certain global markets in which wireless operators provide subsidies on handset sales to their customers. Increases in cellular handset prices that negatively impact handset sales can result from changes in regulatory policies or other factors, which could impact the demand for our products. Limitations or changes in policy on phone subsidies in the United States, South Korea, Japan, China, and other countries may have additional negative impacts on our revenues.

Some of the countries in which we operate and seek to expand are in emerging markets where legal systems may be less developed or familiar to us. Other jurisdictions in which we conduct business may establish legal and regulatory regimes that differ materially from United States laws and regulations. Compliance with diverse legal requirements is costly and time-consuming and requires significant resources. Violations of one or more of these regulations in the conduct of our business could result in significant fines or monetary damages, criminal sanctions against us or our officers, prohibitions on doing business, unfavorable publicity and other reputation damage, restrictions on our ability to process information and allegations by our clients that we have not performed our contractual obligations.

We are particularly exposed to risks of doing business in China. We expect to continue to expand our business and operations in China. Our success in the Chinese markets may be adversely affected by China's continuously evolving laws and regulations, including

those relating to taxation, import and export tariffs, currency controls, anti-corruption, environmental regulations, indigenous innovation, and intellectual property rights and enforcement of those rights. Enforcement of existing laws or agreements may be inconsistent. In addition, changes in the political environment, governmental policies or United States-China relations could result in revisions to laws or regulations or their interpretation and enforcement, exposure of our proprietary intellectual property, increased taxation, restrictions on imports, import duties or currency revaluations, which could have an adverse effect on our business plans and operating results. In particular, the imposition by the United States of tariffs on goods imported from China or deemed to be of Chinese origin and other government actions that restrict our ability to sell our products to Chinese customers or to manufacture or source components in China, and countermeasures imposed by China in response, could directly or indirectly adversely impact our manufacturing costs and the sales of our products in China and elsewhere. Further, the evolving labor market and increasing labor unrest in China may have a negative impact on our customers, which would result in a negative impact on our business and results of operations. Finally, China's stated policy of reducing its dependence on foreign semiconductor manufacturers and other technology companies could result in reduced demand for our products in China and other key markets as well as reduced supply of critical materials for our products.

***Our manufacturing processes are extremely complex and specialized, and disruptions could have a material adverse effect on our business, financial condition and results of operations.***

Our manufacturing operations are complex and subject to disruption, including due to causes beyond our control. The fabrication of integrated circuits is an extremely complex and precise process consisting of hundreds of separate steps. It requires production in a highly controlled, clean environment. Minor impurities, contamination of the clean room environment in which our products are produced, errors in any step of the fabrication process, defects in the masks used to print circuits on a wafer, defects in equipment or materials, human error, or a number of other factors can cause a substantial percentage of our products to be rejected or to malfunction. Because our operating results are highly dependent upon our ability to produce integrated circuits at acceptable manufacturing yields, these factors could have a material and adverse effect on our business.

Additionally, our operations may be affected by lengthy or recurring disruptions of operations at any of our production facilities, as well as disruptions at facilities operated by our subcontractors or customers. These disruptions may result from electrical power outages, fire, earthquake, flooding, war, acts of terrorism, health advisories or risks, or other natural or man-made disasters, as well as equipment maintenance, repairs and/or upgrades. Disruptions of our manufacturing operations, or those of our subcontractors and customers, could cause significant delays in shipments until we are able to shift production of the impacted products from an affected facility or subcontractor to another facility or subcontractor, or until the affected customer resumes operations and accepts shipments from us. In the event of such delays, the required alternative capacity, particularly wafer production capacity, may not be available on a timely basis or at all. Even if alternative production capacity is available, we may not be able to obtain it on favorable terms, which could result in higher costs and/or a loss of customers and revenue. Likewise, lower-than-expected demand could lead to underutilized manufacturing facilities, which could negatively impact our financial results.

Due to the highly specialized nature of the gallium arsenide integrated circuit manufacturing process, in the event of a disruption in production at our Newbury Park, California, or Woburn, Massachusetts, semiconductor wafer fabrication facilities as well as our assembly and test facility in Mexicali, Mexico, for any reason, alternative gallium arsenide production capacity would not be immediately available from third-party sources. These disruptions could have a material adverse effect on our business, financial condition and results of operations.

Our SAW and TC-SAW filter manufacturing process is also specialized in nature and in the event of a disruption in production at our filter wafer fabrication facilities in Kadoma, Japan and Osaka, Japan or in our filter assembly and test facility in Singapore, for any reason, alternative filter production capacity would not be immediately available from third-party sources. These disruptions could have a material adverse effect on our business, financial condition and results of operations.

***We may not be able to maintain and improve manufacturing yields that contribute positively to our gross margin and profitability.***

Minor deviations or disturbances in the manufacturing process can cause substantial manufacturing yield loss, and in some cases, cause production to be suspended and impact our ability to meet customer demand on a timely basis. Manufacturing yields for new products initially tend to be lower as we complete product development and commence volume manufacturing, and typically increase as we bring the product to full production. Our forward product pricing includes this assumption of improving manufacturing yields and, as a result, material variances between projected and actual manufacturing yields will have a direct effect on our gross margin and profitability. The difficulty of accurately forecasting manufacturing yields and maintaining cost competitiveness through improving manufacturing yields will continue to be magnified by the increasing process complexity of manufacturing semiconductor products. Our manufacturing operations may also face pressures arising from the compression of product life cycles, which may require us to manufacture new products faster and for shorter periods while maintaining acceptable manufacturing yields and quality without, in many cases, reaching the longer-term, high-volume manufacturing conducive to higher manufacturing yields and declining costs.

***Remaining competitive in the semiconductor industry depends upon our ability to develop new products, reduce costs in a timely manner, transition to smaller geometry process technologies, and achieve higher levels of design integration.***

The semiconductor industry generally and, in particular, many of the markets into which we sell our products, are highly cyclical and characterized by constant and rapid technological change, continuous product evolution, price erosion, evolving technical standards, short product life cycles (including annual product refreshes in some cases), increasing demand for higher levels of integration, increased miniaturization, reduced power consumption and wide fluctuations in product supply and demand. Our operating results depend largely on our ability to continue to cost-effectively introduce new and enhanced products on a timely basis. The successful development and commercialization of semiconductor devices and modules is highly complex and depends on numerous factors, including the ability:

- to anticipate customer and market requirements and changes in technology and industry standards,
- to obtain sufficient manufacturing capacity to meet customer demand,
- to define new products that meet customer and market requirements,
- to complete development of new products and bring products to market on a timely basis,
- to differentiate our products from offerings of our competitors,
- to achieve overall market acceptance of our products,
- to lengthen the time that a particular product is in demand, and
- to obtain adequate intellectual property protection for our new products.

Our ability to manufacture current products, and to develop new products, depends on, among other factors, the viability and flexibility of our own internal information technology systems.

We continually evaluate expenditures for planned product development and choose among alternatives based on our understanding of customer technical requirements, new industry standards and expectations of future market growth. We may not be able to develop and introduce new or enhanced wireless communications and analog semiconductor products in a timely and cost-effective manner, and our products may not satisfy customer requirements or achieve market acceptance or we may not be able to anticipate new industry standards and technological changes. We also may not be able to respond successfully to new product announcements and introductions by competitors or to changes in the design or specifications of complementary products of third parties with which our products interface. If we fail to rapidly and cost-effectively introduce new and enhanced products in sufficient quantities that meet our customers' requirements, our business and results of operations would be materially and adversely harmed.

In addition, prices of many of our products decline, sometimes significantly, over time. Our products may become obsolete earlier than planned or may not have life cycles long enough to allow us to recoup the cost of our investment in designing such products. Accordingly, we believe that to remain competitive, we must continue to reduce the cost of producing and delivering existing products at the same time that we develop and introduce new or enhanced products. We may not be able to continue to reduce the cost of producing and delivering our products and thereby remain competitive.

In order to remain competitive, we expect to continue to transition our products to increasingly smaller geometries. This transition requires us to modify the manufacturing processes for our products, design new products to more stringent standards, and to redesign some existing products. In the past, we have experienced some difficulties migrating to smaller geometry process technologies or new manufacturing processes, which resulted in sub-optimal manufacturing yields, delays in product deliveries and increased expenses. We may face similar difficulties, delays and expenses as we continue to transition our products to smaller geometry processes in the future. In some instances, we depend on our relationships with our third-party foundries to transition to smaller geometry processes successfully. Our foundries may not be able to effectively manage the transition or we may not be able to maintain our relationships with certain foundries. If our foundries or we experience significant delays in this transition or fail to efficiently implement this transition, our business, financial condition and results of operations could be materially and adversely affected. As smaller geometry processes become more prevalent, we expect to continue to integrate greater levels of functionality, as well as customer and third-party intellectual property, into our products. However, we may not be able to achieve higher levels of design integration or deliver new integrated products on a timely basis, or at all.

***We may be subject to warranty claims, product recalls, and liability claims.***

Although we invest significant resources in the testing of our products, we may discover from time to time defects in our products after they have been shipped, and we may be required to incur additional development and remediation costs, or cash payments to settle claims pursuant to warranty and indemnification provisions in our customer contracts and purchase orders. The potential liabilities associated with these, and similar, provisions in certain of our customer contracts are in some cases capped at significant amounts, and in other cases are uncapped. Depending on the nature of the product defects, we may not be able to recoup our losses from our third-party suppliers. These problems may divert our technical and other resources from other product development efforts and could result in claims against us by our customers or third parties, including liability for costs associated with product recalls,

indemnification claims, or other obligations under customer contracts. If any of our products contain defects, or have reliability, quality or compatibility problems, our reputation may be damaged and we could be subject to liability claims, which could make it more difficult for us to sell our products to existing and prospective customers and could adversely affect our operating results. Furthermore, such losses would not be covered under our existing corporate insurance programs.

***We are dependent upon third parties for the manufacture, assembly and testing of our products.***

We rely on foundries to provide silicon-based products and to supplement our gallium arsenide wafer manufacturing capacity. There are significant risks associated with reliance on third-party foundries, including:

- the lack of wafer supply, potential wafer shortages and higher wafer prices,
- limited ability to respond to unanticipated changes in customer demand,
- limited control over delivery schedules, manufacturing yields, production costs and quality assurance, and
- the inaccessibility of, or delays in obtaining access to, key process technologies and IP blocks.

Although we have long-term supply arrangements to obtain additional external manufacturing capacity, the third-party foundries we use for our standby manufacturing capacity may allocate their limited capacity to the production requirements of other customers and we have no contractual right to prevent them from making such allocations. If we choose to use a new foundry to replace either existing or backup capacity, it will typically take an extended period of time for us to complete our qualification process for that foundry, which will result in a significant passage of time before we can begin shipping products from that new foundry.

Further, the third-party foundries may experience financial difficulties, be unable to deliver products to us in a timely manner or suffer damage or destruction to their facilities, particularly since some of them are located in areas prone to natural disasters. If any disruption of manufacturing capacity occurs, we may not have alternative manufacturing sources immediately available. We may therefore experience difficulties or delays in securing an adequate supply of our products, which could impair our ability to meet our customers' needs and have a material adverse effect on our operating results.

Although we own and operate assembly and test facilities, we still depend on subcontractors to package, assemble and test certain of our products at cost-competitive rates. We do not have long-term agreements with any of our assembly or test subcontractors and typically procure services from these suppliers on a per order basis. If any of these subcontractors experiences capacity constraints or financial difficulties, suffers any damage to its facilities, experiences power outages or any other disruption of assembly or testing capacity, we may not be able to obtain alternative assembly and testing services in a timely manner and/or at cost-competitive rates. Due to the amount of time that it usually takes us to qualify assemblers and testers, we could experience significant delays in product shipments if we are required to find alternative assemblers or testers for our components. Any problems that we may encounter with the delivery, quality or cost of our products could damage our customer relationships and materially and adversely affect our results of operations.

***If we are unable to attract and retain qualified personnel to contribute to the design, development, manufacture and sale of our products, we may not be able to effectively operate our business.***

As the source of our technological and product innovations, our key technical personnel represent a significant asset. Our success depends on our ability to continue to attract, retain and motivate qualified personnel, including executive officers and other key management and technical personnel. The competition for management and technical personnel is intense in the semiconductor industry, and therefore we may not be able to continue to attract and retain the qualified management and other personnel necessary for the design, development, manufacture and sale of our products. We may have particular difficulty attracting and retaining key personnel during periods of poor operating performance and/or declines in the price of our common stock, given among other factors, the use of equity-based compensation by us and our competitors. Further, existing immigration laws, together with any changes to immigration policies or regulations in the United States, could make it more difficult for us to recruit and retain highly skilled foreign national graduates of universities in the United States, limiting the pool of available talent. Travel bans, difficulties obtaining visas and other restrictions on international travel could make it more difficult to effectively manage our international operations, collaborate as a global company or service our international customer base. We continue to anticipate increases in human resource needs, particularly in engineering. The loss of the services of one or more of our key employees or our inability to attract, retain and motivate qualified personnel, could have a material adverse effect on our ability to operate our business.

***Our business would be adversely affected by the departure of existing members of our senior management team or if our senior management team is unable to effectively implement our strategy.***

Our success depends, in large part, on the continued contributions of our senior management team, none of whom is bound by a written employment contract to remain with us for a specified period. The loss of any of our senior management could harm our ability to implement our business strategy and respond to the rapidly changing market conditions in which we operate.

***Uncertainties involving the ordering and shipment of, and payment for, our products, could adversely affect our business.***



Our sales are made pursuant to standard purchase orders and/or specified customer contracts for delivery of products and not under long-term supply arrangements with our customers. Our customers may cancel orders before shipment. Additionally, we sell a portion of our products through third-party distributors, some of whom have rights to return products if the product is defective. We may purchase and manufacture inventory based on estimates of customer demand for our products, which is difficult to predict. This difficulty may be compounded when we sell to OEMs indirectly through distributors or contract manufacturers, or both, as our forecasts of demand will then be based on estimates provided by multiple parties. In addition, our customers and/or distributors may change their inventory practices on short notice for any reason. The cancellation or deferral of product orders, the return of previously sold products, or overproduction due to a change in anticipated order volumes could result in us holding excess or obsolete inventory, which could result in inventory write-downs and, in turn, could have a material adverse effect on our financial condition. Some of our customers have implemented vendor-managed inventory, consignment or similar inventory programs which may result in an increase in the time between manufacture of, and payment for, our products.

In addition, if a customer or distributor encounters financial difficulties of its own as a result of a change in demand or for any other reason, the customer's or distributor's ability to make timely payments against our accounts receivable could be impaired.

***We are dependent upon third parties for the supply of raw materials and components.***

Our manufacturing operations depend on obtaining adequate supplies of raw materials and components used in our manufacturing processes at a competitive cost. Although we maintain relationships with suppliers located around the world with the objective of ensuring that we have adequate sources for the supply of raw materials and components for our manufacturing needs, increases in demand from the semiconductor industry for such raw materials and components, as well as increased demand for commodities in general, can result in tighter supplies and higher costs. Our suppliers may not be able to meet our delivery schedules, we may lose a significant or sole supplier, a supplier may not be able to meet performance and quality specifications and we may not be able to purchase such supplies or material at a competitive cost. If a supplier were unable to meet our delivery schedules or if we lost a supplier or a supplier were unable to meet performance or quality specifications, our ability to satisfy customer obligations would be materially and adversely affected. In addition, we review our relationships with suppliers of raw materials and components for our manufacturing needs on an ongoing basis. In connection with our ongoing review, we may modify or terminate our relationship with one or more suppliers. We may also enter into sole supplier arrangements to meet certain of our raw material or component needs. While we do not typically rely on a single source of supply for our raw materials, we are currently dependent on a limited number of sole-source suppliers. If we were to lose these sole sources of supply, for any reason, a material adverse effect on our business could result until an alternate source is obtained. To the extent we enter into additional sole supplier arrangements for any of our raw materials or components, the risks associated with our supply arrangements would be exacerbated.

***Our business and operations could suffer in the event of information technology security breaches.***

Security breaches, phishing, spoofing, attempts by others to gain unauthorized access to our information technology systems, and other cyberattacks are becoming more sophisticated and are sometimes successful. These incidents, which might be related to industrial or other espionage, include covertly introducing malware to our computers and networks (or to an electronic system operated by a third party for our benefit) and impersonating authorized users, among others. We seek to detect and investigate all security incidents and to prevent their recurrence, but in some cases, we might be unaware of an incident or its magnitude and effects. The theft, unauthorized use, transfer, or publication of our intellectual property, our confidential business information, or the personal data of our employees by third parties or by our employees could harm our competitive position, reduce the value of our investment in research and development and other strategic initiatives or otherwise adversely affect our business. To the extent that any security breach or other cybersecurity incident results in inappropriate disclosure of our customers', suppliers', licensees' or employees' confidential information, we may incur liability as a result. We expect to continue devoting significant resources to the security of our information technology systems and the training of our employees. However, we cannot ensure that our efforts will be sufficient to prevent or mitigate the damage caused by a cyberattack, cybersecurity incident or network disruption.

***If we are not successful in protecting our intellectual property rights, our ability to compete successfully may be materially and adversely affected.***

We rely on patent, copyright, trademark, trade secret and other intellectual property laws, as well as nondisclosure and confidentiality agreements and other methods, to protect our proprietary technologies, inventions, information, data, devices, algorithms, processes and other intellectual property. In addition, we often incorporate the intellectual property of our customers, suppliers or other third parties into our designs, and we have obligations with respect to the non-use and non-disclosure of such third-party intellectual property. In the future, it may be necessary to engage in litigation or like activities to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of proprietary rights of others, including our customers. This could require us to expend significant resources and to divert the efforts and attention of our management and technical personnel from our business operations. Regardless of our actions:

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- the steps we take to prevent misappropriation, infringement, dilution or other violation of our intellectual property or the intellectual property of our customers, suppliers or other third parties may not be successful, and
- any of our existing or future patents, copyrights, trademarks, trade secrets or other intellectual property rights may be challenged, invalidated or circumvented.

Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our technology without authorization, develop similar technology independently or design around or invalidate our patents. If any of our intellectual property protection mechanisms fails to protect our technology, it would make it easier for our competitors to offer similar competitive products, potentially resulting in loss of market share and price erosion. Even if we receive a patent, the patent claims may not be broad enough to adequately cover and protect our technology. Furthermore, even if we receive patent protection in the United States, we may not seek, or may not be granted, patent protection in other relevant foreign countries. In addition, effective patent, copyright, trademark and trade secret protection and enforcement may be unavailable or limited for certain technologies and in certain foreign countries.

We attempt to control access to, and distribution of, our proprietary information through operational, technological and legal safeguards. Despite our efforts, parties, including former or current employees, may attempt to copy, disclose, transfer or obtain access to our information without our authorization. Furthermore, attempts by computer hackers to gain unauthorized access to our systems or information could result in our confidential and/or proprietary information being compromised or our operations being interrupted. While we attempt to prevent such unauthorized access or misappropriation we may be unable to anticipate the methods used, or be unable to prevent the release of our confidential and/or proprietary information.

***We may be subject to claims of infringement of third-party intellectual property rights, or demands that we license third-party technology, which could result in significant expense and prevent us from using our technology.***

The semiconductor industry is characterized by vigorous protection and pursuit of intellectual property rights. From time to time, third parties have asserted and may in the future assert patent, copyright, trademark and other intellectual property rights against technologies that are important to our business and have demanded and may in the future demand that we license their technology or refrain from using it.

Any litigation to determine the validity of any allegations that our products infringe or may infringe intellectual property rights of another party, including indemnification claims arising from our contractual obligations of our customers, regardless of their merit or resolution, could be costly and divert the efforts and attention of our management and technical personnel. Regardless of the merits of any specific claim, we may not prevail in litigation because of the complex technical issues and inherent uncertainties in intellectual property litigation. If litigation were to result in an adverse ruling, we could be required to:

- pay substantial damages,
- cease the manufacture, import, use, sale or offer for sale of infringing products or processes,
- discontinue the use of infringing technology,
- expend significant resources to develop non-infringing technology, and
- license technology from the third party claiming infringement, which license may not be available on commercially reasonable terms.

Our operating results or financial condition may be materially adversely affected if we, or one of our customers, were required to take any one or more of the foregoing actions.

In addition, if another supplier to one of our customers, or a customer of ours itself, were found to be infringing upon the intellectual property rights of a third party, the supplier or customer could be ordered to cease the manufacture, import, use, sale or offer for sale of its infringing product(s) or process(es), either of which could result, indirectly, in a decrease in demand from our customers for our products. If such a decrease in demand for our products were to occur, it could have an adverse impact on our operating results.

***Many of our products currently incorporate technology licensed or acquired from third parties and we expect our products in the future to also require technology from third parties. If the licenses to such technology that we currently hold become unavailable or the terms on which they are available become commercially unreasonable, or if we are unable to acquire or license necessary technology for our products in the future, our business could be adversely affected.***

We sell products in markets that are characterized by rapid technological changes, evolving industry standards, frequent new product introductions, short product life cycles and increasing levels of integration. Our ability to keep pace with this market depends on our ability to obtain technology from third parties on commercially reasonable terms to allow our products to remain competitive. If licenses to such technology are not available on commercially reasonable terms and conditions or at all, and we cannot otherwise acquire or integrate such technology, our products or our customers' products could become unmarketable or obsolete, and we could lose market share. In such instances, we could also incur substantial unanticipated costs or scheduling delays to develop substitute technology to deliver competitive products.

***There can be no assurance that we will continue to declare cash dividends or repurchase our stock.***

We intend to pay quarterly cash dividends subject to capital availability and periodic determinations by our Board of Directors that cash dividends are in the best interest of our stockholders. In addition, from time to time the Board of Directors approves stock repurchase programs, pursuant to which we are authorized to repurchase shares of common stock on the open market or in privately negotiated transactions.

Future cash dividends and the amount and timing of our stock repurchases may be affected by, among other factors:

- our views on potential future capital requirements, including those related to acquisitions as well as research and development,
- our ability to generate sufficient earnings and cash flows,
- use of cash to consummate various acquisition transactions,
- capital requirements related to cash dividends and stock repurchase programs,
- changes in federal and state income tax laws or corporate laws, and
- changes to our business model.

Our cash dividend payments may change from time to time, and we cannot provide assurance that we will increase our cash dividend payment or declare cash dividends in any particular amounts or at all. A reduction in our cash dividend payments or a reduction in the level of our stock repurchases could have a negative effect on our stock price.

***Changes in tax laws and regulations worldwide could have an adverse impact on our operating results.***

We are subject to taxation in many different countries and localities worldwide. To the extent the tax laws and regulations in these various countries and localities could change, including the Base Erosion and Profit Shifting project being conducted by the Organization for Economic Co-operation and Development, our tax liability in general could increase. For example, our subsidiary in Singapore receives a tax holiday that is expected to be effective through September 2020. Changes in the status of this tax holiday could have a negative effect on our net income in future years.

The new tax legislation (the “Tax Reform Act”), enacted by the United States in December 2017, included several changes to U.S. tax laws that will have a significant impact on our operations, including a reduction in the U.S. corporate tax rate, base-erosion prevention measures on earnings of our non-U.S. subsidiaries, and a one-time mandatory deemed repatriation tax on earnings of certain foreign jurisdictions. Because these changes require a number of complex calculations that previously were not required, our actual tax liability may differ materially from our income tax provisions, estimates, and accruals. Changes in our interpretations and assumptions, as well as additional guidance issued, could increase income tax liabilities and/or reduce certain tax benefits.

***We face a risk that capital needed for our business will not be available when we need it.***

To the extent that our existing cash and cash equivalents and cash generated from operations are insufficient to fund our future activities, we may need to raise additional funds through public or private equity or debt financing. If unfavorable capital market conditions exist in the event we were to seek additional financing, we may not be able to raise sufficient capital on favorable terms and on a timely basis, if at all. Failure to obtain capital when required by our business circumstances would have a material adverse effect on us.

In addition, any strategic investments and acquisitions that we may make to help us grow our business may require additional capital resources. The capital required to fund these investments and acquisitions may not be available in the future.

***To be successful we may need to make certain investments and acquisitions, integrate companies we acquire, and/or enter into strategic alliances.***

Although we have invested in the past, and intend to continue to invest, significant resources in internal research and development activities, the complexity and rapidity of technological changes and the significant expense of internal research and development make it impractical for us to pursue development of all technological solutions on our own. On an ongoing basis, we review investment, alliance and acquisition prospects that would complement our product offerings, augment our market coverage or enhance our technological capabilities. We may not be able to identify and consummate suitable investment, alliance or acquisition transactions in the future. Moreover, if such transactions are consummated, they could result in:

- issuances of equity securities dilutive to our stockholders,
- large, transactions, restructuring or other impairment write-offs,
- the incurrence of substantial debt and assumption of unknown liabilities,
- the potential loss of key employees from the acquired company,
- recognition of additional liabilities known or unknown at the time of acquisition,

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- amortization expenses related to intangible assets, and
- the diversion of management’s attention from other business concerns.

Moreover, integrating acquired organizations and their products and services may be difficult, expensive, time-consuming and a strain on our resources and our relationship with employees and customers and ultimately may not be successful. Additionally, in periods following an acquisition, we will be required to evaluate goodwill and acquisition-related intangible assets for impairment. If such assets are found to be impaired, they will be written down to estimated fair value, with a charge against earnings.

***Increasingly stringent environmental laws, rules and regulations may require us to redesign our existing products and processes, and could adversely affect our ability to cost-effectively produce our products.***

The semiconductor industry has been subject to increasing environmental regulations, particularly those environmental requirements that control and restrict the use, transportation, emission, discharge, storage and disposal of certain chemicals, elements and materials used or produced in the semiconductor manufacturing process. Heightened public focus on climate change, sustainability and environmental issues has also led to increased government regulation and caused certain of our customers to impose environmental standards on us as a part of doing business with them. We expect that the trend of increasing environmental awareness will continue for the foreseeable future which will result in higher costs of operations. In addition, our commitment to environmentally sustainable practices, while undertaken in a manner designed to be as efficient and cost effective as possible, may result in increases in costs of operations for us relative to our competitors until technologies and methods are developed that will help reduce those costs or such practices become industry best practice.

A number of domestic and foreign jurisdictions restrict or may seek to restrict the use of various substances, a number of which have been or are currently used in our products or processes. For example, the European Union Restriction of Hazardous Substances in Electrical and Electronic Equipment (“RoHS”) Directive requires that certain substances, which may be found in certain products we have manufactured in the past, be removed from all electronics components. Eliminating such substances from our manufacturing processes requires the expenditure of additional research and development funds to seek alternative substances for our products, as well as increased testing by third parties to ensure the quality of our products and compliance with the RoHS Directive. While we have implemented a compliance program to ensure our product offering meets these regulations, there may be instances where alternative substances will not be available or commercially feasible, or may only be available from a single source, or may be significantly more expensive than their restricted counterparts. Additionally, if we were found to be non-compliant with any such rule or regulation, we could be subject to fines, penalties and/or restrictions imposed by government agencies that could adversely affect our operating results.

Regulations in the United States require that we determine whether certain materials used in our products, referred to as conflict minerals, originated in the Democratic Republic of the Congo or adjoining countries, or were from recycled or scrap sources. The verification and reporting requirements, in addition to customer demands for conflict-free sourcing, impose additional costs on us and on our suppliers, and may limit the sources or increase the prices of materials used in our products. Further, if we are unable to certify that our products are conflict free, we may face challenges with our customers, which could place us at a competitive disadvantage, and our reputation may be harmed.

New climate change laws and regulations could require us to change our manufacturing processes or obtain substitute materials that may cost more or be less available for our manufacturing operations. In addition, new restrictions on emissions of carbon dioxide or other greenhouse gases could result in significant costs for us. The Commonwealth of Massachusetts has adopted greenhouse gas regulations, and the United States Congress may pass federal greenhouse gas legislation in the future. The United States Environmental Protection Agency has issued greenhouse gas reporting regulations that may apply to certain of our operations. Various jurisdictions are developing other climate change-based regulations, that also may increase our expenses and adversely affect our operating results. We expect increased worldwide regulatory activity relating to climate change in the future. Compliance with these laws and regulations has not had a material impact on our capital expenditures, earnings, financial condition or competitive position.

Furthermore, environmental regulations often require parties to fund remedial action for violations of such regulations regardless of fault. Consequently, it is often difficult to estimate the future impact of environmental matters, including potential liabilities. In addition, our customers increasingly require warranties or indemnity relating to compliance with environmental regulations. The amount of expense and capital expenditures that might be required to satisfy environmental liabilities, to complete remedial actions and to continue to comply with applicable environmental laws may have a material adverse effect on our business, financial condition and results of operations.

***Certain provisions in our organizational documents and Delaware law may make it difficult for someone to acquire control of us.***

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We have certain anti-takeover measures that may affect our common stock. Our certificate of incorporation, our by-laws and the Delaware General Corporation Law contain several provisions that would make more difficult an acquisition of control of us in a transaction not approved by our Board of Directors. Our certificate of incorporation and by-laws include provisions such as:

- the ability of our Board of Directors to issue shares of preferred stock in one or more series without further authorization of stockholders,
- a prohibition on stockholder action by written consent,
- a requirement that stockholders provide advance notice of any stockholder nominations of directors or any proposal of new business to be considered at any meeting of stockholders,
- a requirement that the affirmative vote of at least 80% of our shares be obtained to amend or repeal the provisions of our certificate of incorporation relating to the election and removal of directors or the right to act by written consent,
- a requirement that the affirmative vote of at least 80% of our shares be obtained for business combinations unless approved by a majority of the members of the Board of Directors and, in the event that the other party to the business combination is the beneficial owner of 5% or more of our shares, a majority of the members of the Board of Directors in office prior to the time such other party became the beneficial owner of 5% or more of our shares,
- a fair price provision, and
- a requirement that the affirmative vote of at least 90% of our shares be obtained to amend or repeal the fair price provision.

In addition to the provisions in our certificate of incorporation and by-laws, Section 203 of the Delaware General Corporation Law generally provides that a corporation may not engage in any business combination with any interested stockholder during the three-year period following the time that such stockholder becomes an interested stockholder, unless a majority of the directors then in office approves either the business combination or the transaction that results in the stockholder becoming an interested stockholder or specified stockholder approval requirements are met.

**ITEM 1B. UNRESOLVED STAFF COMMENTS.**

*None.*

**ITEM 2. PROPERTIES.**

We have executive offices in Irvine, California, and Woburn, Massachusetts. For information regarding property, plant and equipment by geographic region for each of the last three fiscal years, see [Note 17](#) to Item 8 of this Annual Report on Form 10-K. The following table sets forth our principal facilities:

<b>Location</b>	<b>Owned/Leased</b>	<b>Square Footage</b>	<b>Primary Function</b>
Mexicali, Mexico	Owned	380,000	Manufacturing and office space
Woburn, Massachusetts	Owned	158,000	Manufacturing and office space
Adamstown, Maryland	Owned	121,200	Manufacturing and office space
Newbury Park, California	Owned	111,600	Manufacturing and office space
Osaka, Japan	Leased	405,300	Filter manufacturing
Mexicali, Mexico	Leased	179,000	Manufacturing and office space
Singapore, Singapore	Leased	176,800	Filter manufacturing
Irvine, California	Leased	126,900	Design center and office space
Newbury Park, California	Leased	115,700	Design center
Kadoma, Japan	Leased	97,300	Filter manufacturing and office space
San Jose, California	Leased	51,900	Design center and office space
Cedar Rapids, Iowa	Leased	42,900	Design center
Ottawa, Ontario	Leased	33,200	Design center
Andover, Massachusetts	Leased	22,900	Design center
Seoul, Korea	Leased	22,900	Design center
Basking Ridge, New Jersey	Leased	21,800	Design center
Hillsboro, Oregon	Leased	21,200	Design center and office space

**ITEM 3. LEGAL PROCEEDINGS.**

The information set forth under [Note 13](#) of Notes to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K is incorporated herein by reference.

**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.****MARKET INFORMATION AND DIVIDENDS**

Our common stock is traded on the Nasdaq Global Select Market under the symbol "SWKS".

The number of stockholders of record of our common stock as of November 7, 2018, was 12,404. On November 8, 2018, the Company announced that the Board of Directors had declared a cash dividend of \$0.38 per share of common stock, payable on December 18, 2018, to stockholders of record as of November 27, 2018. We intend to continue to pay quarterly dividends subject to capital availability and our view that cash dividends are in the best interests of our stockholders. Future cash dividends may be affected by, among other items, our views on potential future capital requirements, including those relating to research and development, creation and expansion of sales distribution channels and investments and acquisitions, legal risks, stock repurchase programs, debt issuance, changes in federal and state income tax law and changes to our business model.

**ISSUER PURCHASES OF EQUITY SECURITIES**

The following table provides information regarding repurchases of common stock made during the fiscal quarter ended September 28, 2018:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs (1)
6/30/18-7/27/18	829,906 (2)	\$97.56	828,483	\$567.1 million
7/28/18-8/24/18	718,516(3)	\$93.61	715,597	\$500.1 million
8/25/18-9/28/18	1,002,162(4)	\$87.13	1,000,000	\$413.0 million
Total	2,550,584		2,544,080	

(1) The stock repurchase program approved by the Board of Directors on January 31, 2018, authorizes the repurchase of up to \$1.0 billion of our common stock from time to time on the open market or in privately negotiated transactions as permitted by securities laws and other legal requirements. The January 31, 2018, stock repurchase program replaces in its entirety the January 17, 2017, plan and is scheduled to expire on January 31, 2020.

(2) 828,483 shares were repurchased at an average price of \$97.56 per share as part of our stock repurchase program, and 1,423 shares were repurchased by us at the fair market value of the common stock as of the applicable purchase date, in connection with the satisfaction of tax withholding obligations under equity award agreements with an average price of \$96.91 per share.

(3) 715,597 shares were repurchased at an average price of \$93.62 per share as part of our stock repurchase program, and 2,919 shares were repurchased by us at the fair market value of the common stock as of the applicable purchase date, in connection with the satisfaction of tax withholding obligations under equity award agreements with an average price of \$91.52 per share.

(4) 1,000,000 shares were repurchased at an average price of \$87.12 per share as part of our stock repurchase program, and 2,162 shares were repurchased by us at the fair market value of the common stock as of the applicable purchase date, in connection with the satisfaction of tax withholding obligations under equity award agreements with an average price of \$93.02 per share.

On November 15, 2017, we agreed to potentially issue not more than 1% of our common stock to an unaffiliated third party as contingent consideration for its role under a multi-year collaboration agreement. The shares are issuable for no cash payment but only upon the achievement of certain product sale milestones, certain terminations of the agreement or if the Company engages in certain competition with the third party. Though the timing is not certain, the Company does not expect achievement of the product sale milestones to occur any time prior to mid-2020. The transaction was made in reliance on the exemption from registration in Section 4(a)(2) of the Securities Act. The Company has agreed to file a registration statement with the Securities and Exchange Commission registering the resale of any issued shares.

**ITEM 6. SELECTED FINANCIAL DATA.**

The information set forth below for the five years ended September 28, 2018, is not necessarily indicative of results of future operations, and should be read in conjunction with Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, and our consolidated financial statements and related notes included in Part II, Item 8 of this Annual Report on Form 10-K to fully understand factors that may affect the comparability of the information presented below. Our fiscal year ends on the Friday closest to September 30. Fiscal 2018, 2017, 2016, and 2015 each consisted of 52 weeks and ended on September 28, 2018, September 29, 2017, September 30, 2016, and October 2, 2015, respectively. Fiscal 2014 consisted of 53 weeks and ended on October 3, 2014.

The following table represents the selected financial data (in millions, except per share data):

Statement of Operations Data:	Fiscal Years Ended				
	September 28, 2018 (2)	September 29, 2017	September 30, 2016 (1)	October 2, 2015	October 3, 2014
Net revenue	\$ 3,868.0	\$ 3,651.4	\$ 3,289.0	\$ 3,258.4	\$ 2,291.5
Operating income	\$ 1,319.3	\$ 1,253.8	\$ 1,118.7	\$ 1,023.1	\$ 565.2
Operating margin	34.1%	34.3%	34.0%	31.4%	24.7%
Net income	\$ 918.4	\$ 1,010.2	\$ 995.2	\$ 798.3	\$ 457.7
Earnings per share:					
Basic	\$ 5.06	\$ 5.48	\$ 5.27	\$ 4.21	\$ 2.44
Diluted	\$ 5.01	\$ 5.41	\$ 5.18	\$ 4.10	\$ 2.38
Cash dividends declared per share	\$ 1.34	\$ 1.16	\$ 1.06	\$ 0.65	\$ 0.22

  

Balance Sheet Data:	As of				
	September 28, 2018 (2)	September 29, 2017	September 30, 2016 (1)	October 2, 2015	October 3, 2014
Working capital	\$ 1,872.5	\$ 2,245.8	\$ 1,791.9	\$ 1,450.8	\$ 1,131.6
Property, plant and equipment, net	\$ 1,140.9	\$ 882.3	\$ 806.3	\$ 826.4	\$ 555.9
Total assets	\$ 4,828.9	\$ 4,573.6	\$ 3,855.4	\$ 3,719.4	\$ 2,973.8
Stockholders' equity	\$ 4,097.0	\$ 4,065.7	\$ 3,541.4	\$ 3,159.2	\$ 2,532.4

(1) Fiscal 2016 net income and earnings per share include other income of \$88.5 million related to the receipt of the PMC-Sierra merger termination fee.

(2) Fiscal 2018 net income and earnings per share include a one-time charge of \$224.6 million related to the mandatory deemed repatriation tax on foreign earnings and a one-time charge of \$18.3 million related to the revaluation of deferred tax assets and liabilities at the new corporate tax rate, as a result of the Tax Reform Act.



**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 consolidated financial statements and related notes that appear elsewhere in this Annual Report on Form 10-K. In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Actual results may differ substantially and adversely from those referred to herein due to a number of factors, including, but not limited to, those described below and in Item 1A "[Risk Factors](#)" and elsewhere in this Annual Report on Form 10-K.

**OVERVIEW**

We, together with our consolidated subsidiaries, are empowering the wireless networking revolution. Our highly innovative analog semiconductors are connecting people, places, and things spanning a number of new and previously unimagined applications within the aerospace, automotive, broadband, cellular infrastructure, connected home, industrial, medical, military, smartphone, tablet and wearable markets. Our key customers include Amazon, Apple, Arris, Bose, Cisco, DJI, Ericsson, Foxconn, Garmin, Gemalto, General Electric, Google, Honeywell, HTC, Huawei, Itron, Lenovo, LG Electronics, Microsoft, Motorola, Netgear, Northrop Grumman, OPPO, Rockwell Collins, Samsung, Sierra Wireless, Sonos, Technicolor, VIVO, Xiaomi and ZTE.

**RESULTS OF OPERATIONS****FISCAL YEARS ENDED SEPTEMBER 28, 2018, SEPTEMBER 29, 2017, AND SEPTEMBER 30, 2016.**

The following table sets forth the results of our operations expressed as a percentage of net revenue:

	September 28, 2018	September 29, 2017	September 30, 2016
Net revenue	100.0%	100.0%	100.0 %
Cost of goods sold	49.6	49.6	49.4
Gross profit	50.4	50.4	50.6
Operating expenses:			
Research and development	10.4	9.7	9.5
Selling, general and administrative	5.4	5.6	6.0
Amortization of intangibles	0.5	0.8	1.0
Restructuring and other charges	—	—	0.1
Total operating expenses	16.3	16.1	16.6
Operating income	34.1	34.3	34.0
Other income (expense), net	0.3	0.1	(0.2)
Merger termination fee	—	—	2.7
Income before income taxes	34.4	34.4	36.5
Provision for income taxes	10.7	6.7	6.2
Net income	23.7%	27.7%	30.3 %

**GENERAL**

During the fiscal year ended September 28, 2018, the following key factors contributed to our overall results of operations, financial position and cash flows:

- Net revenue increased to approximately \$3,868.0 million, an increase of 6% as compared to the prior fiscal year. This increase in revenue was primarily driven by our success in capturing a higher share of the increasing radio frequency and analog content per device as smartphone models continue to evolve, increases in applications for the IoT, and the expanding analog product portfolio supporting new vertical markets including aerospace, automotive, industrial, medical and military.

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- Our ending cash, cash equivalents and marketable securities balance decreased 35.0% to \$1,050.2 million in fiscal 2018 from \$1,616.8 million in fiscal 2017. This was the result of a 13% decrease in cash from operations to \$1,260.6 million in fiscal 2018 from \$1,456.3 million in fiscal 2017 due to a \$221.9 million increase in cash used for working capital. In addition, we returned \$1,002.7 million to shareholders through repurchasing 7.7 million shares of our common stock for \$759.5 million together with payments of \$243.2 million in cash dividends. Lastly, we invested approximately \$422.3 million in capital expenditures and \$404.0 million in payments for acquisitions.

**NET REVENUE**

	Fiscal Years Ended				
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016
(dollars in millions)					
Net revenue	\$ 3,868.0	5.9%	\$ 3,651.4	11.0%	\$ 3,289.0

We market and sell our products directly to OEMs of communications and electronics products, third-party original design manufacturers and contract manufacturers, and indirectly through electronic components distributors. We generally experience seasonal peaks during the second half of the calendar year, primarily as a result of increased worldwide production of consumer electronics in anticipation of increased holiday sales, whereas our second and third fiscal quarter is typically lower and in line with seasonal industry trends.

The \$216.6 million increase in revenue in fiscal 2018 as compared to fiscal 2017 and the \$362.4 million increase in revenue in fiscal 2017 as compared to fiscal 2016 were primarily driven by our success in capturing a higher share of the increasing radio frequency and analog content per device as smartphones models continue to evolve, the increasing number of applications for the IoT, and our expanding analog product portfolio supporting new vertical markets including automotive, industrial, medical and military.

For information regarding net revenue by geographic region and customer concentration, see [Note 17](#) to Item 8 of this Annual Report on Form 10-K.

**GROSS PROFIT**

	Fiscal Years Ended				
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016
(dollars in millions)					
Gross profit	\$ 1,950.7	5.9%	\$ 1,841.8	10.6%	\$ 1,665.2
% of net revenue	50.4%		50.4%		50.6%

Gross profit represents net revenue less cost of goods sold. Our cost of goods sold consists primarily of purchased materials, labor and overhead (including depreciation and share-based compensation expense) associated with product manufacturing. Erosion of average selling prices of established products is typical of the semiconductor industry. Consistent with trends in the industry, we anticipate that average selling prices for our established products will continue to decline over time. As part of our normal course of business, we mitigate the gross margin impact of declining average selling prices with efforts to increase unit volumes, reduce material costs, improve manufacturing efficiencies, lower manufacturing costs of existing products and by introducing new and higher value-added products.

Gross profit was \$108.9 million higher in fiscal 2018 as compared to fiscal 2017. The increase in gross profit was primarily the result of higher unit volumes, lower overall per-unit material and manufacturing costs, and favorable product mix, with an aggregate gross profit benefit of \$267.1 million. These benefits were partially offset by the erosion of average selling price that negatively impacted gross profit by \$158.2 million. Gross profit margin remained consistent at 50.4% of net revenue for fiscal 2018.

Gross profit was \$176.6 million greater in fiscal 2017 as compared to fiscal 2016. The increase in gross profit was primarily the result of higher unit volumes and lower overall per-unit material and manufacturing costs, with an aggregate gross profit benefit of \$306.6 million. These benefits were partially offset by the erosion of average selling price and changes in product mix that combined to negatively impact gross profit by \$130.0 million. As a result of these impacts, gross profit margin decreased to 50.4% of net revenue for fiscal 2017.

**RESEARCH AND DEVELOPMENT**

	Fiscal Years Ended					
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016	
(dollars in millions)						
Research and development	\$ 404.5	13.9%	\$ 355.2	13.7%	\$ 312.4	
% of net revenue	10.4%		9.7%		9.5%	

Research and development expenses consist primarily of direct personnel costs including share-based compensation expense, costs for pre-production evaluation and testing of new devices, masks, engineering prototypes and design tool costs.

The increase in research and development expense in fiscal 2018 as compared to fiscal 2017 is primarily related to increased headcount, overall employee-related compensation expense, and expenses associated with product development activity. Research and development expense increased as a percentage of net revenue due to increased development complexity and our efforts to increase the value of our future products.

The increase in research and development expense in fiscal 2017 as compared to fiscal 2016 is primarily related to increased headcount, overall employee-related compensation expense, and expenses associated with product development activity. Research and development expense increased slightly as a percentage of net revenue due to the aforementioned factors.

**SELLING, GENERAL AND ADMINISTRATIVE**

	Fiscal Years Ended					
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016	
(dollars in millions)						
Selling, general and administrative	\$ 207.8	1.6%	\$ 204.6	4.4%	\$ 195.9	
% of net revenue	5.4%		5.6%		6.0%	

Selling, general and administrative expenses include legal and related costs, accounting, treasury, human resources, information systems, customer service, bad debt expense, sales commissions, share-based compensation expense, advertising, marketing, costs associated with business combinations completed or contemplated during the period and other costs.

The increase in selling, general and administrative expenses in fiscal 2018 as compared to fiscal 2017 was primarily related to increases in employee-related compensation expenses, including share-based compensation, partially offset by an increase in the net gain related to the fair value adjustment of contingent consideration of \$11.9 million. Selling, general and administrative expenses decreased as a percentage of net revenue primarily due to the increase in net revenue.

The increase in selling, general and administrative expenses in fiscal 2017 as compared to fiscal 2016 was primarily related to increases in employee-related compensation expenses, including share-based compensation, partially offset by lower legal expenses and the net gain related to the fair value adjustment of contingent consideration of \$1.3 million. Selling, general and administrative expenses decreased as a percentage of net revenue due to the aforementioned factors and the increase in net revenue.

**AMORTIZATION OF INTANGIBLES**

	Fiscal Years Ended					
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016	
(dollars in millions)						
Amortization of purchased intangibles	\$ 20.7	(25.0)%	\$ 27.6	(17.4)%	\$ 33.4	
Amortization of capitalized software	6.0	100.0%	—	—%	—	
Total amortization of intangibles	26.7		27.6		33.4	
% of net revenue	0.7%		0.8%		1.0%	

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During fiscal 2018, \$8.4 million and \$18.3 million in amortization of intangibles were included in cost of goods sold and selling, general and administrative expense, respectively. During fiscal 2017, \$27.6 million in amortization of intangibles was included in selling, general and administrative expense.

The decrease in amortization for fiscal 2018 and fiscal 2017, as compared to fiscal 2017 and fiscal 2016, respectively, primarily relates to fully amortized intangible assets that were acquired in prior years partially offset by additional intangible assets acquired during the fiscal year.

**RESTRUCTURING AND OTHER CHARGES**

	Fiscal Years Ended				
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016
(dollars in millions)					
Restructuring and other charges	\$ 0.8	33.3%	\$ 0.6	(87.5)%	\$ 4.8
% of net revenue	—%		—%		0.1%

Restructuring and other charges incurred in fiscal 2018 are related to charges on a leased facility. We do not anticipate any further significant charges associated with these restructuring activities and substantially all of the cash payments related to these restructuring plans have occurred.

Restructuring and other charges incurred in fiscal 2017 are primarily related to restructuring plans initiated during the period.

**MERGER TERMINATION FEE**

	Fiscal Years Ended				
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016
(dollars in millions)					
Merger termination fee	\$ —	—%	\$ —	(100.0)%	\$ 88.5
% of net revenue	—%		—%		2.7%

On October 29, 2015, we entered into an Amended and Restated Agreement and Plan of Merger (the “Merger Agreement”) with PMC-Sierra, Inc. (“PMC”), providing for, subject to the terms and conditions of the Merger Agreement, our cash acquisition of PMC. On November 23, 2015, PMC notified us that it had terminated the Merger Agreement. As a result, on November 24, 2015, PMC paid us a termination fee of \$88.5 million pursuant to the Merger Agreement.

**PROVISION FOR INCOME TAXES**

	Fiscal Years Ended				
	September 28, 2018	Change	September 29, 2017	Change	September 30, 2016
(dollars in millions)					
Provision for income taxes	\$ 413.7	67.6%	\$ 246.8	20.2%	\$ 205.4
% of net revenue	10.7%		6.7%		6.2%

The annual effective tax rate for fiscal 2018 of 31.1% was greater than the United States federal statutory rate of 24.6% primarily due to increases in tax from a one-time charge related to the mandatory deemed repatriation tax on foreign earnings of 16.9%, a one-time charge related to the revaluation of our deferred tax assets and liabilities of 1.4%, and income tax rate expense impact of 0.5% related to a change in our tax reserves, partially offset by benefits of 8.4% related to foreign earnings taxed at a rate less than the United States federal rate, 1.0% related to a domestic production activities deduction, 1.9% related to stock windfall deductions, and 1.5% related to the recognition of federal research and development tax credits.

We operate under a tax holiday in Singapore, which is effective through September 30, 2020. This tax holiday is conditioned upon our compliance with certain employment and investment thresholds in Singapore. The impact of the tax holiday decreased the taxes we owe in Singapore by \$38.4 million and \$37.4 million for fiscal 2018 and fiscal 2017, respectively. This resulted in tax benefits of \$0.21 and \$0.20 of diluted earnings per share for fiscal 2018 and fiscal 2017, respectively.

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The annual effective tax rate for fiscal 2017 of 19.6% was less than the United States federal statutory rate of 35.0% primarily due to benefits of 14.3% related to foreign earnings taxed at a rate less than the United States federal rate, 1.6% related to a domestic production activities deduction, and 1.3% related to the recognition of federal research and development tax credits, partially offset by income tax rate expense impact of 1.0% related to a change in our tax reserves.

See [Note 9](#) to Item 8 of this Annual Report on Form 10-K for a detailed discussion of the impact of the Tax Reform Act.

## LIQUIDITY AND CAPITAL RESOURCES

(in millions)	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Cash and cash equivalents at beginning of period	\$ 1,616.8	\$ 1,083.8	\$ 1,043.6
Net cash provided by operating activities	1,260.6	1,456.3	1,077.7
Net cash used in investing activities	(1,150.4)	(325.9)	(250.9)
Net cash used in financing activities	(993.7)	(597.4)	(786.6)
Cash and cash equivalents at end of period	\$ 733.3	\$ 1,616.8	\$ 1,083.8

### ***Cash provided by operating activities:***

Cash provided by operating activities consists of net income for the period adjusted for certain non-cash items and changes in certain operating assets and liabilities. For fiscal 2018, we generated \$1,260.6 million in cash from operations, a decrease of \$195.7 million when compared to \$1,456.3 million generated in fiscal 2017. The decrease in cash from operating activities during fiscal 2018 was primarily related to a \$221.9 million increase in cash used for working capital. Specifically, the increase in uses of cash were: \$156.7 million in accounts receivable due to the timing of customer collections and \$273.8 million related to accounts payable, due to the timing of capital expenditures and vendor payments. These increases in uses of cash were offset by increases in sources of cash of: \$143.0 million related to changes in other current and long-term liabilities primarily related to the unpaid portion of the mandatory deemed repatriation tax on foreign earnings.

### ***Cash used in investing activities:***

Cash used in investing activities consists primarily of cash paid for acquisitions net of cash acquired, capital expenditures, purchased intangibles, cash received from the sale of capital assets, and cash related to the sale or maturity of investments. Cash used in investing activities was \$1,150.4 million during fiscal 2018, compared to \$325.9 million during fiscal 2017. The cash used for capital expenditures in fiscal 2018 was \$422.3 million, primarily related to the purchase of manufacturing equipment to support the expansion of our assembly and test operations, filter production operations, and wafer fabrication facilities. During fiscal 2018, we paid \$404.0 million, net of cash acquired, to complete an acquisition and \$315.5 million in net purchases of marketable securities.

### ***Cash used in financing activities:***

Cash used in financing activities consists primarily of cash transactions related to equity. During fiscal 2018, we had net cash outflows of \$993.7 million, compared to \$597.4 million in fiscal 2017. The increase in cash used in financing activities primarily related to the increase in share repurchase activity and dividend payments during fiscal 2018. During fiscal 2018 we had the following significant uses of cash:

- \$759.5 million related to our repurchase of 7.7 million shares of our common stock pursuant to the share repurchase programs approved by our Board of Directors on January 31, 2018, and January 17, 2017;
- \$243.2 million related to the payment of cash dividends on our common stock; and
- \$48.0 million related to the minimum statutory payroll tax withholdings upon vesting of employee performance and restricted stock awards.

These uses of cash were partially offset by the net proceeds from employee stock option exercises of \$38.8 million and the proceeds from employee stock purchase plans of \$18.2 million during fiscal 2018.

### ***Liquidity:***

Cash and cash equivalent balances were \$733.3 million at September 28, 2018, representing a decrease of \$883.5 million from September 29, 2017. The decrease resulted from \$759.5 million used to repurchase 7.7 million shares of stock, \$422.3 million in capital expenditures, \$404.0 million related to business acquisition activity, \$315.5 million in net purchases of marketable securities and \$243.2 million in cash dividend payments during fiscal 2018, which was partially offset by \$1,260.6 million in cash generated from operations. Based on our historical results of operations, we expect that our cash, cash equivalents and marketable securities

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on hand and the cash we expect to generate from operations will be sufficient to fund our research and development, capital expenditures, potential acquisitions, working capital, quarterly cash dividend payments (if such dividends are declared by the Board of Directors), outstanding commitments and other liquidity requirements associated with existing operations for at least the next 12 months. However, we cannot be certain that our cash on hand and cash generated from operations will be available in the future to fund all of our capital and operating requirements. In addition, any future strategic investments and acquisitions may require additional cash and capital resources. If we are unable to obtain sufficient cash or capital to meet our needs on a timely basis and on favorable terms, our business and operations could be materially and adversely affected.

Our invested cash balances primarily consist of highly liquid marketable securities that are available to meet near-term cash requirements including: term deposits, certificate of deposits, money market funds, U.S. Treasury securities, agency securities, other government securities, corporate debt securities and commercial paper.

We had \$300.6 million of cash and cash equivalents located in foreign jurisdictions at September 28, 2018.

#### OFF-BALANCE SHEET ARRANGEMENTS

All significant contractual obligations are recorded on our consolidated balance sheet or fully disclosed in the notes to our consolidated financial statements. We have no material off-balance sheet arrangements as defined in SEC Regulation S-K-303(a)(4)(ii).

#### CONTRACTUAL CASH FLOWS

Set forth below is a summary of our contractual payment obligations related to our operating leases, other commitments and long-term liabilities at September 28, 2018 (in millions):

Obligation	Payments Due By Period				
	Total	Less Than 1 Year	1-3 Years	3-5 Years	Thereafter
Other long-term liabilities (1)	\$ 308.6	\$ 5.5	\$ 36.9	\$ 36.9	\$ 229.3
Operating lease obligations	86.8	21.6	32.5	17.5	15.2
Contingent consideration for business combinations (2)	3.1	3.1	—	—	—
Other commitments (3)	15.0	12.5	2.5	—	—
Total	\$ 413.5	\$ 42.7	\$ 71.9	\$ 54.4	\$ 244.5

- (1) Other long-term liabilities primarily include our gross unrecognized tax benefits, as well as executive deferred compensation, which are both classified as beyond five years due to the uncertain nature of the liabilities.
- (2) Contingent consideration related to business combinations is recorded at fair value and actual results could differ. See [Note 3](#) and [Note 5](#) to Item 8 of this Annual Report on Form 10-K for further detail.
- (3) Other commitments consist of contractual license and royalty payments and other purchase obligations. See [Note 12](#) to Item 8 of this Annual Report on Form 10-K.

#### CRITICAL ACCOUNTING ESTIMATES

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles, or GAAP. The preparation of these financial statements requires us to make estimates and judgments in applying our most critical accounting policies that can have a significant impact on the results we report in our financial statements. The SEC has defined critical accounting policies as those that are both most important to the portrayal of our financial condition and results and which require our most difficult, complex or subjective judgments or estimates. Based on this definition, our most critical accounting policies include revenue recognition, which impacts the recording of net revenue; inventory valuation, which impacts the cost of goods sold and gross margin; assessment of goodwill and long-lived assets, which impacts the impairment of the respective assets; business combinations, which impacts the fair value of acquired assets and assumed liabilities; share-based compensation, which impacts cost of goods sold and operating expenses; loss contingencies, which impacts operating expenses; and income taxes, which impacts the income tax provision. These policies and significant judgments involved are discussed further below. We have other significant accounting policies that do not generally require subjective estimates or judgments or would not have a material impact on our results of operations. Our significant accounting policies are described in [Note 2](#) to Item 8 on this Annual Report on Form 10-K.

*Revenue Recognition.* We recognize revenue in accordance with the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification ("ASC") 605 *Revenue Recognition* net of estimated reserves. Our revenue reserves contain uncertainties

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because they require management to make assumptions and to apply judgment to estimate the value of future credits to customers for product returns, price protection and stock rotation for products sold to certain electronic component distributors. Our estimates of the amount and timing of the reserves is based primarily on historical experience and specific contractual arrangements. Refer to [Note 2](#) to Item 8 on this Annual Report on Form 10-K for information about the expected impact of our adoption of ASU 2014-09, Revenue from Contracts with Customers (“Topic 606”).

*Inventory Valuation.* We value our inventory at the lower of cost or net realizable value. Reserves for excess and obsolete inventory are established on a quarterly basis and are based on a detailed analysis of aged material, forecasted demand in relation to on-hand inventory, salability of our inventory, general market conditions, and product life cycles. Once reserves are established, write-downs of inventory are considered permanent adjustments to the cost basis of inventory. Our reserves contain uncertainties because the calculation requires management to make assumptions and to apply judgment regarding historical experience, forecasted demand and technological obsolescence. Changes in actual demand or market conditions could adversely impact our reserve calculations.

*Goodwill and Long-Lived Assets.* We evaluate goodwill and long-lived assets for impairment annually on the first day of the fourth fiscal quarter and whenever events or circumstances arise that may indicate that the carrying value of the goodwill or other intangibles may not be recoverable.

Our impairment analysis contains uncertainties because it requires management to make assumptions and to apply judgment to items such as: determination of the reporting unit and asset groupings, estimated control premiums, discount rates, future cash flows, the profitability of future business strategies and useful lives.

*Business Combinations.* We apply significant estimates and judgments in order to determine the fair value of the identified tangible and intangible assets acquired, liabilities assumed and goodwill recognized in business combinations. The value of all assets and liabilities are recognized at fair value as of the acquisition date using a market participant approach.

In measuring the fair value, we utilize a number of valuation techniques consistent with the market approach, income approach and/or cost approach. The valuation of the identifiable assets and liabilities includes assumptions such as projected revenue, royalty rates, weighted average cost of capital, discount rates and estimated useful lives. These assessments can be significantly affected by our judgments.

*Share-Based Compensation.* We have share-based compensation plans which include non-qualified stock options, restricted and performance share awards and units, as well as an employee stock purchase plan and other special share-based awards. [Note 10](#) of Item 8 of this Annual Report on Form 10-K details our current share-based compensation programs.

We determine the fair value of our share-based compensation items with pricing models as of the date of grant using a number of highly complex and subjective variables and assumptions including, but not limited to: our expected stock price volatility over the term of the award, correlation coefficients, risk-free rate, the expected life of the award, dividend yield, and estimated performance against metrics. Compensation expense is recognized over the requisite service period of the underlying awards. Management periodically evaluates these assumptions and updates share-based compensation expense accordingly.

*Loss Contingencies.* We record an estimate for loss contingencies such as a legal proceeding or claims if it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss or range of loss can be reasonably estimated. We disclose material loss contingencies if there is at least a reasonable possibility that a loss has been incurred.

Our loss contingency analysis contains uncertainties because it requires management to assess the degree of probability of an unfavorable outcome and to make a reasonable estimate of the amount of potential loss.

*Income Taxes.* We account for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between tax and financial reporting. We record a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized. Significant management judgment is required in developing our provision for income taxes, including the determination of deferred tax assets and liabilities and any valuation allowances that might be required against the deferred tax assets.

The application of tax laws and regulations to calculate our tax liabilities is subject to legal and factual interpretation, judgment, and uncertainty in a multitude of jurisdictions. Tax laws and regulations themselves are subject to change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations, and court rulings. We recognize potential liabilities for anticipated tax audit issues in the United States and other tax jurisdictions based on our estimate of whether, and the extent to which, additional taxes and interest will be due. We record an amount as an estimate of probable additional income tax liability at the largest amount

that we feel is more likely than not, based upon the technical merits of the position, to be sustained upon audit by the relevant tax authority.

## **OTHER MATTERS**

Inflation did not have a material impact on our results of operations during the three-year period ended September 28, 2018.

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

We are subject to overall financial market risks, such as changes in market liquidity, credit quality, investment risk, interest rate risk and foreign exchange rate risk as described below.

#### *Investment and Interest Rate Risk*

Our exposure to interest rate and general market risks relates principally to our investment portfolio, which consists of cash and cash equivalents (money market funds and marketable securities purchased with less than ninety days until maturity) that total approximately \$733.3 million and marketable securities (U.S. Treasury and government securities, corporate bonds and notes, municipal bonds, other government securities) that total approximately \$294.1 million and \$22.8 million within short-term and long-term marketable securities, respectively, as of September 28, 2018.

The main objectives of our investment activities are liquidity and preservation of capital. Our cash equivalent investments have short-term maturity periods that dampen the impact of market or interest rate risk. Our marketable securities consist of short-term and long-term maturity periods between 90 days and two years. Credit risk associated with our investments is not material because our investments are diversified across several types of securities with high credit ratings, which reduces the amount of credit exposure to any one investment.

Based on our results of operations for the fiscal year ended September 28, 2018, a hypothetical reduction in the interest rates on our cash, cash equivalents, and other investments to zero would result in an immaterial reduction of interest income with a de minimis impact on income before taxes.

Given the low interest rate environment, the objectives of our investment activities, and the relatively low interest income generated from our cash, cash equivalents, and other investments, we do not believe that investment or interest rate risks pose material exposures to our current business or results of operations.

#### *Foreign Exchange Rate Risk*

Substantially all sales to customers and arrangements with third-party manufacturers provide for pricing and payment in United States dollars, thereby reducing the impact of foreign exchange rate fluctuations on our results. A percentage of our international operational expenses are denominated in foreign currencies and exchange rate volatility could positively or negatively impact those operating costs. For the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, we had foreign exchange losses of \$5.5 million, \$3.1 million and \$5.6 million, respectively. Increases in the value of the United States dollar relative to other currencies could make our products more expensive, which could negatively impact our ability to compete. Conversely, decreases in the value of the United States dollar relative to other currencies could result in our suppliers raising their prices to continue doing business with us. Given the relatively small number of customers and arrangements with third-party manufacturers denominated in foreign currencies, we do not believe that foreign exchange volatility has a material impact on our current business or results of operations. However, fluctuations in currency exchange rates could have a greater effect on our business or results of operations in the future to the extent our expenses increasingly become denominated in foreign currencies.

We may enter into foreign currency forward and option contracts with financial institutions to protect against foreign exchange risks associated with certain existing assets and liabilities, certain firmly committed transactions, forecasted future cash flows and net investments in foreign subsidiaries. However, we may choose not to hedge certain foreign exchange exposures for a variety of reasons, including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. For the fiscal year ended September 28, 2018, we had no outstanding foreign currency forward or option contracts with financial institutions.



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

The following consolidated financial statements of the Company are included herewith:

(1)	<a href="#">Report of Independent Registered Public Accounting Firm</a>	Page <a href="#">34</a>
(2)	<a href="#">Consolidated Statements of Operations for the three years ended September 28, 2018</a>	Page <a href="#">36</a>
(3)	<a href="#">Consolidated Statements of Comprehensive Income for the three years ended September 28, 2018</a>	Page <a href="#">37</a>
(4)	<a href="#">Consolidated Balance Sheets at September 28, 2018, and September 29, 2017</a>	Page <a href="#">38</a>
(5)	<a href="#">Consolidated Statements of Cash Flows for the three years ended September 28, 2018</a>	Page <a href="#">39</a>
(6)	<a href="#">Consolidated Statements of Stockholders' Equity for the three years ended September 28, 2018</a>	Page <a href="#">40</a>
(7)	<a href="#">Notes to Consolidated Financial Statements</a>	Page <a href="#">41</a> through <a href="#">62</a>

## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

Skyworks Solutions, Inc.:

### *Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting*

We have audited the accompanying consolidated balance sheets of Skyworks Solutions, Inc. and subsidiaries (the Company) as of September 28, 2018 and September 29, 2017, the related consolidated statements of operations, comprehensive income, cash flows, and stockholders' equity for each of the years in the three-year period ended September 28, 2018, and the related notes (collectively, the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of September 28, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of September 28, 2018 and September 29, 2017, and the results of its operations and its cash flows for each of the years in the three-year period ended September 28, 2018, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 28, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

### *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 the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion 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 (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) 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 (3) 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.

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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.

/s/ KPMG LLP

We have served as the Company's auditor since 2002.

Irvine, California  
November 14, 2018

**SKYWORKS SOLUTIONS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In millions, except per share amounts)

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Net revenue	\$ 3,868.0	\$ 3,651.4	\$ 3,289.0
Cost of goods sold	1,917.3	1,809.6	1,623.8
Gross profit	1,950.7	1,841.8	1,665.2
Operating expenses:			
Research and development	404.5	355.2	312.4
Selling, general and administrative	207.8	204.6	195.9
Amortization of intangibles	18.3	27.6	33.4
Restructuring and other charges	0.8	0.6	4.8
Total operating expenses	631.4	588.0	546.5
Operating income	1,319.3	1,253.8	1,118.7
Other income (expense), net	12.8	3.2	(6.6)
Merger termination fee	—	—	88.5
Income before income taxes	1,332.1	1,257.0	1,200.6
Provision for income taxes	413.7	246.8	205.4
Net income	\$ 918.4	\$ 1,010.2	\$ 995.2
Earnings per share:			
Basic	\$ 5.06	\$ 5.48	\$ 5.27
Diluted	\$ 5.01	\$ 5.41	\$ 5.18
Weighted average shares:			
Basic	181.3	184.3	188.7
Diluted	183.2	186.7	192.1
Cash dividends declared and paid per share	\$ 1.34	\$ 1.16	\$ 1.06

See accompanying Notes to Consolidated Financial Statements.

**SKYWORKS SOLUTIONS, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(In millions)

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Net income	\$ 918.4	\$ 1,010.2	\$ 995.2
Other comprehensive income			
Fair value of investments	(0.1)	0.9	—
Pension adjustments	—	0.7	(1.8)
Foreign currency translation adjustment	(0.2)	0.8	(0.9)
Comprehensive income	<u>\$ 918.1</u>	<u>\$ 1,012.6</u>	<u>\$ 992.5</u>

See accompanying Notes to Consolidated Financial Statements.

**SKYWORKS SOLUTIONS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In millions, except per share amounts)

	As of	
	September 28, 2018	September 29, 2017
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 733.3	\$ 1,616.8
Marketable securities	294.1	—
Receivables, net of allowance for doubtful accounts of \$0.6 and \$0.5, respectively	655.8	454.7
Inventory	490.2	493.5
Other current assets	88.8	68.7
Total current assets	2,262.2	2,633.7
Property, plant and equipment, net	1,140.9	882.3
Goodwill	1,189.8	883.0
Intangible assets, net	143.7	67.8
Deferred tax assets, net	36.5	66.5
Marketable securities	22.8	—
Other assets	33.0	40.3
Total assets	\$ 4,828.9	\$ 4,573.6
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 229.9	\$ 258.4
Accrued compensation and benefits	85.2	68.1
Other current liabilities	74.6	61.4
Total current liabilities	389.7	387.9
Long-term tax liabilities	310.5	92.9
Other long-term liabilities	31.7	27.1
Total liabilities	731.9	507.9
Commitments and contingencies ( <a href="#">Note 12</a> and <a href="#">Note 13</a> )		
Stockholders' equity:		
Preferred stock, no par value: 25.0 shares authorized, no shares issued	—	—
Common stock, \$0.25 par value: 525.0 shares authorized; 228.4 shares issued and 177.4 shares outstanding at September 28, 2018, and 226.0 shares issued and 183.1 shares outstanding at September 29, 2017	44.4	45.8
Additional paid-in capital	3,061.0	2,893.8
Treasury stock, at cost	(2,732.5)	(1,925.0)
Retained earnings	3,732.9	3,059.6
Accumulated other comprehensive loss	(8.8)	(8.5)
Total stockholders' equity	4,097.0	4,065.7
Total liabilities and stockholders' equity	\$ 4,828.9	\$ 4,573.6

See accompanying Notes to Consolidated Financial Statements.

**SKYWORKS SOLUTIONS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions)

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
<b>Cash flows from operating activities:</b>			
Net income	\$ 918.4	\$ 1,010.2	\$ 995.2
Adjustments to reconcile net income to net cash provided by operating activities:			
Share-based compensation	107.8	88.5	78.0
Depreciation	272.5	227.2	214.4
Amortization of intangible assets	26.7	27.6	33.4
Deferred income taxes	27.3	2.2	—
Excess tax benefit from share-based compensation	—	(40.8)	(43.7)
Changes in fair value of contingent consideration	(11.9)	(1.3)	—
Other	(0.7)	0.3	0.3
Changes in assets and liabilities net of acquired balances:			
Receivables, net	(193.8)	(37.1)	121.4
Inventory	11.9	(69.2)	(147.3)
Other current and long-term assets	(12.2)	3.3	(20.4)
Accounts payable	(126.0)	147.8	(181.5)
Other current and long-term liabilities	240.6	97.6	27.9
<b>Net cash provided by operating activities</b>	<b>1,260.6</b>	<b>1,456.3</b>	<b>1,077.7</b>
<b>Cash flows from investing activities:</b>			
Capital expenditures	(422.3)	(303.3)	(189.3)
Payments for acquisitions, net of cash acquired	(404.0)	(13.7)	(55.6)
Purchased intangibles	(8.6)	(12.1)	(6.0)
Purchases of marketable securities	(683.7)	—	—
Sales and maturities of investments	368.2	3.2	—
<b>Net cash used in investing activities</b>	<b>(1,150.4)</b>	<b>(325.9)</b>	<b>(250.9)</b>
<b>Cash flows from financing activities:</b>			
Payments for obligations recorded for business combinations	—	—	(76.5)
Excess tax benefit from share-based compensation	—	40.8	43.7
Repurchase of common stock - payroll tax withholdings on equity awards	(48.0)	(49.2)	(73.3)
Repurchase of common stock - share repurchase program	(759.5)	(432.3)	(525.6)
Dividends paid	(243.2)	(214.6)	(201.0)
Net proceeds from exercise of stock options	38.8	53.8	28.1
Proceeds from employee stock purchase plan	18.2	15.0	18.0
Deferred payments for intangible assets	—	(5.5)	—
Payments of contingent consideration	—	(5.4)	—
<b>Net cash used in financing activities</b>	<b>(993.7)</b>	<b>(597.4)</b>	<b>(786.6)</b>
Net increase in cash and cash equivalents	(883.5)	533.0	40.2
Cash and cash equivalents at beginning of period	1,616.8	1,083.8	1,043.6
Cash and cash equivalents at end of period	\$ 733.3	\$ 1,616.8	\$ 1,083.8
<b>Supplemental cash flow disclosures:</b>			
Income taxes paid	\$ 135.9	\$ 163.2	\$ 165.9

See accompanying Notes to Consolidated Financial Statements.

**SKYWORKS SOLUTIONS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In millions)

	Shares of common stock	Par value of common stock	Shares of treasury stock	Value of treasury stock	Additional paid- in capital	Retained earnings	Accumulated other comprehensive loss	Total stockholders' equity
Balance at October 2, 2015	190.3	\$ 47.6	28.7	\$ (844.6)	\$ 2,495.2	\$ 1,469.2	\$ (8.2)	\$ 3,159.2
Net income	—	—	—	—	—	995.2	—	995.2
Exercise and settlement of share based awards and related tax benefit, net of shares withheld for taxes	2.6	0.6	0.9	(73.3)	109.1	—	—	36.4
Share-based compensation expense	—	—	—	—	79.7	—	—	79.7
Share repurchase program	(8.0)	(2.0)	8.0	(525.6)	2.0	—	—	(525.6)
Dividends declared	—	—	—	—	—	(200.8)	—	(200.8)
Other comprehensive loss	—	—	—	—	—	—	(2.7)	(2.7)
Balance at September 30, 2016	184.9	\$ 46.2	37.6	\$ (1,443.5)	\$ 2,686.0	\$ 2,263.6	\$ (10.9)	\$ 3,541.4
Net income	—	—	—	—	—	1,010.2	—	1,010.2
Exercise and settlement of share based awards and related tax benefit, net of shares withheld for taxes	2.9	0.7	0.6	(49.2)	118.2	—	—	69.7
Share-based compensation expense	—	—	—	—	88.5	—	—	88.5
Share repurchase program	(4.7)	(1.1)	4.7	(432.3)	1.1	—	—	(432.3)
Dividends declared	—	—	—	—	—	(214.2)	—	(214.2)
Other comprehensive income	—	—	—	—	—	—	2.4	2.4
Balance at September 29, 2017	183.1	\$ 45.8	42.9	\$ (1,925.0)	\$ 2,893.8	\$ 3,059.6	\$ (8.5)	\$ 4,065.7
Net income	—	—	—	—	—	918.4	—	918.4
Exercise and settlement of share based awards, net of shares withheld for taxes	2.0	0.5	0.4	(48.0)	57.8	—	—	10.3
Share-based compensation expense	—	—	—	—	107.3	(1.9)	—	105.4
Share repurchase program	(7.7)	(1.9)	7.7	(759.5)	1.9	—	—	(759.5)
Dividends declared	—	—	—	—	—	(243.2)	—	(243.2)
Pre-combination service on replacement awards	—	—	—	—	0.2	—	—	0.2
Other comprehensive loss	—	—	—	—	—	—	(0.3)	(0.3)
Balance at September 28, 2018	177.4	\$ 44.4	51.0	\$ (2,732.5)	\$ 3,061.0	\$ 3,732.9	\$ (8.8)	\$ 4,097.0

See accompanying Notes to Consolidated Financial Statements.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### 1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Skyworks Solutions, Inc., together with its consolidated subsidiaries (“Skyworks” or the “Company”), is empowering the wireless networking revolution. The Company’s analog semiconductors are connecting people, places, and things, spanning a number of new applications within the aerospace, automotive, broadband, cellular infrastructure, connected home, industrial, medical, military, smartphone, tablet and wearable markets.

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### PRINCIPLES OF CONSOLIDATION

All Skyworks subsidiaries are included in the Company’s consolidated financial statements and all intercompany balances are eliminated in consolidation.

#### FISCAL YEAR

The Company’s fiscal year ends on the Friday closest to September 30. Fiscal 2018, 2017, and 2016 each consisted of 52 weeks and ended on September 28, 2018, September 29, 2017, and September 30, 2016, respectively.

#### USE OF ESTIMATES

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts of assets, liabilities, revenue, expenses, comprehensive income and accumulated other comprehensive loss during the reporting period. The Company evaluates its estimates on an ongoing basis using historical experience and other factors, including the current economic environment. Significant judgment is required in determining the reserves for and fair value of items such as overall fair value assessments of assets and liabilities, inventory, intangible assets associated with business combinations, share-based compensation, loss contingencies, and income taxes. In addition, significant judgment is required in determining whether a potential indicator of impairment of long-lived assets exists and in estimating future cash flows for any necessary impairment testing. Actual results could differ significantly from these estimates.

#### CASH AND CASH EQUIVALENTS

The Company invests excess cash in time deposits, certificate of deposits, money market funds, U.S. Treasury securities, agency securities, other government securities, corporate debt securities and commercial paper. The Company considers highly liquid investments with maturities of 90 days or less when purchased as cash equivalents.

#### ALLOWANCE FOR DOUBTFUL ACCOUNTS

The Company maintains general allowances for doubtful accounts related to potential losses that could arise due to customers’ inability to make required payments. These reserves require management to apply judgment in deriving these estimates. In addition, the Company performs ongoing credit evaluations of its customers’ financial condition and if it becomes aware of any specific receivables which may be uncollectable, it performs additional analysis including, but not limited to, factors such as a customer’s credit worthiness, intent and ability to pay and overall financial position, and reserves are recorded if deemed necessary. If the data the Company uses to calculate the allowance for doubtful accounts does not reflect the future ability to collect outstanding receivables, additional provisions for doubtful accounts may be needed and results of operations could be materially affected.

#### INVESTMENTS

The Company classifies its investment in marketable securities as “available-for-sale.” Available-for-sale securities are carried at fair value with unrealized holding gains or losses recorded in other comprehensive income. Gains or losses are included in earnings in the period in which they are realized.

#### FAIR VALUE

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principle or most advantageous market in an orderly transaction between market participants at the measurement date. Applicable accounting guidance provides a hierarchy for inputs used in measuring fair value that prioritize the use of observable inputs over the use of unobservable inputs, when such observable inputs are available. The three levels of inputs that may be used to measure fair value are as follows:

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- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active markets), or model-driven valuations in which all significant inputs are observable or can be derived principally from, or corroborated with, observable market data.
- Level 3 - Fair value is derived from valuation techniques in which one or more significant inputs are unobservable, including assumptions and judgments made by the Company.

It is the Company's policy to maximize the use of observable inputs and minimize the use of unobservable inputs when developing fair value measurements. When available, the Company uses quoted market prices to measure fair value. If market prices are not available, the Company is required to make judgments about assumptions market participants would use to estimate the fair value of a financial instrument.

The Company measures certain assets and liabilities at fair value on a recurring basis in three levels, based on the market in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value. It recognizes transfers within the fair value hierarchy at the end of the fiscal quarter in which the change in circumstances that caused the transfer occurred.

The carrying value of cash and cash equivalents, accounts receivable, other current assets, accounts payable and accrued liabilities approximates fair value due to the short-term maturities of these assets and liabilities.

### **INVENTORY**

Inventory is stated at the lower of cost or net realizable value on a first-in, first-out basis. Reserves for excess and obsolete inventory are established on a quarterly basis and are based on a detailed analysis of aged material, forecasted demand in relation to on-hand inventory, salability of our inventory, general market conditions, and product life cycles. Once reserves are established, write-downs of inventory are considered permanent adjustments to the cost basis of inventory.

### **PROPERTY, PLANT AND EQUIPMENT**

Property, plant and equipment are carried at cost less accumulated depreciation, with significant renewals and betterments being capitalized and retired equipment written off in the respective periods. Maintenance and repairs are expensed as incurred.

Depreciation is calculated using the straight-line method over the estimated useful lives, which range from five to thirty years for buildings and improvements and three to ten years for machinery and equipment. Leasehold improvements are depreciated over the lesser of the economic life or the life of the associated lease.

### **VALUATION OF LONG-LIVED ASSETS**

Definite lived intangible assets are carried at cost less accumulated amortization. Amortization is calculated based on the pattern of benefit to be recognized from the underlying asset over its estimated useful life. Carrying values for long-lived assets and definite lived intangible assets are reviewed for possible impairment as circumstances warrant. Factors considered important that could result in an impairment review include significant underperformance relative to expected, historical or projected future operating results, significant changes in the manner of use of assets or the Company's business strategy, or significant negative industry or economic trends. In addition, impairment reviews are conducted at the judgment of management whenever asset values are deemed to be unrecoverable relative to future undiscounted cash flows expected to be generated by that particular asset group. The determination of recoverability is based on an estimate of undiscounted cash flows expected to result from the use of an asset group and its eventual disposition. Such estimates require management to exercise judgment and make assumptions regarding factors such as future revenue streams, operating expenditures, cost allocation and asset utilization levels, all of which collectively impact future operating performance. The Company's estimates of undiscounted cash flows may differ from actual cash flows due to, among other things, technological changes, economic conditions, changes to its business model or changes in its operating performance. If the sum of the undiscounted cash flows is less than the carrying value of an asset group, the Company would recognize an impairment loss, measured as the amount by which the carrying value exceeds the fair value of the asset group.

### **GOODWILL AND INDEFINITE-LIVED INTANGIBLE ASSETS**

Goodwill and indefinite-lived intangible assets are not amortized but are tested at least annually as of the first day of the fourth fiscal quarter for impairment or more frequently if indicators of impairment exist during the fiscal year. The Company assesses its conclusion regarding segments and reporting units in conjunction with its annual goodwill impairment test, and has determined that it has one reporting unit for the purposes of allocating and testing goodwill.

The Company's impairment analysis compares its fair value to its net book value to determine if there is an indicator of impairment. In the Company's calculation of fair value, it considers the closing price of its common stock on the selected testing date, the number of shares of its common stock outstanding and other marketplace activity such as a related control premium. If the calculated fair value is determined to be less than the book value of the reporting unit, an impairment loss is recognized equal to that excess; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit.

#### **BUSINESS COMBINATIONS**

The Company uses the acquisition method of accounting for business combinations and recognizes assets acquired and liabilities assumed at their fair values on the date acquired. Goodwill represents the excess of the purchase price over the fair value of the net assets. The fair values of the assets and liabilities acquired are determined based upon the Company's valuation using a combination of market, income or cost approaches. The valuation involves making significant estimates and assumptions, which are based on detailed financial models including the projection of future cash flows, the weighted average cost of capital and any cost savings that are expected to be derived in the future from the viewpoint of a market participant.

#### **EMPLOYEE RETIREMENT BENEFIT PLANS**

The funded status of benefit pension plans, or the balance of plan assets and benefit obligations, is recognized on the consolidated balance sheet and pension liability adjustments, net of tax, are recorded in Accumulated Other Comprehensive Income. The Company determines discount rates considering the rates of return on high-quality fixed income investments, and the expected long-term rate of return on pension plan assets by considering the current and expected asset allocations, as well as historical and expected returns on various categories of plan assets. Decreases in discount rates lead to increases in benefit obligations that, in turn, could lead to an increase in amortization cost through amortization of actuarial gain or loss. A decline in the market values of plan assets will generally result in a lower expected rate of return, which would result in an increase of future retirement benefit costs.

#### **REVENUE RECOGNITION**

Revenue from product sales is recognized when there is persuasive evidence of an arrangement, the price to the buyer is fixed and determinable, delivery and transfer of title have occurred in accordance with the shipping terms specified in the arrangement with the customer and collectability is reasonably assured. Revenue from license fees and intellectual property is recognized when due and payable, and all other criteria previously noted have been met. The Company ships product on consignment to certain customers and only recognizes revenue when the customer notifies the Company that the inventory has been consumed. Revenue recognition is deferred in all instances where the earnings process is incomplete. Certain product sales are made to electronic component distributors under agreements allowing for price protection and stock rotation on unsold products. Reserves for sales returns and allowances are recorded based on historical experience or pursuant to contractual arrangements necessitating revenue reserves. Reserves for sales returns and allowances of \$32.2 million and \$14.7 million were recorded as of September 28, 2018 and September 29, 2017, respectively.

#### **SHARE-BASED COMPENSATION**

The Company recognizes compensation expense for all share-based payment awards made to employees and directors including non-qualified employee stock options, share awards and units, employee stock purchase plan and other special share-based awards based on estimated fair values.

The fair value of share-based payment awards is amortized over the requisite service period, which is defined as the period during which an employee is required to provide service in exchange for an award. The Company uses a straight-line attribution method for all grants that include only a service condition. Awards with both performance and service conditions are expensed over the service period for each separately vesting tranche.

Share-based compensation expense recognized during the period includes actual expense on vested awards and expense associated with unvested awards. Forfeitures are recorded as incurred.

The Company determines the fair value of share-based option awards based on the Company's closing stock price on the date of grant using a Black-Scholes options pricing model. Under the Black-Scholes model, a number of variables are used including, but not limited to: the expected stock price volatility over the term of the award, the risk-free rate, the expected life of the award and dividend yield. The determination of fair value of restricted and certain performance share awards and units is based on the value of the Company's stock on the date of grant with performance awards and units adjusted for the actual outcome of the underlying performance condition.

For more complex performance awards including units with market-based performance conditions the Company employs a Monte Carlo simulation valuation method to calculate the fair value of the awards based on the most likely outcome. Under the Monte Carlo simulation, a number of highly complex and subjective variables are used including, but not limited to: the expected stock price volatility over the term of the award, a correlation coefficient, the risk-free rate, the expected life of the award, and dividend yield.

#### **RESEARCH AND DEVELOPMENT COSTS**

Research and development costs are expensed as incurred.

#### **LOSS CONTINGENCIES**

The Company records its best estimates of a loss contingency when it is considered probable and the amount can be reasonably estimated. When a range of loss can be reasonably estimated with no best estimate in the range, the minimum estimated liability related to the claim is recorded. As additional information becomes available, the Company assesses the potential liability related to the potential pending loss contingency and revises its estimates. Loss contingencies are disclosed if there is at least a reasonable possibility that a loss or an additional loss may have been incurred and include estimated legal costs.

#### **RESTRUCTURING**

A liability for post-employment benefits is recorded when payment is probable, the amount is reasonably estimable, and the obligation relates to rights that have vested or accumulated. Contract exit costs include contract termination fees and future contractual commitments for lease payments. A liability for contract exit costs is recognized in the period in which the Company terminates the contract or on the cease-use date for leased facilities.

#### **FOREIGN CURRENCIES**

The Company's primary functional currency is the United States dollar. Gains and losses related to foreign currency transactions, conversion of foreign denominated cash balances and translation of foreign currency financial statements are included in current results. For certain foreign entities that utilize local currencies as their functional currency, the resulting unrealized translation gains and losses are reported as currency translation adjustment through other comprehensive income (loss) for each period.

#### **INCOME TAXES**

The Company uses the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. This method also requires the recognition of future tax benefits such as net operating loss carry forwards, to the extent that realization of such benefits is more likely than not. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The carrying value of the Company's net deferred tax assets assumes the Company will be able to generate sufficient future taxable income in certain tax jurisdictions, based on estimates and assumptions. If these estimates and related assumptions change in the future, the Company may be required to record additional valuation allowances against its deferred tax assets resulting in additional income tax expense in its Consolidated Statement of Operations. Management evaluates the realizability of the deferred tax assets and assesses the adequacy of the valuation allowance quarterly. Likewise, in the event the Company were to determine that it would be able to realize its deferred tax assets in the future in excess of their net recorded amount, an adjustment to the deferred tax assets would increase income or decrease the carrying value of goodwill in the period such determination was made.

The determination of recording or releasing tax valuation allowances is made, in part, pursuant to an assessment performed by management regarding the likelihood that the Company will generate future taxable income against which benefits of its deferred tax assets may or may not be realized. This assessment requires management to exercise significant judgment and make estimates with respect to its ability to generate revenues, gross profits, operating income and taxable income in future periods. Amongst other factors, management must make assumptions regarding overall business and semiconductor industry conditions, operating efficiencies, the Company's ability to develop products to its customers' specifications, technological change, the competitive environment and changes in regulatory requirements which may impact its ability to generate taxable income and, in turn, realize the value of its deferred tax assets.

The calculation of the Company's tax liabilities includes addressing uncertainties in the application of complex tax regulations and is based on the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

The Company recognizes liabilities for anticipated tax audit issues in the United States and other tax jurisdictions based on its recognition threshold and measurement attribute of whether it is more likely than not that the positions the Company has taken in tax filings will be sustained upon tax audit, and the extent to which, additional taxes would be due. If payment of these amounts ultimately proves to be unnecessary, the reversal of the liabilities would result in tax benefits being recognized in the period in which it is determined the liabilities are no longer necessary. If the estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result. The Company recognizes any interest or penalties, if incurred, on any unrecognized tax liabilities or benefits as a component of income tax expense.

#### **EARNINGS PER SHARE**

Basic earnings per share are computed using the weighted average number of common shares outstanding during the period. Diluted earnings per share incorporate the potentially dilutive incremental shares issuable upon the assumed exercise of stock options, the assumed vesting of outstanding restricted stock units, and the assumed issuance of common stock under the stock purchase plan using the treasury share method.

#### **RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS**

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-09, Improvements to Employee Share-Based Payment Accounting (“ASU 2016-09”), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The Company adopted ASU 2016-09 at the beginning of the first quarter of fiscal 2018. As a result of adoption, the Company recognized a discrete income tax benefit of \$25.6 million to the income tax provision for excess tax benefits generated by the settlement of share-based awards during fiscal 2018. The adoption also resulted in an increase in cash flow from operations and a decrease of cash flow from financing of \$25.6 million during fiscal 2018. Prior periods have not been adjusted. The Company has elected to account for forfeitures as they occur and will no longer estimate future forfeitures. The change in accounting for forfeitures was applied using a modified retrospective transition method and resulted in a cumulative-effect adjustment to retained earnings as of the beginning of the first quarter of fiscal 2018 in the amount of \$1.9 million. Forfeitures in the future will now be recorded as a benefit in the period they are realized.

In January 2017, the FASB issued ASU 2017-04, Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment (“ASU 2017-04”). This ASU simplifies the subsequent measurement of goodwill and eliminates Step 2 from the goodwill impairment test. The annual or interim goodwill impairment test is performed by comparing the fair value of a reporting unit with its carrying amount, and an impairment charge should be recognized for the amount by which the carrying amount exceeds the reporting unit’s fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. In addition, income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit should be considered when measuring the goodwill impairment loss, if applicable. The Company early adopted ASU 2017-04 during the second quarter of fiscal 2018 and applied it prospectively, as permitted by the standard. The adoption of this standard did not impact the Company’s consolidated financial statements.

#### **RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS**

In August 2015, the FASB deferred the effective date of ASU 2014-09, Revenue from Contracts with Customers (Topic 606) (“ASU 2014-09”), which outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and will supersede most current revenue recognition guidance. The new guidance is required to be applied retrospectively to each prior reporting period presented or retrospectively with the cumulative effect of initially applying it recognized at the date of initial application. The Company will adopt this guidance during the first quarter of fiscal 2019 and will apply the modified retrospective approach, with the cumulative effect of applying the new guidance recognized as an adjustment to the opening retained earnings balance. The Company has established a cross-functional team to assess the potential impact of the new revenue standard. The assessment process consists of reviewing the Company’s current accounting policies and practices to identify potential differences that would result from applying the requirements of the new standard to its revenue contracts and identifying appropriate changes to the business processes, systems and controls to support revenue recognition and disclosure requirements under the new standard. The Company has determined the impact of the new revenue standard on its business processes, systems, controls and consolidated financial statements is not material.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) (“ASU 2016-02”). This ASU requires lessees to reflect most leases on their balance sheet as assets and obligations. The effective date for the standard is for fiscal years beginning after December 15, 2018, with early adoption permitted. The standard is to be applied under the modified retrospective method, with elective reliefs, which requires application of the new guidance for all periods presented. The Company is currently evaluating the effect that ASU 2016-02 will have on the consolidated financial statements and related disclosures.

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In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230), (“ASU 2016-15”). This ASU provides guidance on the presentation and classification of specific cash flow items to improve consistency within the statement of cash flows. The effective date for the standard is for fiscal years beginning after December 15, 2017, with early adoption permitted. The Company will early adopt ASU 2016-15 during the first quarter of fiscal 2019 and does not expect it to have a material impact on the consolidated financial statements.

In October 2016, the FASB issued ASU 2016-16, Income Taxes (Topic 740), Intra-entity Transfers of an Asset Other than Inventory (“ASU 2016-16”). This ASU provides guidance that changes the accounting for income tax effects of intra-entity transfers of assets other than inventory. Under the new guidance, the selling (transferring) entity is required to recognize a current tax expense or benefit upon transfer of the asset. Similarly, the purchasing (receiving) entity is required to recognize a deferred tax asset or deferred tax liability, as well as the related deferred tax benefit or expense, upon receipt of the asset. The effective date for the standard is for fiscal years beginning after December 15, 2017, on a modified retrospective basis, and early adoption is permitted. The Company will early adopt ASU 2016-16 during the first quarter of fiscal 2019 and does not expect it to have a material impact on the consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, Compensation-Stock Compensation (Topic 718), Scope of Modification Accounting (“ASU 2017-09”). This ASU provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The effective date for the standard is for interim periods in fiscal years beginning after December 15, 2017, with early adoption permitted, including adoption in any interim period for which financial statements have not yet been issued. The Company will early adopt ASU 2017-09 during the first quarter of fiscal 2019 and does not expect it to have a material impact on the consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Measurement of Credit Losses on Financial Instruments (Topic 320), (“ASU 2016-13”). This ASU requires a financial asset (or a group of financial assets) measured on the basis of amortized cost to be presented at the net amount expected to be collected. This ASU requires that the income statement reflect the measurement of credit losses for newly recognized financial assets as well as the expected increases or decreases of expected credit losses that have taken place during the period. This ASU requires that credit losses of debt securities designated as available-for-sale be recorded through an allowance for credit losses. The ASU also limits the credit loss to the amount by which fair value is below amortized cost. This ASU will be effective for the Company in the first quarter of 2021, with early adoption permitted. This ASU requires modified retrospective adoption, with prospective adoption for debt securities for which an other-than-temporary impairment had been recognized before the effective date. The Company is currently evaluating the effect ASU 2016-13 will have on the consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, Recognition and Measurement of Financial Assets and Financial Liabilities (Topic 320), (“ASU 2016-01”). This ASU provides guidance for the recognition, measurement, presentation, and disclosure of financial assets and liabilities. This ASU will be effective for the Company in the first quarter of fiscal 2019 and requires modified retrospective adoption, with prospective adoption for amendments related to equity securities without readily determinable fair values. The Company is evaluating the effect ASU 2016-01 will have on the consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07, Compensation-Stock Compensation (Topic 718), Improvements to Nonemployee Share-based Payments (“ASU 2018-07”). This ASU expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The effective date for the standard is for interim periods in fiscal years beginning after December 15, 2018, with early adoption permitted, but no earlier than the Company's adoption date of Topic 606. The new guidance is required to be applied retrospectively with the cumulative effect recognized at the date of initial application. The Company will early adopt ASU 2018-07 during the first quarter of fiscal 2019 and does not expect it to have a material impact on the consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement - Disclosure Framework (Topic 820), (“ASU 2018-13”). The updated guidance improves the disclosure requirements on fair value measurements. The updated guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted for any removed or modified disclosures. The Company early adopted the removed or modified disclosures in the fourth quarter of fiscal 2018 and is currently assessing the timing and impact of adopting the updated provisions.

There have been no other recent accounting pronouncements or changes in accounting pronouncements that are of significance, or potential significance, to the Company.

**Supplemental Cash Flow Information**

As of September 28, 2018, the Company had \$13.9 million accrued to other long-term liabilities for capital equipment, and \$94.1 million accrued to accounts payable for capital equipment. These amounts accrued for capital equipment purchases have been excluded from the consolidated statements of cash flows for fiscal 2018 and are expected to be paid in subsequent periods. The prior period amount under the description “Proceeds from employee stock purchase plan” has been reclassified from net cash provided by operating activities to net cash used in financing activities.

**3. BUSINESS COMBINATIONS**

On August 17, 2018, the Company completed its acquisition of Avnera Corporation (“Avnera”). Avnera designs and develops analog system-on-chip (“SoC”) technology products for audio, speech, sensor and artificial intelligence (“AI”) applications. The Company acquired Avnera to expand its leadership in wireless connectivity by adding ultra-low power analog circuits to enable smart interfaces via acoustic signal processing, sensors and integrated software. The acquisition of Avnera is expected to enable the Company to capitalize on the rapid proliferation of audio functionality and its convergence with its advanced connectivity solutions.

The Company acquired the business for total cash consideration, net of cash acquired, of \$404.0 million together with future contingent payments for a total aggregated fair value of \$407.1 million. The future contingent consideration payments range from zero to \$20.0 million and are based upon the achievement of specified revenue objectives that are payable up to one fiscal year from the anniversary of the acquisition, which at closing had a total estimated fair value of \$3.1 million.

Net revenue and net income from this acquisition has been included in the Consolidated Statements of Operations from the acquisition date through the end of the fiscal year on September 28, 2018, and the impact of the acquisition to the ongoing operations on the Company’s net revenue and net income was not material. The Company incurred immaterial transaction-related costs during the fiscal year ended September 28, 2018, which were included within the selling, administrative and general expense.

The allocation of the purchase price to the assets and liabilities recognized in the Company’s acquisition of Avnera was considered final at the time of filing this Annual Report on Form 10-K. The allocation of the purchase price is based on the estimated fair values of the assets acquired and liabilities assumed by major class related to the Avnera acquisition and are reflected, as of the acquisition date, in the accompanying financial statements as follows (in millions):

	<u>As of</u> <u>August 17,</u> <u>2018</u>
<b>Estimated fair value of assets acquired, net of cash</b>	
Accounts receivable	\$ 7.3
Inventory, including step up	9.8
Property, plant and equipment	1.5
Other assets	11.7
Intangible assets	94.0
Goodwill	306.8
Liabilities assumed	(24.0)
Estimated fair value of net assets acquired	<u>\$ 407.1</u>

Goodwill is primarily attributable to the assembled workforce and Company specific revenue synergies expected from the integration of the Avnera business. This goodwill will not be deductible for tax purposes.

	<u>As of</u>
	<u>August 17,</u>
	<u>2018</u>
<b>Intangible Assets</b>	
Developed technology	\$ 37.3
Customer relationships and backlog	10.4
Tradename	0.3
Total identified finite-lived intangible assets	48.0
In process research and development	46.0
Total identified intangible assets	<u>\$ 94.0</u>

Developed technology relates to SoC-based wireless audio solutions and sound processors. Developed technology was valued using the multi-period excess earnings method under the income approach. This method reflects the present value of the projected cash flows that are expected to be generated by the developed technology less charges representing the contribution of other assets to those cash flows. The economic useful life of two years was determined based on the technology cycle related to each developed technology, as well as the cash flows over the forecast period.

Customer relationships and backlog represent the fair value of future projected revenue that will be derived from sales of products to existing customers of Avnera. Customer relationships and backlog were valued using the with-and-without method under the income approach. In the with-and-without method, the fair value was measured by the difference between the present values of the cash flows with and without the existing customers in place over the period of time necessary to reacquire the customers. The economic useful life of one year was determined based on historical customer acquisition rates.

Tradename relates to the "Avnera" trade name. The fair value was determined by applying the relief-from-royalty method under the income approach. This method is based on the application of a market royalty rate to forecasted revenue under the trade name.

The fair value of in-process research and development, or IPR&D, was determined using the multi-period excess earnings method under the income approach. This method reflects the present value of the projected cash flows that are expected to be generated by the IPR&D, less charges representing the contribution of other assets to those cash flows.

The unaudited pro forma financial results for the fiscal years ended September 28, 2018, and September 29, 2017, combine the unaudited historical results of Skyworks with the unaudited historical results of Avnera for the fiscal years ended September 28, 2018, and September 29, 2017, respectively. The results include the effects of unaudited pro forma adjustments as if Avnera was acquired at the beginning of the prior fiscal year. The unaudited pro forma results presented include amortization charges for acquired intangible assets, adjustments for increases in the fair value of acquired inventory, other charges and related tax effects. The pro forma financial results presented below do not include any anticipated synergies or other expected benefits of the acquisition. These unaudited results are presented for informational purposes only and are not necessarily indicative of future operations (in millions, except per share amounts):

	<u>Fiscal Years-Ended</u>	
	<u>September 28,</u>	<u>September 29,</u>
	<u>2018</u>	<u>2017</u>
Revenue	\$ 3,914.3	\$ 3,693.9
Net income	926.0	977.8
Diluted earnings per common share	\$ 5.05	\$ 5.24

#### 4. MARKETABLE SECURITIES

The Company's portfolio of available-for-sale marketable securities consists of the following (in millions):



	Current		Noncurrent	
	September 28, 2018	September 29, 2017	September 28, 2018	September 29, 2017
<b>Available for sale:</b>				
U.S. Treasury and government	\$ 65.0	\$ —	\$ —	\$ —
Corporate bonds and notes	204.1	—	12.0	—
Municipal bonds	2.0	—	0.8	—
Other government	23.0	—	10.0	—
<b>Total</b>	<b>\$ 294.1</b>	<b>\$ —</b>	<b>\$ 22.8</b>	<b>\$ —</b>

The contractual maturities of noncurrent available-for-sale marketable securities were due within two years or less.

The Company recorded unrealized gains and losses on sales of available-for-sale marketable securities as follows (in millions):

September 28, 2018	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. Treasury and government	\$ 65.0	\$ —	\$ —	\$ 65.0
Corporate bonds and notes	216.1	—	(0.1)	216.0
Municipal bonds	2.8	—	—	2.8
Other government	33.1	—	—	33.1
<b>Total</b>	<b>\$ 317.0</b>	<b>\$ —</b>	<b>\$ (0.1)</b>	<b>\$ 316.9</b>

The Company concluded that the unrealized losses were temporary at September 28, 2018. Further, for bonds and other debt securities held by the Company with unrealized losses, the Company did not have the intent to sell, nor was it more likely than not that the Company would be required to sell, such securities before recovery or maturity.

## 5. FAIR VALUE

### *Assets and Liabilities Measured and Recorded at Fair Value on a Recurring Basis*

The Company measures certain assets and liabilities at fair value on a recurring basis such as its financial instruments. There have been no transfers between Level 1, 2 or 3 assets or liabilities during the fiscal year ended September 28, 2018.

Contingent consideration related to business combinations is recorded as a Level 3 liability because management uses significant judgments and unobservable inputs to determine the fair value. The Company reassesses the fair value of its contingent consideration liabilities on a quarterly basis and records any fair value adjustments to earnings in the period that they are determined. The decrease in Level 3 liabilities during fiscal 2018, relates to net adjustments to the fair value of contingent consideration liabilities, which were included in selling, general and administrative expenses, partially offset by the fair value of the contingent consideration associated with a business combination completed during the period, as detailed in [Note 3](#) of these Notes to Consolidated Financial Statements. The fair value of the contingent consideration was determined using a probabilistic Black-Scholes pricing model calibrated to the expected revenue forecast to be generated from the acquired business over a one-year period.

Assets and liabilities recorded at fair value on a recurring basis consisted of the following (in millions):

	As of September 28, 2018				As of September 29, 2017			
	Total	Fair Value Measurements			Total	Fair Value Measurements		
		Level 1	Level 2	Level 3		Level 1	Level 2	Level 3
<b>Assets</b>								
Cash equivalents*	\$ 79.3	\$ 29.7	\$ 49.6	\$ —	\$ 592.6	\$ 592.6	\$ —	\$ —
U.S. Treasury and government securities	65.0	15.0	50.0	—	—	—	—	—
Corporate bonds and notes	216.0	—	216.0	—	—	—	—	—
Municipal bonds	2.8	—	2.8	—	—	—	—	—
Other government securities	33.1	—	33.1	—	—	—	—	—
<b>Total</b>	<b>\$ 396.2</b>	<b>\$ 44.7</b>	<b>\$ 351.5</b>	<b>\$ —</b>	<b>\$ 592.6</b>	<b>\$ 592.6</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Liabilities</b>								
Contingent consideration	\$ 3.1	\$ —	\$ —	\$ 3.1	\$ 11.9	\$ —	\$ —	\$ 11.9
<b>Total</b>	<b>\$ 3.1</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 3.1</b>	<b>\$ 11.9</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 11.9</b>

\* Cash equivalents included in Levels 1 and 2 consist of money market funds and corporate bonds and notes, foreign government bonds, commercial paper, and agency securities purchased with less than ninety days until maturity.

The following table summarizes changes to the fair value of the Level 3 liabilities (in millions):

	<b>Contingent Consideration</b>
Balance as of September 29, 2017	\$ 11.9
Increases to Level 3 liabilities	3.1
Changes in fair value included in earnings	(11.9)
Balance as of September 28, 2018	<u>\$ 3.1</u>

*Assets Measured and Recorded at Fair Value on a Nonrecurring Basis*

The Company's non-financial assets and liabilities, such as goodwill, intangible assets, and other long-lived assets resulting from business combinations, are measured at fair value using income approach valuation methodologies at the date of acquisition and are subsequently re-measured if there are indicators of impairment.

**6. INVENTORY**

Inventory consists of the following (in millions):

	As of	
	September 28, 2018	September 29, 2017
Raw materials	\$ 20.2	\$ 24.6
Work-in-process	340.7	330.6
Finished goods	124.8	123.0
Finished goods held on consignment by customers	4.5	15.3
<b>Total inventory</b>	<u>\$ 490.2</u>	<u>\$ 493.5</u>

**7. PROPERTY, PLANT AND EQUIPMENT, NET**

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

	As of	
	September 28, 2018	September 29, 2017
Land and improvements	\$ 11.6	\$ 11.6
Buildings and improvements	238.0	137.8
Furniture and fixtures	31.5	29.5
Machinery and equipment	2,089.6	1,715.3
Construction in progress	179.0	164.8
Total property, plant and equipment, gross	2,549.7	2,059.0
Accumulated depreciation	(1,408.8)	(1,176.7)
Total property, plant and equipment, net	\$ 1,140.9	\$ 882.3

## 8. GOODWILL AND INTANGIBLE ASSETS

The changes to the carrying amount of goodwill are as follows (in millions):

	As of	
	September 28, 2018	September 29, 2017
Goodwill at beginning of the period	\$ 883.0	\$ 873.3
Goodwill recognized through business combinations (Note 3)	306.8	9.7
Goodwill impairment	—	—
Goodwill at the end of the period	\$ 1,189.8	\$ 883.0

The Company performed an impairment test of its goodwill as of the first day of the fourth fiscal quarter in accordance with its regularly scheduled testing. The results of this test indicated that the Company's goodwill was not impaired. There were no other indicators of impairment noted during the fiscal year ended September 28, 2018.

Intangible assets consist of the following (in millions):

	Weighted average amortization period (years)	As of September 28, 2018			As of September 29, 2017		
		Gross carrying amount	Accumulated amortization	Net carrying amount	Gross carrying amount	Accumulated amortization	Net carrying amount
Customer relationships	3.4	\$ 31.7	\$ (13.2)	\$ 18.5	\$ 29.7	\$ (14.6)	\$ 15.1
Developed technology and other	5.3	89.9	(23.5)	66.4	59.9	(20.6)	39.3
Trademarks	3.0	1.6	(0.8)	0.8	1.6	(0.3)	1.3
Capitalized software	3.0	18.0	(6.0)	12.0	12.1	—	12.1
IPR&D		46.0	—	46.0	\$ —	—	—
Total intangible assets		\$ 187.2	\$ (43.5)	\$ 143.7	\$ 103.3	\$ (35.5)	\$ 67.8

Fully amortized intangible assets have been eliminated from both the gross and accumulated amortization amounts. The increase in the gross amount of intangible assets is primarily related to the business combination that closed during the fourth quarter of fiscal 2018. For further information regarding the acquired intangibles see [Note 3](#), Business Combinations, in these Notes to the Consolidated Financial Statements.

Annual amortization expense for the next five fiscal years related to intangible assets is expected to be as follows (in millions):

	2019	2020	2021	2022	2023	Thereafter
Amortization expense, cost of goods sold	\$ 24.8	\$ 22.5	\$ 0.1	\$ 0.1	\$ 0.1	\$ 1.9
Amortization expense, operating expense	22.6	11.8	9.0	1.0	1.0	2.8
Total amortization expense	\$ 47.4	\$ 34.3	\$ 9.1	\$ 1.1	\$ 1.1	\$ 4.7

## 9. INCOME TAXES

Income before income taxes consists of the following components (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
United States	\$ 712.2	\$ 681.2	\$ 697.5
Foreign	619.9	575.8	503.1
Income before income taxes	\$ 1,332.1	\$ 1,257.0	\$ 1,200.6

The provision for income taxes consists of the following (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Current tax expense (benefit):			
Federal	\$ 347.7	\$ 215.7	\$ 181.8
State	0.3	0.3	0.1
Foreign	31.2	24.4	25.8
	379.2	240.4	207.7
Deferred tax expense (benefit):			
Federal	20.3	5.0	(0.8)
Foreign	14.2	1.4	(1.5)
	34.5	6.4	(2.3)
Provision for income taxes	\$ 413.7	\$ 246.8	\$ 205.4

The actual income tax expense is different than that which would have been computed by applying the federal statutory tax rate to income before income taxes. A reconciliation of income tax expense as computed at the United States federal statutory income tax rate to the provision for income tax expense is as follows (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Tax expense at United States statutory rate	\$ 327.4	\$ 439.9	\$ 420.2
Foreign tax rate difference	(111.9)	(174.6)	(160.8)
Tax on deemed repatriation	224.6	—	—
Effect of stock compensation	(25.6)	—	—
Change of tax rate on deferred taxes	18.3	—	—
Research and development credits	(19.9)	(16.3)	(33.7)
Change in tax reserve	6.7	12.6	(2.5)
Domestic production activities deduction	(13.9)	(19.8)	(19.1)
Other, net	8.0	5.0	1.3
Provision for income taxes	\$ 413.7	\$ 246.8	\$ 205.4

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The Company operates in foreign jurisdictions with income tax rates lower than the United States tax rate for the fiscal years ended September 28, 2018, and September 29, 2017, which were 24.6% and 35.0%, respectively. The Company's tax benefits related to foreign earnings taxed at a rate less than the United States federal rate were \$111.9 million and \$174.6 million for the fiscal years ended September 28, 2018, and September 29, 2017, respectively.

The Tax Reform Act includes, among other things, a reduction of the United States corporate tax rate from 35% to 21%, a mandatory deemed repatriation tax on foreign earnings, repeal of the corporate alternative minimum tax and the domestic production activities deduction, and expensing of certain capital investments. The new law makes fundamental changes to the taxation of multinational entities, including a shift from worldwide taxation with deferral to a hybrid territorial system, featuring a participation exemption regime, a minimum tax on low-taxed foreign earnings, and new measures to deter base erosion and promote export from the United States. As a result of this legislation, the Company recognized a one-time transition tax related to the deemed repatriation of foreign earnings of \$224.6 million, and a charge related to the revaluation of its deferred tax assets at the new corporate tax rate of \$18.3 million. The \$224.6 million deemed repatriation tax is payable over the next eight years, \$18.0 million per year for each of the next five years, followed by payments of \$33.6 million, \$44.9 million, and \$56.1 million in years six through eight, respectively. The Company has accrued \$206.6 million of the deemed repatriation tax in long-term liabilities within the consolidated balance sheet as of September 28, 2018.

Staff Accounting Bulletin 118 ("SAB 118") provides a measurement period during which companies may analyze the impacts of newly enacted legislation when the company does not have the necessary information available, prepared, or analyzed in reasonable detail to complete the accounting for certain income tax effects of the new legislation, not to exceed one year. The Company does not expect to record any further adjustments within the measurement period as of September 28, 2018, but will continue to monitor the estimate if new guidance becomes available.

In addition to the introduction of a modified territorial tax system, the Tax Reform Act includes two new sets of provisions aimed at preventing or decreasing U.S. tax base erosion—the global intangible low-taxed income ("GILTI") provisions and the base erosion and anti-abuse tax ("BEAT") provisions. The GILTI provisions impose a tax on foreign income in excess of a deemed return on tangible assets of foreign corporations. The Company expects to make an accounting policy election to account for GILTI as a component of tax expense in the period in which the Company is subject to the rules and therefore will not provide any deferred tax impacts of GILTI in its consolidated financial statements for the year ended September 28, 2018. The BEAT provisions eliminate the deduction of certain base-erosion payments made to related foreign corporations, and impose a minimum tax if greater than regular tax. The Company does not presently expect that it will be subject to the minimum tax imposed by the BEAT provisions.

The Company's federal income tax returns for fiscal 2015 and fiscal 2016 are currently under IRS examination. As a result, the Company increased the reserve for uncertain tax positions by \$18.9 million, including interest.

On October 2, 2010, the Company expanded its presence in Asia by launching operations in Singapore. The Company operates under a tax holiday in Singapore, which is effective through September 30, 2020, and is conditional upon the Company's compliance with certain employment and investment thresholds in Singapore. The impact of the tax holiday decreased Singapore's taxes by \$38.4 million and \$37.4 million for the fiscal years ended September 28, 2018, and September 29, 2017, respectively, which resulted in tax benefits of \$0.21 and \$0.20 of diluted earnings per share, respectively.

Deferred income tax assets and liabilities consist of the tax effects of temporary differences related to the following (in millions):

	Fiscal Years Ended	
	September 28, 2018	September 29, 2017
<b>Deferred tax assets:</b>		
Inventory	\$ 5.7	\$ 7.4
Bad debts	1.2	0.1
Accrued compensation and benefits	4.9	7.1
Product returns, allowances and warranty	4.6	5.2
Restructuring	—	0.1
Intangible assets	—	10.6
Share-based and other deferred compensation	26.1	40.2
Net operating loss carry forwards	15.5	7.7
Non-United States tax credits	20.3	20.1
State tax credits	97.0	71.0
Property, plant and equipment	9.1	7.9
Other, net	3.3	2.7
Deferred tax assets	187.7	180.1
Less valuation allowance	(118.6)	(90.9)
Net deferred tax assets	69.1	89.2
<b>Deferred tax liabilities:</b>		
Prepaid insurance	(0.6)	(0.9)
Property, plant and equipment	(25.6)	(24.8)
Intangible assets	(19.3)	(6.2)
Other, net	(2.0)	—
Net deferred tax liabilities	(47.5)	(31.9)
Total net deferred tax assets	\$ 21.6	\$ 57.3

In accordance with GAAP, management has determined that it is more likely than not that a portion of its historic and current year income tax benefits will not be realized. As of September 28, 2018, the Company has a valuation allowance of \$118.6 million. This valuation allowance is comprised of \$100.5 million related to United States state tax credits, of which \$1.5 million are state tax credits acquired from Avnera in fiscal 2018, and \$18.1 million are related to foreign deferred tax assets. The Company does not anticipate sufficient taxable income or tax liability to utilize these state and foreign credits. If these benefits are recognized in a future period the valuation allowance on deferred tax assets will be reversed and up to a \$118.6 million income tax benefit may be recognized. The Company will need to generate \$88.5 million of future United States federal taxable income to utilize its United States deferred tax assets as of September 28, 2018. The Company believes that future reversals of taxable temporary differences, and its forecast of continued earnings in its domestic and foreign jurisdictions, support its decision to not record a valuation allowance on other deferred tax assets.

Deferred tax assets are recognized for foreign operations when management believes it is more likely than not that the deferred tax assets will be recovered during the carry forward period. The Company will continue to assess its valuation allowance in future periods.

As of September 28, 2018, the Company has United States federal net operating loss carry forwards of approximately \$41.0 million, including \$32.7 million related to the acquisition of Avnera. The utilization of these net operating losses is subject to certain annual limitations as required under Internal Revenue Code section 382 and similar state income tax provisions. The United States federal net operating loss carry forwards expire at various dates through 2035. The Company also has state income tax credit carry forwards of \$97.0 million, net of federal benefits, for which the Company has provided a valuation allowance. The state tax credits relate primarily to California research tax credits that can be carried forward indefinitely.

The Company has continued to expand its operations and increase its investments in numerous international jurisdictions. These activities will increase the Company's earnings attributable to foreign jurisdictions. Due to the enactment of the Tax Reform Act,

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all of the Company's previously undistributed earnings were deemed repatriated during the year ended September 28, 2018, resulting in a one-time transition tax of \$224.6 million.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows (in millions):

	<b>Unrecognized tax benefits</b>
Balance at September 29, 2017	\$ 90.4
Increases based on positions related to prior years	13.5
Decreases based on positions related to prior years	(0.5)
Increases based on positions related to current year	0.5
Decreases relating to settlements with taxing authorities	—
Decreases relating to lapses of applicable statutes of limitations	(10.5)
Balance at September 28, 2018	\$ 93.4

Of the total unrecognized tax benefits at September 28, 2018, \$77.7 million would impact the effective tax rate, if recognized. The remaining unrecognized tax benefits would not impact the effective tax rate, if recognized, due to the Company's valuation allowance and certain positions that were required to be capitalized.

The Company anticipates reversals within the next 12 months related to items such as the lapse of the statute of limitations, audit closures, and other items that occur in the normal course of business. Due to open examinations, an estimate of anticipated reversals within the next 12 months cannot be made. During the fiscal year ended September 28, 2018, the Company recognized \$10.5 million of previously unrecognized tax benefits related to the expiration of the statute of limitations and \$4.1 million of accrued interest or penalties related to unrecognized tax benefits. As of September 28, 2018, accrued interest and penalties of \$7.5 million related to uncertain tax positions have been included in long-term tax liabilities within the consolidated balance sheet.

The Company's major tax jurisdictions as of September 28, 2018, are the United States, California, Canada, Luxembourg, Mexico, Japan, and Singapore. For the United States, the Company has open tax years dating back to fiscal 2000 due to the carry forward of tax attributes. For California, the Company has open tax years dating back to fiscal 1999 due to the carry forward of tax attributes. For Canada, the Company has open tax years dating back to fiscal 2012. For Luxembourg, the Company has open tax years back to fiscal 2012. For Mexico, the Company has open tax years back to fiscal 2012. For Singapore, the Company has open tax years dating back to fiscal 2012. The Company is subject to audit examinations by the respective taxing authorities on a periodic basis, of which the results could impact its financial position, results of operations or cash flows.

## 10. STOCKHOLDERS' EQUITY

### COMMON STOCK

At September 28, 2018, the Company is authorized to issue 525.0 million shares of common stock, par value \$0.25 per share, of which 228.4 million shares are issued and 177.4 million shares are outstanding.

Holders of the Company's common stock are entitled to dividends in the event declared by the Company's Board of Directors out of funds legally available for such purpose. Dividends may not be paid on common stock unless all accrued dividends on preferred stock, if any, have been paid or declared and set aside. In the event of the Company's liquidation, dissolution or winding up, the holders of common stock will be entitled to share pro rata in the assets remaining after payment to creditors and after payment of the liquidation preference plus any unpaid dividends to holders of any outstanding preferred stock.

Each holder of the Company's common stock is entitled to one vote for each such share outstanding in the holder's name. No holder of common stock is entitled to cumulate votes in voting for directors. The Company's restated certificate of incorporation as amended to date (the "Certificate of Incorporation") provides that, unless otherwise determined by the Company's Board of Directors, no holder of stock has any preemptive right to purchase or subscribe for any stock of any class which the Company may issue or sell.

### PREFERRED STOCK

The Company's Certificate of Incorporation has authorized and permits the Company to issue up to 25.0 million shares of preferred stock without par value in one or more series and with rights and preferences that may be fixed or designated by the Company's Board of Directors without any further action by the Company's stockholders. The designation, powers, preferences, rights and

qualifications, limitations and restrictions of the preferred stock of each series will be fixed by the certificate of designation relating to such series, which will specify the terms of the preferred stock. At September 28, 2018, the Company had no shares of preferred stock issued or outstanding.

## SHARE REPURCHASE

On January 31, 2018, the Board of Directors approved a stock repurchase program, pursuant to which the Company is authorized to repurchase up to \$1.0 billion of its common stock from time to time prior to January 31, 2020, on the open market or in privately negotiated transactions as permitted by securities laws and other legal requirements. This authorized stock repurchase program replaced in its entirety the January 17, 2017, stock repurchase program. During the fiscal year ended September 28, 2018, the Company paid approximately \$759.5 million (including commissions) in connection with the repurchase of 7.7 million shares of its common stock (paying an average price of \$98.84 per share) under the January 31, 2018, stock repurchase plan and the January 17, 2017, stock repurchase plan. As of September 28, 2018, \$413.0 million remained available under the January 31, 2018, share repurchase plan.

During the fiscal year ended September 29, 2017, the Company paid approximately \$432.3 million (including commissions) in connection with the repurchase of 4.7 million shares of its common stock (paying an average price of \$92.97 per share).

## DIVIDENDS

On November 8, 2018, the Company announced that the Board of Directors had declared a cash dividend on the Company's common stock of \$0.38 per share. This dividend is payable on December 18, 2018, to the Company's stockholders of record as of the close of business on November 27, 2018. Future dividends are subject to declaration by the Board of Directors. The dividends charged to retained earnings in fiscal 2018 and 2017 were as follows (in millions except per share amounts):

	Fiscal Years Ended			
	September 28, 2018		September 29, 2017	
	Per Share	Total	Per Share	Total
First quarter	\$ 0.32	\$ 58.8	\$ 0.28	\$ 51.8
Second quarter	0.32	58.5	0.28	51.8
Third quarter	0.32	57.8	0.28	51.7
Fourth quarter	0.38	68.1	0.32	58.9
	<u>\$ 1.34</u>	<u>\$ 243.2</u>	<u>\$ 1.16</u>	<u>\$ 214.2</u>

## EMPLOYEE STOCK BENEFIT PLANS

As of September 28, 2018, the Company has the following equity compensation plans under which its equity securities were authorized for issuance to its employees and/or directors:

- the 1999 Employee Long-Term Incentive Plan
- the 2002 Employee Stock Purchase Plan
- the Non-Qualified Employee Stock Purchase Plan
- the 2005 Long-Term Incentive Plan
- the AATI 2005 Equity Incentive Plan
- the 2008 Director Long-Term Incentive Plan
- the 2015 Long-Term Incentive Plan

Except for the 1999 Employee Long-Term Incentive Plan and the Non-Qualified Employee Stock Purchase Plan, each of the foregoing equity compensation plans was approved by the Company's stockholders.

As of September 28, 2018, a total of 85.3 million shares are authorized for grant under the Company's share-based compensation plans, with 1.9 million options outstanding. The number of common shares reserved for future awards to employees and directors under these plans was 13.8 million at September 28, 2018. The Company currently grants new equity awards to employees under the 2015 Long-Term Incentive Plan and to non-employee directors under the 2008 Director Long-Term Incentive Plan.



*2015 Long-Term Incentive Plan.* Under this plan, officers, employees, non-employee directors and certain consultants may be granted stock options, restricted stock awards and units, performance stock awards and units and other share-based awards. The plan has been approved by the stockholders. Under the plan, up to 19.4 million shares have been authorized for grant. A total of 13.1 million shares are available for new grants as of September 28, 2018. The maximum contractual term of options under the plan is seven years from the date of grant. Options granted under the plan are exercisable at the determination of the compensation committee and generally vest ratably over four years. Restricted stock awards and units granted under the plan at the determination of the compensation committee generally vest over four or more years. With respect to restricted stock awards, dividends are accumulated and paid when the underlying shares vest. If the underlying shares are forfeited for any reason, the rights to the dividends with respect to such shares are also forfeited. No dividends or dividend equivalents are paid or accrued with respect to restricted stock unit awards or other awards until the shares underlying such awards become vested and are issued to the award holder. Performance stock awards and units are contingently granted depending on the achievement of certain predetermined performance goals and generally vest over two or more years.

*2008 Director Long-Term Incentive Plan.* Under this plan, non-employee directors may be granted stock options, restricted stock awards and other share-based awards. The plan has been approved by the stockholders. Under the plan a total of 1.5 million shares have been authorized for grant. A total of 0.7 million shares are available for new grants as of September 28, 2018. The maximum contractual term of options granted under the plan is ten years from the date of grant. Options granted under the plan are generally exercisable over four years. Restricted stock awards and units granted under the plan generally vest over one or more years. With respect to restricted stock awards, dividends are accumulated and paid when the underlying shares vest. If the underlying shares are forfeited for any reason, the rights to the dividends with respect to such shares are also forfeited.

*Employee Stock Purchase Plans.* The Company maintains a domestic and an international employee stock purchase plan. Under these plans, eligible employees may purchase common stock through payroll deductions of up to 10% of their compensation. The price per share is the lower of 85% of the fair market value of the common stock at the beginning or end of each offering period (generally six months). The plans provide for purchases by employees of up to an aggregate of 9.7 million shares. Shares of common stock purchased under these plans in the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, were 0.2 million, 0.2 million, and 0.3 million, respectively. At September 28, 2018, there are 0.5 million shares available for purchase. The Company recognized compensation expense of \$5.2 million, \$4.5 million and \$4.6 million for the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, respectively, related to the employee stock purchase plan. The unrecognized compensation expense on the employee stock purchase plan at September 28, 2018, was \$1.9 million. The weighted average period over which the cost is expected to be recognized is approximately four months.

*Stock Options*

The following table represents a summary of the Company's stock options:

	Shares (in millions)	Weighted average exercise price	Weighted average remaining contractual life (in years)	Aggregate intrinsic value (in millions)
Balance outstanding at September 29, 2017	3.0	\$ 50.36		
Granted	0.1	\$ 26.66		
Exercised	(1.1)	\$ 35.92		
Canceled/forfeited	(0.1)	\$ 72.42		
Balance outstanding at September 28, 2018	1.9	\$ 57.12	3.0	\$ 64.3
Exercisable at September 28, 2018	1.2	\$ 50.15	2.3	\$ 50.8

The weighted-average grant date fair value per share of employee stock options granted during the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, was \$68.32, \$23.25, and \$26.30, respectively. The increase in the weighted-average grant date fair value per share of employee stock options granted during fiscal 2018 was due to replacement awards granted as a result of the Avnera acquisition completed during the period. The total grant date fair value of the options vested during the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, was \$22.6 million, \$19.3 million and \$21.9 million, respectively.

*Restricted and Performance Awards and Units*

The following table represents a summary of the Company's restricted and performance awards and units:

	Shares (In millions)	Weighted average grant date fair value
Non-vested awards outstanding at September 29, 2017	2.9	\$ 75.49
Granted (1)	1.3	\$ 108.86
Vested	(1.2)	\$ 69.55
Canceled/forfeited	(0.3)	\$ 86.64
Non-vested awards outstanding at September 28, 2018	2.7	\$ 92.37

(1) includes performance shares granted and earned based on maximum performance under the underlying performance metrics

The weighted average grant date fair value per share for awards granted during the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, was \$108.86, \$72.84, and \$62.02, respectively. The total grant date fair value of the awards vested during the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, was \$81.1 million, \$57.9 million and \$71.2 million, respectively.

The following table summarizes the total intrinsic value for stock options exercised and awards vested (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Awards	\$ 134.4	\$ 137.8	\$ 197.6
Options	\$ 75.0	\$ 116.1	\$ 68.9

*Valuation and Expense Information*

The following table summarizes pre-tax share-based compensation expense by financial statement line and related tax benefit (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Cost of goods sold	\$ 14.4	\$ 13.6	\$ 11.3
Research and development	42.6	35.3	32.2
Selling, general and administrative	50.8	39.6	34.5
Total share-based compensation expense	\$ 107.8	\$ 88.5	\$ 78.0
Share-based compensation tax benefit	\$ 25.6	\$ 25.1	\$ 22.5
Capitalized share-based compensation expense at period end	\$ 2.9	\$ 4.0	\$ 3.7

The following table summarizes total compensation costs related to unvested share based awards not yet recognized and the weighted average period over which it is expected to be recognized at September 28, 2018:

	Unrecognized compensation cost for unvested awards (in millions)	Weighted average remaining recognition period (in years)
Awards	\$ 106.1	1.5
Options	\$ 11.1	1.1

The fair value of the restricted stock awards and units is equal to the closing market price of the Company's common stock on the date of grant.

The Company issued performance share units during fiscal 2018, fiscal 2017 and fiscal 2016 that contained market-based conditions. The fair value of these performance share units was estimated on the date of the grant using a Monte Carlo simulation with the following weighted average assumptions:

	Fiscal Year Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Volatility of common stock	35.54%	39.60%	38.24%
Average volatility of peer companies	36.78%	39.78%	34.76%
Average correlation coefficient of peer companies	0.47	0.42	0.49
Risk-free interest rate	1.74%	0.68%	0.44%
Dividend yield	1.15%	1.44%	1.23%

The fair value of each stock option is estimated on the date of the grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Expected volatility	35.86%	40.31%	42.93%
Risk-free interest rate	2.00%	1.60%	0.98%
Dividend yield	1.15%	1.44%	1.23%
Expected option life (in years)	4.0	4.0	4.0

The Company used a historical volatility calculated by the mean reversion of the weekly-adjusted closing stock price over the expected life of the options. The risk-free interest rate assumption is based upon observed treasury bill interest rates appropriate for the expected life of the Company's employee stock options. The dividend yield was calculated based on the annualized dividend and the stock price on the date of grant.

The expected life of employee stock options represents a calculation based upon the historical exercise, cancellation and forfeiture experience for the Company across its demographic population. The Company believes that this historical data is the best estimate of the expected life of a new option and that generally all groups of the Company's employees exhibit similar behavior.

On November 15, 2017, the Company agreed to potentially issue not more than 1% of its common stock to an unaffiliated third party as a contingent consideration for its role under a multi-year collaboration agreement, upon the achievement of certain product sales milestones. The shares have been valued utilizing a probability weighted series of Black-Scholes pricing models and could be issued after mid-2020. The shares will be marked to estimated fair value each reporting period through earnings. The amount recorded in the statement of operations within selling, general and administrative expense for the fiscal year ended 2018, is not material.

## 11. EMPLOYEE BENEFIT PLAN, PENSIONS AND OTHER RETIREE BENEFITS

The Company maintains a 401(k) plan covering substantially all of its employees based in the United States under which all employees at least twenty-one years old are eligible to receive discretionary Company contributions. Discretionary Company contributions in the form of cash are determined by the Board of Directors. The Company has generally contributed a match of up to 4% of an employee's contributed annual eligible compensation. The Company no longer provides shares of its common stock as contributions to the 401(k) plan.

### *Defined Benefit Pension:*

The Company has a defined benefit pension plan for certain employees in Japan. This plan has been frozen and new employees are not eligible. However, the Company is obligated to make future contributions to fund benefits to the participants with the benefits under the plan being based primarily on a combination of years of service and compensation.

The net amount of the unfunded obligation recognized in other long-term liabilities on the balance sheet consists of (in millions):

	Fiscal Year Ended	
	September 28, 2018	September 29, 2017
Pension benefit obligations at the end of the fiscal year	\$ 16.1	\$ 17.0
Fair value of plan assets at the end of the fiscal year	11.3	11.5
Unfunded status, net	\$ (4.8)	\$ (5.5)

The pension obligation and the net periodic benefit costs associated with the pension have an immaterial impact to the Company's results of operations and financial position and accordingly, the disclosures required have been excluded from this Annual Report on Form 10-K.

## 12. COMMITMENTS

The Company has various operating leases primarily for buildings, computers and equipment. Rent expense amounted to \$20.5 million, \$20.6 million, and \$19.5 million in the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, respectively. Future minimum payments under these non-cancelable leases for the next five fiscal years are as follows (in millions):

	2019	2020	2021	2022	2023	Thereafter	Total
Future minimum payments	\$ 21.6	18.3	14.2	12.2	5.3	15.2	\$ 86.8

## 13. CONTINGENCIES

### Legal Matters

From time to time, various lawsuits, claims and proceedings have been, and may in the future be, instituted or asserted against the Company, including those pertaining to patent infringement, intellectual property, environmental hazards, product liability and warranty, safety and health, employment and contractual matters.

The semiconductor industry is characterized by vigorous protection and pursuit of intellectual property rights. From time to time, third parties have asserted and may in the future assert patent, copyright, trademark and other intellectual property rights to technologies that are important to the Company's business and have demanded and may in the future demand that the Company license their technology. The outcome of any such litigation cannot be predicted with certainty and some such lawsuits, claims or proceedings may be disposed of unfavorably to the Company. Generally speaking, intellectual property disputes often have a risk of injunctive relief, which, if imposed against the Company, could materially and adversely affect the Company's financial condition, or results of operations. From time to time the Company may also be involved in legal proceedings in the ordinary course of business.

The Company monitors the status of legal proceedings and other contingencies on an ongoing basis to ensure loss contingencies are recognized and/or disclosed in its financial statements and footnotes. The Company does not believe there are any pending legal proceedings that are reasonably possible to result in a material loss. The Company is engaged in various legal actions in the normal course of business and, while there can be no assurances, the Company believes the outcome of all pending litigation involving the Company will not have, individually or in the aggregate, a material adverse effect on its business or financial statements.

## 14. GUARANTEES AND INDEMNITIES

The Company has made no significant contractual guarantees for the benefit of third parties. However, the Company generally indemnifies its customers from third-party intellectual property infringement litigation claims related to its products, and, on occasion, also provides other indemnities related to product sales. In connection with certain facility leases, the Company has indemnified its lessors for certain claims arising from the facility or the lease.

The Company indemnifies its directors and officers to the maximum extent permitted under the laws of the state of Delaware. The duration of the indemnities varies, and in many cases is indefinite. The indemnities to customers in connection with product sales generally are subject to limits based upon the amount of the related product sales and in many cases are subject to geographic and other restrictions. In certain instances, the Company's indemnities do not provide for any limitation of the maximum potential future payments the Company could be obligated to make. The Company has not recorded any liability for these indemnities in the accompanying consolidated balance sheets and does not expect that such obligations will have a material adverse impact on its financial statements.

**15. RESTRUCTURING AND OTHER CHARGES**

During fiscal 2018, the Company recorded restructuring and other charges of approximately \$0.8 million related to a leased facility. The Company does not anticipate any material charges in future periods related to these plans. Charges associated with the restructuring plan are categorized in the "Other restructuring programs" in the table below.

During fiscal 2017, the Company implemented immaterial restructuring plans and recorded \$0.6 million related to employee severance and other costs.

During fiscal 2016, the Company recorded restructuring and other charges of approximately \$4.8 million primarily related to restructuring plans to reduce redundancies associated with acquisitions during the year.

**16. EARNINGS PER SHARE**

The following table sets forth the computation of basic and diluted earnings per share (in millions, except per share amounts):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
Net income	\$ 918.4	\$ 1,010.2	\$ 995.2
Weighted average shares outstanding – basic	181.3	184.3	188.7
Dilutive effect of equity based awards	1.9	2.4	3.4
Weighted average shares outstanding – diluted	183.2	186.7	192.1
Net income per share – basic	\$ 5.06	\$ 5.48	\$ 5.27
Net income per share – diluted	\$ 5.01	\$ 5.41	\$ 5.18
Anti-dilutive common stock equivalents	0.2	0.6	1.5

Basic earnings per share are calculated by dividing net income by the weighted average number of shares of the Company's common stock outstanding during the period. The calculation of diluted earnings per share includes the dilutive effect of equity based awards that were outstanding during the fiscal years ended September 28, 2018, September 29, 2017, and September 30, 2016, using the treasury stock method. Certain of the Company's outstanding share-based awards, noted in the table above, were excluded because they were anti-dilutive, but they could become dilutive in the future.

**17. SEGMENT INFORMATION AND CONCENTRATIONS**

The Company considers itself to be a single reportable operating segment which designs, develops, manufactures and markets similar proprietary semiconductor products, including intellectual property. In reaching this conclusion, management considers the definition of the chief operating decision maker ("CODM"), how the business is defined by the CODM, the nature of the information provided to the CODM and how that information is used to make operating decisions, allocate resources and assess performance. The Company's CODM is the president and chief executive officer. The results of operations provided to and analyzed by the CODM are at the consolidated level and accordingly, key resource decisions and assessment of performance is performed at the consolidated level. The Company assesses its determination of operating segments at least annually.

**GEOGRAPHIC INFORMATION**

Net revenue by geographic area presented based upon the location of the OEMs' headquarters are as follows (in millions):

	Fiscal Years Ended		
	September 28, 2018	September 29, 2017	September 30, 2016
United States	\$ 1,946.2	\$ 1,615.4	\$ 1,455.0
China	982.8	1,018.8	971.2
South Korea	432.7	531.8	393.0
Taiwan	339.1	335.4	323.6
Europe, Middle East and Africa	144.6	117.4	102.1
Other Asia-Pacific	22.6	32.6	44.1
Total	<u>\$ 3,868.0</u>	<u>\$ 3,651.4</u>	<u>\$ 3,289.0</u>

During fiscal 2018, the Company updated the table above from prior period presentation of net revenue based on the country of destination to current period presentation of net revenue based on the location of the OEMs' headquarters. Prior periods have been reclassified to match the current period presentation.

The Company's revenue to external customers is generated principally from the sale of semiconductor products that facilitate various wireless communication applications. Accordingly, the Company considers its product offerings to be similar in nature and therefore not segregated for reporting purposes.

Net property, plant and equipment balances, based on the physical locations within the indicated geographic areas are as follows (in millions):

	As of	
	September 28, 2018	September 29, 2017
Mexico	\$ 449.4	\$ 465.9
Japan	328.4	166.4
United States	123.5	126.9
Singapore	222.7	112.1
Rest of world	16.9	11.0
	<u>\$ 1,140.9</u>	<u>\$ 882.3</u>

## CONCENTRATIONS

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of trade accounts receivable. Trade accounts receivable are primarily derived from sales to manufacturers of communications and consumer products and electronic component distributors. Ongoing credit evaluations of customers' financial condition are performed and collateral, such as letters of credit and bank guarantees, are required whenever deemed necessary.

In fiscal 2018, 2017, and 2016, Apple, through sales to multiple distributors, contract manufacturers and direct sales for multiple applications including smartphones, tablets, desktop and notebook computers, watches and other devices, in the aggregate accounted for 47%, 39% and 40% of the Company's net revenue, respectively. In fiscal 2017 and 2016, Samsung in the aggregate accounted for 12% and 10% of the Company's net revenue, respectively. In fiscal 2017, Huawei in the aggregate accounted for 10% of the Company's net revenue.

At September 28, 2018, the Company's three largest accounts receivable balances comprised 66% of aggregate gross accounts receivable. This concentration was 53% and 54% at September 29, 2017, and September 30, 2016, respectively.

## 18. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following table summarizes the quarterly and annual results (in millions, except per share data):

	First quarter	Second quarter	Third quarter	Fourth quarter	Fiscal year
<b>Fiscal 2018</b>					
Net revenue	\$ 1,051.9	\$ 913.4	\$ 894.3	\$ 1,008.4	\$ 3,868.0
Gross profit	536.8	458.7	451.6	503.6	1,950.7
Net income	70.4	276.0	286.5	285.5	918.4
Per share data (1)					
Net income, basic	\$ 0.38	\$ 1.51	\$ 1.58	\$ 1.60	\$ 5.06
Net income, diluted	\$ 0.38	\$ 1.50	\$ 1.57	\$ 1.58	\$ 5.01
<b>Fiscal 2017</b>					
Net revenue	\$ 914.3	\$ 851.7	\$ 900.8	\$ 984.6	\$ 3,651.4
Gross profit	463.9	425.4	453.6	498.9	1,841.8
Net income	257.8	224.9	246.2	281.3	1,010.2
Per share data (1)					
Net income, basic	\$ 1.39	\$ 1.22	\$ 1.34	\$ 1.53	\$ 5.48
Net income, diluted	\$ 1.38	\$ 1.20	\$ 1.32	\$ 1.51	\$ 5.41

(1) Earnings per share calculations for each of the quarters are based on the weighted average number of shares outstanding and included common stock equivalents in each period. Therefore, the sums of the quarters do not necessarily equal the full year earnings per share.

**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.*

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 28, 2018. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company 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 by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on management’s evaluation of our disclosure controls and procedures as of September 28, 2018, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

**Management’s Annual Report on Internal Control over Financial Reporting**

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, the Company’s principal executive and principal financial officers and effected by the Company’s Board of Directors, management and other personnel, 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 and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- 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
- 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. 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.

The Company’s management assessed the effectiveness of the Company’s internal control over financial reporting as of September 28, 2018. In making this assessment, the Company’s management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) 2013 Internal Control-Integrated Framework.

Based on their assessment, management concluded that, as of September 28, 2018, the Company’s internal control over financial reporting is effective based on those criteria.

The Company’s independent registered public accounting firm has issued an audit report on the effectiveness of the Company’s internal control over financial reporting as stated within their report which appears herein.

*Changes in internal control over financial reporting.*



There are no changes to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the period covered by this report that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION.**

*None.*

**PART III**

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

The information under the captions “Directors and Executive Officers”, “Corporate Governance—Committees of the Board of Directors” and “Other Matters—Section 16(a) Beneficial Ownership Reporting Compliance” in our definitive proxy statement for the 2019 Annual Meeting of Stockholders is incorporated herein by reference.

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. We make available our code of business conduct and ethics free of charge through our website, which is located at [www.skyworksinc.com](http://www.skyworksinc.com). We intend to disclose any amendments to, or waivers from, our code of business conduct and ethics that are required to be publicly disclosed pursuant to rules of the SEC and the Nasdaq Global Select Market by posting any such amendment or waivers on our website and disclosing any such waivers in a Form 8-K filed with the SEC.

**ITEM 11. EXECUTIVE COMPENSATION.**

The information to be included under the caption “Information about Executive and Director Compensation” in our definitive proxy statement for the 2019 Annual Meeting of Stockholders is incorporated herein by reference.

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

The information to be included under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” in our definitive proxy statement for the 2019 Annual Meeting of Stockholders is incorporated herein by reference.

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

The information to be included under the captions “Certain Relationships and Related Transactions” and “Corporate Governance—Director Independence” in our definitive proxy statement for the 2019 Annual Meeting of Stockholders is incorporated herein by reference.

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

The information to be included under the caption “Ratification of Independent Registered Public Accounting Firm—Audit Fees” in our definitive proxy statement for the 2019 Annual Meeting of Stockholders is incorporated herein by reference.

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.**

(a) The following are filed as part of this Annual Report on Form 10-K:

	Page number in this report
1. Index to Financial Statements	
Report of Independent Registered Public Accounting Firm	Page <a href="#">34</a>
Consolidated Statements of Operations for the three years ended September 28, 2018	Page <a href="#">36</a>
Consolidated Statements of Comprehensive Income for the three years ended September 28, 2018	Page <a href="#">38</a>
Consolidated Balance Sheets at September 28, 2018, and September 29, 2017	Page <a href="#">38</a>
Consolidated Statements of Cash Flows for the three years ended September 28, 2018	Page <a href="#">39</a>
Consolidated Statements of Stockholders' Equity for the three years ended September 28, 2018	Page <a href="#">40</a>
Notes to Consolidated Financial Statements	Pages <a href="#">41</a> through <a href="#">62</a>

2. The schedule listed below is filed as part of this Annual Report on Form 10-K:  
All required schedule information is included in the Notes to Consolidated Financial Statements or is omitted because it is either not required or not applicable.
3. The Exhibits listed in the Exhibit Index immediately following Item 16 are filed as a part of this Annual Report on Form 10-K.

(b) Exhibits

The exhibits required by Item 601 of Regulation S-K are filed herewith and incorporated by reference herein. The response to this portion of Item 15 is submitted under Item 15 (a) (3).

**ITEM 16. FORM 10-K SUMMARY.**

None

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Form	Incorporated by Reference			Filed Herewith
			File No.	Exhibit	Filing Date	
2.1	<a href="#">Memorandum of Understanding dated as of April 28, 2014, by and between the Company and Panasonic Corporation, acting through Automotive &amp; Industrial Systems Company</a>	10-Q	001-05560	2.1	7/30/2014	
2.2	<a href="#">Stock Purchase Agreement dated as of July 2, 2014, by and among the Company, Skyworks Luxembourg S.A.R.L., Panasonic Corporation, acting through Automotive &amp; Industrial Systems Company, Panasonic Asia Pacific Pte., Ltd. Skyworks Panasonic Filter Solutions Japan Co., Ltd. and Skyworks Panasonic Filter Solutions Singapore Pte. Ltd.</a>	10-K	001-05560	2.5	11/25/2014	
2.3	<a href="#">Agreement and Plan of Merger dated as of August 3, 2018, by and among the Company, Avnera Corporation, AI Acquisition Corp., and Shareholder Representative Services LLC, solely in its capacity as the representative and agent of the Equityholders</a>					X
3.1	<a href="#">Restated Certificate of Incorporation, as Amended</a>	10-Q	001-05560	3.1	8/3/2016	
3.2	<a href="#">Third Amended and Restated By-laws, as Amended</a>	10-Q	001-05560	3.1	2/5/2018	
4.1	<a href="#">Specimen Certificate of Common Stock</a>	S-3	333-92394	4	7/15/2002	
10.1*	<a href="#">Alpha Industries Executive Compensation Plan dated January 1, 1995, and Trust for the Alpha Industries Executive Compensation Plan dated January 3, 1995</a>	10-K	001-05560	10.D	12/14/2005	
10.2*	<a href="#">Skyworks Solutions, Inc. 1999 Employee Long-Term Incentive Plan</a>	10-K	001-05560	10.L	12/23/2002	
10.3*	<a href="#">Skyworks Solutions, Inc. 2002 Employee Stock Purchase Plan</a>	10-Q	001-05560	10.D	1/31/2013	
10.4*	<a href="#">Skyworks Solutions, Inc. Non-Qualified Employee Stock Purchase Plan</a>	10-Q	001-05560	10.E	1/31/2013	
10.5*	<a href="#">Skyworks Solutions, Inc. Amended and Restated 2005 Long-Term Incentive Plan</a>	8-K	001-05560	10.1	5/13/2013	
10.6*	<a href="#">Form of Nonstatutory Stock Option Agreement under the Company's 2005 Long-Term Incentive Plan</a>	10-Q	001-05560	10.B	1/31/2013	
10.7*	<a href="#">Form of Performance Share Agreement under the Company's 2005 Long-Term Incentive Plan</a>	10-Q	001-05560	10.C	1/31/2013	
10.8*	<a href="#">Form of Restricted Stock Unit Agreement under the Company's 2005 Long-Term Incentive Plan</a>	8-K	001-05560	10.1	5/9/2014	
10.9*	<a href="#">Skyworks Solutions, Inc. Amended and Restated 2008 Director Long-Term Incentive Plan, as Amended</a>	10-Q	001-05560	10.1	5/4/2018	
10.10*	<a href="#">Form of Restricted Stock Agreement under the Company's 2008 Director Long-Term Incentive Plan</a>	10-Q	001-05560	10.NN	5/7/2008	
10.11*	<a href="#">Form of Nonstatutory Stock Option Agreement under the Company's 2008 Director Long-Term Incentive Plan</a>	10-Q	001-05560	10.OO	5/7/2008	

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Exhibit Number	Exhibit Description	Form	Incorporated by Reference			Filed Herewith
			File No.	Exhibit	Filing Date	
10.12*	<a href="#">Form of Restricted Stock Unit Agreement under the Company's 2008 Director Long-Term Incentive Plan</a>	10-Q	001-05560	10.2	5/4/2016	
10.13*	<a href="#">Skyworks Solutions, Inc. 2015 Long-Term Incentive Plan</a>	10-Q	001-05560	10.1	8/5/2015	
10.14*	<a href="#">Form of Nonstatutory Stock Option Agreement under the Company's 2015 Long-Term Incentive Plan</a>	10-Q	001-05560	10.2	8/5/2015	
10.15*	<a href="#">Form of Performance Share Agreement under the Company's 2015 Long-Term Incentive Plan</a>	10-Q	001-05560	10.3	8/5/2015	
10.16*	<a href="#">Form of Restricted Stock Unit Agreement under the Company's 2015 Long-Term Incentive Plan</a>	10-Q	001-05560	10.4	8/5/2015	
10.17*	<a href="#">Advanced Analogic Technologies Incorporated 2005 Equity Incentive Plan</a>	10-K	001-05560	10.DD	11/21/2012	
10.18*	<a href="#">Fiscal Year 2018 Executive Incentive Plan, as Amended</a>	10-Q	001-05560	10.2	2/5/2018	
10.19*	<a href="#">Skyworks Solutions, Inc. Cash Compensation Plan for Directors</a>	10-Q	001-05560	10.1	7/20/2018	
10.20*	<a href="#">Second Amended and Restated Change of Control / Severance Agreement, dated May 11, 2016, between the Company and David Aldrich</a>	10-Q	001-05560	10.1	8/3/2016	
10.21*	<a href="#">Amended and Restated Change in Control / Severance Agreement, dated May 11, 2016, between the Company and Liam Griffin</a>	10-Q	001-05560	10.2	8/3/2016	
10.22*	<a href="#">Change in Control / Severance Agreement, dated December 16, 2014, between the Company and Peter Gammel</a>	10-K	001-05560	10.31	11/24/2015	
10.23*	<a href="#">Change in Control / Severance Agreement, dated August 29, 2016, between the Company and Kris Sennesael</a>	10-K	001-05560	10.32	11/22/2016	
10.24*	<a href="#">Change in Control / Severance Agreement, dated November 10, 2016, between the Company and Robert J. Terry</a>	10-Q	001-05560	10.2	2/7/2017	
10.25*	<a href="#">Change in Control / Severance Agreement, dated November 9, 2016, between the Company and Carlos S. Bori</a>	10-K	001-05560	10.27	11/13/2017	
10.26*	<a href="#">International Assignment Agreement, dated September 13, 2017, between the Company and Peter L. Gammel</a>	10-K	001-05560	10.28	11/13/2017	
21	<a href="#">Subsidiaries of the Company</a>					X
23.1	<a href="#">Consent of KPMG LLP</a>					X
31.1	<a href="#">Certification of the Company's Chief Executive Officer pursuant to Securities and Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
31.2	<a href="#">Certification of the Company's Chief Financial Officer pursuant to Securities and Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
32.1	<a href="#">Certification of the Company's 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>					X

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Exhibit Number	Exhibit Description	Form	Incorporated by Reference			Filed Herewith
			File No.	Exhibit	Filing Date	
32.2	<a href="#">Certification of the Company's 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>					X
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					X

\* Indicates a management contract or compensatory plan or arrangement.

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**SIGNATURES**

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

Date: November 14, 2018

SKYWORKS SOLUTIONS, INC.

Registrant

By: /s/ Liam K. Griffin

Liam K. Griffin

President and Chief Executive Officer

Director

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Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on November 14, 2018.

<u>Signature and Title</u>	<u>Signature and Title</u>
<u>/s/ Liam K. Griffin</u> Liam K. Griffin Chief Executive Officer President and Director (principal executive officer)	<u>/s/ David J. Aldrich</u> David J. Aldrich Chairman of the Board
<u>/s/ Kris Sennesael</u> Kris Sennesael Senior Vice President and Chief Financial Officer (principal accounting and financial officer)	<u>/s/ Kevin L. Beebe</u> Kevin L. Beebe Director
	<u>/s/Timothy R. Furey</u> Timothy R. Furey Director
	<u>/s/ Balakrishnan S. Iyer</u> Balakrishnan S. Iyer Director
	<u>/s/ Christine King</u> Christine King Director
	<u>/s/ David P. McGlade</u> David P. McGlade Director
	<u>/s/ David J. McLachlan</u> David J. McLachlan Director
	<u>/s/ Robert A. Schriesheim</u> Robert A. Schriesheim Director
	<u>/s/ Kimberly S. Stevenson</u> Kimberly S. Stevenson Director

**AGREEMENT AND PLAN OF MERGER**

**By and Among**

**AVNERA CORPORATION**

**AI ACQUISITION CORP.**

**SKYWORKS SOLUTIONS, INC.**

**AND**

**SHAREHOLDER REPRESENTATIVE SERVICES LLC,  
AS AGENT OF THE EQUITYHOLDERS**

**Dated as of August 3, 2018**



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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the “*Agreement*”) is made as of August 3, 2018 (the “*Agreement Date*”) by and among Skyworks Solutions, Inc., a Delaware corporation (“*Purchaser*”), AI Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of Purchaser (“*Merger Sub*”), Avnera Corporation, a Delaware corporation (the “*Company*”), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact (“*Agent*”) of the Equityholders (as defined below).

**WHEREAS**, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth herein (the “*Merger*”);

**WHEREAS**, in the Merger, upon the terms and subject to the conditions of this Agreement, each share of Capital Stock will be converted into the right to receive the Merger Consideration as set forth herein;

**WHEREAS**, the Board of Directors of the Company (the “*Company Board*”) has (a) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement with Purchaser and Merger Sub, (b) approved the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated by the Transaction Agreements, including the Merger (collectively, the “*Transaction*”), and (c) resolved, subject to the terms and conditions set forth in this Agreement, to recommend adoption of this Agreement by the stockholders of the Company; in each case, in accordance with the Delaware General Corporation Law (“*Delaware Law*”);

**WHEREAS**, the respective boards of directors of Purchaser and Merger Sub have each (a) determined that it is in the best interests of Purchaser and Merger Sub, and their respective stockholders, and declared it advisable, to enter into this Agreement, and (b) approved the execution, delivery, and performance of this Agreement and the consummation of the Transaction, in each case, in accordance with Delaware Law;

**WHEREAS**, concurrent with the execution of this Agreement and as a condition and inducement to Purchaser’s willingness to enter into this Agreement, each of Manpreet Khaira, Raj Garg and Chris O’Connor have executed and delivered to Purchaser a Non-Competition, Non-Solicitation and Confidentiality Agreement (the “*Restrictive Covenant Agreements*”), which such Restrictive Covenant Agreements will become effective at the Effective Time; and

**WHEREAS**, the parties desire to make certain representations, warranties, covenants, and agreements in connection with the Transaction and also to prescribe certain conditions to the Transaction.

**NOW, THEREFORE**, in consideration of the terms contained herein and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## 1. The Merger.

1.1 The Merger. At the Effective Time and subject to and upon the terms and conditions of this Agreement, the Certificate of Merger, substantially in the form attached hereto as Exhibit B (the “*Certificate of Merger*”), and Delaware Law, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation and as a wholly-owned subsidiary of Purchaser. The Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the “*Surviving Corporation*.”

1.2 Closing; Effective Time. The closing of the Transaction (the “*Closing*”) shall take place remotely via the exchange of documents and signatures, on a date and at a time to be agreed upon by Purchaser and the Company, which date shall be no later than the second Business Day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Section 7 (other than those conditions that by their terms are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing). In connection with the Closing, the parties shall cause the Merger to become effective by filing the Certificate of Merger with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of Delaware Law (the time of such filing becoming effective being the “*Effective Time*” and the date on which such Effective Time occurs being the “*Closing Date*”).

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at and after the Effective Time, all the property, rights, privileges, franchises, licenses, authority and powers of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

### 1.4 Certificate of Incorporation; Bylaws.

(a) At the Effective Time, the Certificate of Incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as the Certificate of Incorporation of Merger Sub read immediately prior to the Effective Time, except (i) the Certificate of Incorporation of the Surviving Corporation shall be amended to read as follows: “The name of the corporation is Avnera Corporation” and (ii) any other changes necessary to reflect the change referenced in clause (i) of this sentence shall be made.

(b) At the Effective Time, the Bylaws of the Surviving Corporation shall be amended and restated in their entirety to read as the Bylaws of Merger Sub read immediately prior to the Effective Time, except that the name of the Surviving Corporation shall be Avnera Corporation.

1.5 Directors and Officers. At the Effective Time, the directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers, respectively, of the Surviving Corporation, to serve until their respective successors are duly elected or appointed and qualified.

1.6 Effect on Equity Interests. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the Equityholders of any of the following securities, all of the outstanding Equity Interests of the Company, upon the terms and subject to the conditions set forth in this Agreement, will be cancelled and extinguished and converted automatically into the right to receive the Merger Consideration as set forth below, payable in each case without interest, consistent with the procedures set forth in Section 1.9:

(a) Common Stock. Each share of Common Stock issued and outstanding as of the Effective Time (other than any share of Common Stock to be cancelled pursuant to Section 1.6(b), as set forth in Section 1.6(g) and any Dissenting Shares) shall be converted and exchanged into the right to receive an amount in cash equal to (i) the Per Common Share Consideration, (ii) the Per Common Share Earnout Amount when the Earnout Amount (if any) becomes due and payable in accordance with this Agreement, (iii) the portions of the Escrow Fund allocable to such share of Common Stock, if any, when distributed to the Equityholders in accordance with this Agreement, and (iv) the portions of the Expense Fund allocable to such share of Common Stock, if any, when distributed to the Equityholders in accordance with this Agreement.

(b) Cancellation of Treasury Stock. All shares of Capital Stock that are held by the Company as treasury stock shall be canceled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Vested Options. Each outstanding Vested Option will be canceled and the holder thereof (a “*Vested Optionholder*”) will be entitled to receive an amount in cash (the aggregate amount thereof, the “*Option Merger Consideration*”), equal to

(i) (A) the excess of the Per Common Share Consideration over the per share exercise price of the Vested Option multiplied by (B) the number of shares of Common Stock subject to such Vested Option (such amount, the “*Closing Date Option Merger Consideration*”);

(ii) (A) the Per Common Share Earnout Amount when the Earnout Amount (if any) becomes due and payable in accordance with this Agreement multiplied by (B) the number of shares of Common Stock subject to such Vested Option;

(iii) the portions of the Escrow Fund allocable to the number of shares of Common Stock subject to such Vested Option, if any, when distributed to the Equityholders in accordance with this Agreement; and

(iv) the portions of the Expense Fund allocable to the number of shares of Common Stock subject to such Vested Option, if any, when distributed to the Equityholders in accordance with this Agreement.

For purposes of clarity, no payment shall be made with respect to any Vested Option cancelled pursuant hereto with a per share exercise price that equals or exceeds the amount of the Option Merger Consideration. All payments of Option Merger Consideration to Vested Optionholders shall be made on the same schedule and on the same terms and conditions as apply to the Stockholders generally and in all events in accordance with the requirements set forth in Treasury Regulation Section 1.409A-3(i)(5)(iv). The Surviving Corporation shall pay the Option Merger Consideration to which a Vested Optionholder who is an employee or former employee of the Company is entitled and for which Tax withholding is required through the employee payroll system of the Surviving Corporation no later than its next regularly scheduled payroll date occurring at least five Business Days following the date on which such Option Merger Consideration becomes payable. Each payment of Option Merger Consideration to a Vested Optionholder for which Tax withholding is not required shall be paid to such holder in cash by the Surviving Corporation at the same time payment is made to Vested Optionholders for whom Tax withholding is required. In connection therewith, the Company shall provide any notices to Vested Optionholders as may be required by the applicable Company Stock Incentive Plan.

(d) Unvested Options.

(i) Effective as of the Effective Time, Purchaser shall assume each Unvested Option (each an “*Assumed Option*”), and each such Assumed Option shall become an option to acquire, on the same terms and conditions as were applicable under such Assumed Option immediately prior to the Effective Time, a number of shares of Purchaser common stock (rounded down to the nearest whole share) determined by multiplying (x) the number of shares of Company Common Stock subject to the Unvested Option immediately prior to the Effective Time by (y) the quotient obtained from dividing the amount payable for each share of Common Stock pursuant to Section 1.6(a) (as reasonably determined by the Board of Directors of the Company and Purchaser) by the Closing Price (the “*Unvested Option Exchange Ratio*”) (rounded down to the nearest whole number), at a price per share of Purchaser common stock (rounded up to the nearest whole cent) equal to the quotient obtained from dividing (A) the exercise price per share of the shares of Company Common Stock purchasable pursuant to the assumed Unvested Option immediately prior to the Effective Time by (B) the Unvested Option Exchange Ratio; provided, however, that the exercise price and the number of shares of Purchaser common stock subject to each Assumed Option shall be determined in a manner consistent with the requirements of Section 409A of the Code and provided further that in the case of each Unvested Option that qualifies immediately prior to the Effective Time as an “incentive stock option” within the meaning of Section 422 of the Code, the exercise price and the number of shares of Purchaser common stock subject to the applicable Assumed Option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code. In connection therewith, the Company shall provide any notices to holders of Unvested Options as may be required by the applicable Company Stock Incentive Plan. From and after the Effective Time, each Unvested Option shall no longer represent the right to acquire Company Common Stock.

(ii) Purchaser shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Purchaser common stock for delivery upon exercise of the Assumed Options. As of no later than three Business Days after the Effective Time, Purchaser shall maintain a registration statement on Form S-8 (or any successor form) or another appropriate form with respect to the shares of Purchaser common stock subject to such Assumed Options, and Purchaser thereafter shall use commercially reasonable efforts to maintain the effectiveness of such registration statement for as long as any Assumed Options remain outstanding.

(iii) To the extent applicable, prior to the Effective Time, Purchaser shall take all such steps as may be required to approve, for purposes of Section 16(b) of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), the acquisition of Assumed Options in the Merger by any applicable individuals and to cause such acquisitions to be exempt under Rule 16b-3 promulgated under the Exchange Act.

(iv) Prior to the Effective Time, the Company shall take all necessary or appropriate action to effectuate the assumption and conversion of the Unvested Options by Purchaser in accordance with the terms of this Section 1.6(d) (including, without limitation, obtaining any necessary consents) and the assignment to Purchaser of the authorities and responsibilities of the Company Board or any committee thereof with respect to the Assumed Options.

(e) Warrants. Each unexpired, unexercised and outstanding Warrant will be canceled and the holder thereof (a “*Warrantholder*”) will be entitled to receive an amount in cash, equal to the Warrant Consideration for each share of Common Stock (after giving effect to the conversion of all shares

of Preferred Stock to Common Stock contemplated by Section 4.14) that would have been issued upon exercise of such Warrant had it been exercised immediately prior to the Effective Time. The Company will cause each Warrant to be cancelled and terminated as of the Effective Time, such that no holder of any Warrant will have rights thereafter with respect to such Warrant except as expressly provided in this Section 1.6(e).

(f) Capital Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding as of the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each stock certificate, if any, of Merger Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(g) Restricted Stock. Each outstanding share of Restricted Stock that does not vest as a result of the Merger (“*Unvested Stock*”) shall be cancelled at the Effective Time and converted into the right to receive an amount in cash (without interest and subject to deduction for any required withholding Tax as contemplated by Section 1.13) per share from Purchaser equal to the consideration paid to other holders of Common Stock pursuant to Section 1.6(a), with the payment of such consideration subject to the same vesting schedule (and subject to continued employment through the applicable vesting dates) as the corresponding Unvested Stock, provided that any consideration payable to such holders after any applicable vesting date (e.g. distributions of the Earnout Amount, the Escrow Fund, and the Expense Fund) shall be paid at the same time such consideration is paid to the other Equityholders. The cash amounts described in the immediately preceding sentence shall be subject to the same terms and conditions (including any acceleration of vesting properties) as applied to the corresponding Unvested Stock converted pursuant to this Section 1.6(g) immediately prior to the Effective Time. Prior to the Effective Time, the Company shall take all necessary or appropriate action (including obtaining any necessary consents) to effectuate the transactions contemplated by this Section 1.6(g). Notwithstanding anything in this Agreement to the contrary, payments pursuant to this Section 1.6(g) to holders of Unvested Stock who did not timely file Section 83(b) elections under the Code with respect to such Unvested Stock shall be paid by the Surviving Corporation through the employee payroll system rather than through the Paying Agent.

1.7 Closing Consideration. Subject to Section 1.11, the aggregate consideration payable by Purchaser at the Closing (the “*Closing Consideration*”) shall consist of an amount in cash equal to (i) the Estimated Merger Consideration, minus (ii) \$5,025,000 (the “*Escrow Fund*”), which shall consist of (A) an amount equal to \$3,000,000 (the “*Adjustment Escrow Fund*”) and (B) an amount equal to \$2,025,000 (the “*Indemnity Escrow Fund*”), and shall be held in escrow and released by Wilmington Trust, National Association (the “*Escrow Agent*”) pursuant to the terms of this Agreement and the Escrow Agreement, minus (iii) \$200,000 (the “*Expense Fund*”). For the avoidance of doubt, the amount in cash actually payable by Purchaser at the Closing will not include the Aggregate Exercise Price included in the definition of Merger Consideration.

1.8 Payment Schedule. Concurrently with the delivery of the Closing Certificate in accordance with Section 1.10, the Company shall deliver to Purchaser and the Paying Agent a funds flow statement in a form mutually acceptable to the Parties (the “*Payment Schedule*”) setting forth the following:

(a) Equityholder Payments. With respect to each Equityholder, (i) such Person’s name and notice address currently on record with the Company; (ii) the total number of shares of Common Stock (after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by Section 4.14) held by such Equityholder and the respective Certificate number(s) evidencing such shares; (iii) the total number of shares of Preferred Stock held prior to the conversion of all shares of



Preferred Stock to Common Stock contemplated by Section 4.14 and the respective Certificate number(s) evidencing such shares (it being agreed that Common Stock certificates evidencing the conversion contemplated by Section 4.14 will not be issued prior to the exchange of Certificates with the Paying Agent in accordance with Section 1.9); (iv) with respect to each holder of Options, whether such holder is or was at the time such Options were granted an employee of the Company, the number of shares of Common Stock subject to each Option and the exercise price of such Option; (v) with respect to each holder of Warrants, the number of shares of Common Stock subject to each Warrant and the exercise price of such Warrant (after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by Section 4.14); (vi) the total amount of cash payable or issuable to such Person at the Closing pursuant to Section 1.6 before any Tax withholdings in respect to such Person's (A) shares of Common Stock (after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by Section 4.14), (B) Options and (C) Warrants; and (vii) such Person's Percentage.

(b) Other Payments. With respect to each other Person to whom any Company Transaction Expense or Closing Indebtedness is payable or due at Closing, the amount payable to such payee, along with payment instructions for each such payee.

#### 1.9 Payment Procedures.

(a) Paying Agent. The Company and Purchaser have designated Wilmington Trust, National Association to act as the paying agent (the "***Paying Agent***") for the purpose of exchanging certificates representing the shares of Capital Stock (the "***Certificates***") for each Stockholder's share of the Merger Consideration and for exchanging Warrants for each Warrantholder's share of the Merger Consideration, to be allocated among the Stockholders and Warrantholders in accordance with the Payment Schedule delivered to Purchaser by the Company pursuant to Section 1.8.

(b) Delivery of Transmittal Letters. Promptly following the Closing, the Company shall cause the Paying Agent to distribute a Transmittal Letter substantially in the form attached as Exhibit C (each, a "***Transmittal Letter***") to each Stockholder and Warrantholder at the address set forth in the Payment Schedule advising such holder of the effectiveness of the Merger and the procedures for surrendering to the Paying Agent such Stockholder's Certificates and such Warrantholder's Warrants, as applicable, and a duly completed and validly executed Transmittal Letter (with all other documentation required to be delivered pursuant to the Transmittal Letter) in exchange for the portion of the Merger Consideration payable to such Stockholder or Warrantholder pursuant to this Agreement and as set forth on the Payment Schedule.

(c) Payments to Equityholders. Following the Closing, the Paying Agent shall within five Business Days of receipt of all required documentation from an Equityholder, deliver to such Equityholder, in accordance with the terms of such Equityholder's Transmittal Letter, (i) the aggregate share of the Closing Consideration payable to such Equityholder pursuant to this Agreement and as set forth on the Payment Schedule and (ii) within five Business Days of the receipt by Paying Agent of any additional amounts to be distributed to the Equityholders (including any Earnout Amount or portions of the Escrow Fund) pursuant to Section 1.11(e), deliver to such Equityholder such Equityholder's Percentage of any such distribution as set forth on the Payment Schedule; provided, however, that to the extent that all such required documentation is provided to the Paying Agent at least three Business Days before the Closing Date by an Equityholder, then Purchaser shall cause the Paying Agent to pay the aggregate share of the Closing Consideration payable to such Equityholder in exchange for such holder's shares of Capital Stock (or Warrants in the case of a Warrantholder) within one Business Day following the Closing Date. In the event of a conflict between the Payment Schedule and the provisions of this Agreement, the Payment Schedule (as may be

adjusted upon the mutual agreement of Agent and Purchaser to correct any manifest errors) shall control. Purchaser, Merger Sub, the Surviving Corporation, Agent and the Paying Agent shall be entitled to rely on the Payment Schedule as conclusive evidence of amounts payable to the Equityholders pursuant to this Agreement.

(d) Transfer of Ownership. If payment is to be made to a Person other than the Person in whose name the surrendered Certificate is registered on the stock transfer books of the Company, it shall be a condition of payment that the Certificate so surrendered shall be endorsed in blank or to the Paying Agent or otherwise be in proper form for transfer and that the Person requesting such payment shall have paid all transfer and other Taxes required by reason of such payment to a Person other than the registered holder of the Certificate surrendered or shall have established to the reasonable satisfaction of the Paying Agent that such Taxes either have been paid or are not applicable.

(e) Surrender of Certificates and Warrants. Until properly surrendered or canceled, each Certificate and Warrant shall be deemed for all purposes to evidence only the right to receive the portion of the Closing Consideration payable in exchange for shares of Capital Stock or Warrant held by such Equityholder in accordance with the Payment Schedule and this Agreement. No Stockholder or Warrantholder shall be entitled to receive any portion of the Closing Consideration to which such Stockholder or Warrantholder would otherwise be entitled until such Stockholder's or Warrantholder's respective Certificates or Warrants (or valid affidavits of loss with respect thereto) are properly delivered and surrendered in accordance with this Agreement.

(f) Lost, Stolen or Destroyed Certificates or Warrants. In the event any Certificate or Warrant shall have been lost, stolen or destroyed, the Paying Agent shall pay as soon as practicable (and in any event within five Business Days) with respect to such lost, stolen or destroyed Certificates or Warrants, upon the making of an affidavit of that fact by the holder thereof, the amount payable with respect to such Certificate or Warrant as set forth on the Payment Schedule; provided, that Purchaser may, in its reasonable discretion or as required by standard policies of the Paying Agent and as a condition precedent to the payment of such consideration, require the owner of such lost, stolen or destroyed Certificate to deliver a customary agreement of indemnification (but not a bond) in form reasonably satisfactory to Purchaser with respect to any claim that may be made against Purchaser, the Surviving Corporation or the Paying Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

(g) Transfers of Ownership. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers of Capital Stock or Warrants thereafter on the records of the Company or the Surviving Corporation.

(h) Escheat. At any time following the 12 month anniversary of the Effective Time, the Surviving Corporation, at its option, will be entitled (but in no way obligated) to cause the Paying Agent to deliver to it any Merger Consideration which had been made available to the Paying Agent and not disbursed to Equityholders, and, thereafter, in the event of such delivery to the Surviving Corporation, such holders will be entitled to look to the Surviving Corporation (subject to abandoned property, escheat and other similar Laws) only as general creditors thereof with respect to any Merger Consideration that may be payable to them. Notwithstanding anything to the contrary in this Agreement, none of Purchaser, the Surviving Corporation, the Escrow Agent, the Paying Agent, Agent nor any Equityholder shall be liable to any Person for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(i) Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, shares of Capital Stock (other than any such shares to be canceled pursuant to Section 1.6(b)) outstanding immediately prior to the Effective Time and held by a Stockholder who has not voted in favor of the Merger or consented thereto in writing and who has the right to demand appraisal for such shares in accordance with Section 262 of Delaware Law (any of such shares, “**Dissenting Shares**”), shall not be converted into or be exchangeable for the right to receive a portion of the Merger Consideration unless and until such holder fails to perfect or withdraws or otherwise loses his, her or its right to appraisal and payment under Delaware Law. If, after the Effective Time, any such Stockholder fails to perfect or withdraws or loses his, her or its right to appraisal, such Dissenting Shares shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the portion of the Merger Consideration to which such Stockholder is entitled, without interest. Prior to the Effective Time, the Company shall (a) give Purchaser reasonably prompt notice of any demands received by the Company for appraisal of Capital Stock pursuant to Delaware Law, (b) give Purchaser the opportunity to participate in all negotiations and proceedings with respect to such demands and (c) will not, except with the prior written consent of Purchaser (which such consent will not be unreasonably withheld), make any payment with respect to any demands for appraisal or offer to settle or settled any such demands. Any portion of the Merger Consideration made available to the Paying Agent in respect of any Dissenting Shares shall be, upon Purchaser’s request, returned to Purchaser by the Paying Agent to the extent that Purchaser makes payment to the holder of such Dissenting Shares directly in exchange for those Dissenting Shares.

(j) Interest. Any interest that accrues in the Escrow Fund shall be paid out in accordance with the terms of the Escrow Agreement. Except as set forth in the preceding sentence, no other interest shall be payable hereunder with respect to the Merger Consideration.

1.10 Cash, Debt and Working Capital Estimates. At least three Business Days prior to the Closing Date, the Company shall estimate in good faith the amount of the Closing Cash, Closing Indebtedness, Closing Working Capital and Company Transaction Expenses, respectively, and shall deliver to Purchaser a certificate of the Company’s Chief Executive Officer (the “**Closing Certificate**”) setting forth such estimates, together with a calculation of the Estimated Merger Consideration. The Closing Certificate shall be accompanied by executed payoff letters and lien releases (including lien releases for the two historical security interests identified on Schedule 1.10) in a form reasonably satisfactory to Purchaser for each holder of Estimated Closing Indebtedness (the “**Payoff Letters**”). As used herein, “**Estimated Closing Cash**,” “**Estimated Closing Indebtedness**,” “**Estimated Closing Working Capital**” and “**Estimated Company Transaction Expenses**” mean the estimates of the Closing Cash, Closing Indebtedness, Closing Working Capital and Company Transaction Expenses, respectively, set forth in the Closing Certificate, “**Estimated Merger Consideration**” means an amount equal to the Merger Consideration payable at the Closing calculated as set forth herein, assuming for purposes of such calculation that the Closing Cash is equal to the Estimated Closing Cash, that the Closing Indebtedness is equal to the Estimated Closing Indebtedness, that the Working Capital Adjustment Amount is equal to the Estimated Working Capital Adjustment Amount and that the Company Transaction Expenses are equal to the Estimated Company Transaction Expenses.

1.11 Post-Closing Adjustments.

(a) Delivery and Review of Preliminary Adjustment Statement. Within sixty days after the Closing Date, Purchaser shall cause the Surviving Corporation to prepare and deliver to Agent an adjustment statement of the Company, setting forth Purchaser’s determination of the amount of Closing Cash, Closing Indebtedness, Closing Working Capital and Company Transaction Expenses, respectively, and, based on such determination, Purchaser’s written calculation of the Merger Consideration to be paid at the Closing (the “**Closing Date Merger Consideration**”), and the adjustment necessary, if any, to reconcile

the Estimated Merger Consideration to the Closing Date Merger Consideration and a description of the underlying basis for any such adjustment (the “**Preliminary Adjustment Statement**”). Following the delivery of the Preliminary Adjustment Statement, Purchaser shall, and shall cause the Surviving Corporation to, provide Agent with reasonable access during normal business hours to the personnel, books and records of the Surviving Corporation and the work papers prepared by Purchaser’s independent accountants that pertain to the preparation of the Preliminary Adjustment Statement (subject to compliance with Purchaser’s independent accountant’s customary procedures for release), each to the extent related to Agent’s evaluation of the Preliminary Adjustment Statement. Purchaser and the Surviving Corporation shall reasonably cooperate with Agent in such examination. The Preliminary Adjustment Statement, as finally modified pursuant to clauses (b) through (d) of this Section 1.11, is referred to herein as the “**Final Adjustment Statement**.” All disputes with respect to the Preliminary Adjustment Statement will be resolved in accordance with clauses (b) through (d) of this Section 1.11.

(b) Dispute Notice. If, within thirty days following delivery of the Preliminary Adjustment Statement to Agent in accordance with Section 1.11(a), Agent has not delivered to Purchaser a written objection notice stating that Agent does not agree with the calculation of the Preliminary Adjustment Statement, then the Preliminary Adjustment Statement will become the Final Adjustment Statement and shall be deemed final, conclusive and binding on the parties. If Agent disputes the calculation of the Preliminary Adjustment Statement, Agent will (i) deliver to Purchaser within thirty days of its receipt of the Preliminary Adjustment Statement, a reasonably detailed objection notice (the “**Dispute Notice**”) specifying the disputed items in the Preliminary Adjustment Statement (the “**Disputed Items**”), and (ii) will include in such notice any proposed adjustments to the Preliminary Adjustment Statement and the basis for such adjustment. If the Dispute Notice is delivered in accordance with this Section 1.11(b), then any amount set forth in the Preliminary Adjustment Statement as to which Agent has not objected to in the Dispute Notice will be deemed to be accepted and will become part of the Final Adjustment Statement.

(c) Meeting to Resolve Disputed Items. If the Dispute Notice is timely provided in accordance with Section 1.11(b), Purchaser and Agent will use commercially reasonable efforts for a period of thirty days after Purchaser’s receipt of the notice of Disputed Items (or such longer period as they may mutually agree in writing) to resolve the Disputed Items (the “**Consultation Period**”). If Purchaser and Agent reach agreement in writing on all of the Disputed Items within the Consultation Period, the Final Adjustment Statement will be the Preliminary Adjustment Statement modified to reflect the adjustments accepted pursuant to Section 1.11(b) and those otherwise agreed to in writing by the parties pursuant to this Section 1.11(c).

(d) Resolution by Independent Accounting Firm. If Purchaser and Agent do not reach final resolution of all Disputed Items within the Consultation Period, then any remaining Disputed Items will be submitted for resolution to the Independent Accounting Firm, who shall determine all unresolved Disputed Items as follows:

(i) Purchaser and Agent agree to jointly engage the Independent Accounting Firm within fifteen days following the end of the Consultation Period.

(ii) No more than five days following the date the Independent Accounting Firm is engaged, Purchaser will deliver to the Independent Accounting Firm a copy of this Agreement, the Financial Statements, the Preliminary Adjustment Statement, the Dispute Notice and any other relevant correspondence between the parties.

(iii) No more than fifteen days following the date the Independent Accounting Firm is engaged, Purchaser and Agent will also each provide to the Independent Accounting Firm (A) position papers outlining such party's respective arguments and supporting documentation for such party's position, provided that Purchaser's positions, arguments and computations must match those set forth in the Preliminary Adjustment Statement or otherwise agreed to with Agent pursuant to Section 1.11(c) (and the Independent Accounting Firm will not consider any that do not so match) and Agent's positions, arguments and computations must match those set forth in the Dispute Notice or otherwise agreed to with Purchaser pursuant to Section 1.11(c) (and the Independent Accounting Firm will not consider any that do not so match), and (B) reasonable access to the books and records of the Surviving Corporation and the work papers or other schedules prepared by Purchaser or Agent's accountants (subject to compliance with such party's accountants' customary procedures for release) relating to the preparation of the Preliminary Adjustment Statement and the Dispute Notice.

(iv) Each of Purchaser and Agent will be afforded an opportunity to discuss the Disputed Items with the Independent Accounting Firm at such hearing as the Independent Accounting Firm may request or permit (which such hearing shall be held in Los Angeles, California); provided, that (A) each party will provide the other party with a copy of all materials provided to, and written communications with, the Independent Accounting Firm and (B) no party (or any of its representatives) will engage in any ex parte communication with the Independent Accounting Firm at any time with respect to the Disputed Items.

(v) The Independent Accounting Firm shall make its determination of the Disputed Items and calculation of the Closing Date Merger Consideration in accordance with this Agreement, and such calculation shall (except in the case of fraud or manifest error) be binding and conclusive on the parties and constitute an arbitral award that is final, binding and unappealable and upon which a judgment may be entered by a court having jurisdiction thereof. The Independent Accounting Firm's engagement will be limited to (A) reviewing the Preliminary Adjustment Statement as it pertains to the Disputed Items; (B) determining (1) whether Purchaser's proposed amount for each Disputed Item in the Preliminary Adjustment Statement or Agent's proposed adjustment to such Disputed Item in the Dispute Notice is calculated more nearly in accordance with the terms of this Agreement and (2) whether there were mathematical errors in the Preliminary Adjustment Statement; (C) preparing the Final Adjustment Statement, which will include those amounts in the Preliminary Adjustment Statement accepted by Agent pursuant to Section 1.11(b), those adjustments otherwise agreed to in writing by Purchaser and Agent pursuant to Section 1.11(c), and the amounts of the Disputed Items as determined by the Independent Accounting Firm in accordance with this Agreement; and (D) calculating the final adjustment amount, the Closing Date Merger Consideration and each of Purchaser and Agent's allocable portion of the Independent Accounting Firm's fees and expenses. The fees and expenses of the Independent Accounting Firm will be borne by Purchaser and Agent (on behalf of the Equityholders) in inverse proportion as they may prevail on matters resolved by the Independent Accounting Firm, which proportionate allocations will also be determined by the Independent Accounting Firm.

(vi) The parties will instruct the Independent Accounting Firm to (A) complete its preparation of the Final Adjustment Statement and calculation of the adjustment amount as promptly as practical and no more than thirty days after the position papers described in Section 1.11(d)(iii) are submitted to it and (B) deliver promptly thereafter a copy of the Final Adjustment Statement, its calculation of the final adjustment amount and the Closing Date Merger Consideration, and each of Purchaser and Agent's allocable portion of the Independent Accounting Firm's fees and

expenses to Purchaser and Agent, together with a report setting forth the resolution of each Disputed Item and the Independent Accounting Firm's determination with respect thereto.

(e) Adjustment of Closing Date Merger Consideration. If the Closing Date Merger Consideration, as finally determined in accordance with this Section 1.11, is greater than the Estimated Merger Consideration, then Purchaser shall, within five Business Days of such final determination, (i) pay to the Paying Agent for further distribution to the Stockholders and Warranholders the amount of such difference payable to the Stockholders and Warranholders by means of a wire transfer of immediately available funds and (ii) pay to the Surviving Corporation's payroll provider the amount payable to holders of Vested Options directly and instruct such payroll provider to deliver such payments to the holders of Vested Option in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder's Percentage as set forth on the Payment Schedule. If the Closing Date Merger Consideration, as finally determined, is less than the Estimated Merger Consideration, then Purchaser and Agent shall submit joint written instructions to the Escrow Agent, directing the Escrow Agent to disburse from the Adjustment Escrow Fund the amount of such difference to Purchaser. The Adjustment Escrow Fund shall be Purchaser's sole and exclusive recourse for any difference between the Closing Date Merger Consideration and the Estimated Merger Consideration and the Equityholders shall have no liability for such difference in excess of the Adjustment Escrow Fund. The amount of the Adjustment Escrow Fund that remains after payment to Purchaser of any difference shall be (i) paid to the Paying Agent for further distribution to the Stockholders and Warranholders by means of a wire transfer of immediately available funds and (ii) paid to the Surviving Corporation's payroll provider together with instructions to such payroll provider to deliver such payments to the holders of Vested Options in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder's Percentage as set forth on the Payment Schedule. Any payments required to be made under this Section 1.11(e) shall be payable no later than five Business Days after the final determination of such amounts (provided that payments to holders of Vested Options may be made at the next regularly scheduled payroll of the Surviving Corporation).

#### 1.12 Closing Deliveries.

(a) Company Deliveries. At the Closing, the Company shall deliver:

(i) To Purchaser, a certificate of the Secretary of the Company certifying that attached thereto are true and complete copies of (A) the Organizational Documents of the Company, (B) the resolutions of the Company Board approving the Transaction Agreements and the Transaction, and certifying that such resolutions were duly adopted, have not been amended or rescinded and are in full force and effect, (C) copies of forms of notices sent to the holders of each class of Preferred Stock and Common Stock in accordance with the Company's Organizational Documents and other Contracts governing the rights of the Equityholders, and (D) the written consent of the Company's Stockholders approving the Transaction Agreements and the Transaction in accordance with Law and the Organizational Documents of the Company (the "**Written Consent**") and certifying that such Written Consent was duly adopted, has not been amended or rescinded and is in full force and effect.

(ii) To Purchaser, a certificate of good standing as of a date within five Business Days prior to the Closing for the Company from the Secretary of State of the State of Delaware.

(iii) To Purchaser, a certificate conforming with the requirements of Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) certifying that shares of Capital Stock

of the Company do not constitute “United States real property interests” under Section 897(c) of the Code.

(iv) To Purchaser and the Escrow Agent, the Escrow Agreement, duly executed by Agent.

(v) To Purchaser and the Paying Agent, the Paying Agent Agreement, duly executed by Agent.

(vi) To Purchaser, the Payment Schedule in accordance with Section 1.8.

(vii) To Purchaser, the Closing Certificate, together with the Payoff Letters, in accordance with Section 1.10.

(viii) To Purchaser, the Officer’s Certificate in accordance with Section 7.2(c).

(ix) To Purchaser, copies of all consents or notifications set forth in Schedule 1.12(a)(ix) which will have been obtained or made at or prior to the Closing (the effectiveness of which can be contingent on the Closing).

(x) To Purchaser, resignations from all of the officers and directors of the Company, each of which resignations will be effective upon the Closing; provided that any such resignation shall not, as applicable, constitute a resignation of such officer’s or director’s employment with the Company.

(xi) To Purchaser, evidence that the D&O Tail Policy has been obtained.

(b) Purchaser Deliveries. At the Closing, Purchaser shall deliver:

(i) To the Company, a certificate of a duly authorized officer of Purchaser, dated as of the Closing Date, certifying that attached thereto is a true and complete copy of resolutions of the boards of directors of Purchaser and Merger Sub and the sole stockholder of Merger Sub, in each case authorizing the execution, delivery and performance of this Agreement and the consummation of the Transaction by Purchaser and Merger Sub, and certifying that such resolutions were duly adopted, have not been amended or rescinded and are in full force and effect.

(ii) To Agent and the Escrow Agent, the Escrow Agreement, duly executed by Purchaser and the Escrow Agent.

(iii) To Agent and the Paying Agent, the Paying Agent Agreement, duly executed by Purchaser and the Paying Agent.

(iv) To the Paying Agent for further distribution to the Stockholders and Warranholders, by wire transfer of immediately available funds, the Closing Consideration, less the Closing Date Option Merger Consideration.

(v) To each Person to whom any Company Transaction Expense or Closing Indebtedness is payable or due at Closing as set forth on the Payment Schedule, the amount

of the Company Transaction Expense and/or Company Indebtedness set forth thereon with respect to such Person, by wire transfer of immediately available funds.

(vi) To the Escrow Agent, the Escrow Fund, by wire transfer of immediately available funds.

(vii) To the Company, evidence reasonably satisfactory to the Company of the binding of the R&W Insurance Policy.

(viii) To Agent, the Expense Fund, by wire transfer of immediately available funds.

(ix) To the Company, for further distribution to the holders of Vested Options, by wire transfer of immediately available funds, the Closing Date Option Merger Consideration to be paid following the Closing within the time period specified in Section 1.6(c).

(x) To the Company, the officer's certificate in accordance with Section 7.3(c).

1.13 Required Withholding. Notwithstanding anything in this Agreement to the contrary, Purchaser, the Company, the Surviving Corporation, the Paying Agent and the Escrow Agent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement or the Escrow Agreement such amounts as are required to be deducted and withheld with respect to the making of such payments to such Person under the Code or under any other applicable Tax Law. To the extent that amounts are so withheld or deducted, such amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Person for which such withholding or deduction was made, and such amounts shall be delivered by Purchaser, the Company, the Surviving Corporation, the Paying Agent or the Escrow Agent, as appropriate, to the applicable Governmental Body.

#### 1.14 Earnout.

(a) Earnout Consideration. In the event Net Revenue is equal to or exceeds the Net Revenue Target, the Equityholders shall be entitled, in accordance with their respective Percentages, to receive an additional aggregate amount equal to the product of (i) three times (ii) the amount by which Net Revenue exceeds the Net Revenue Target (such product, the "**Earnout Amount**"); provided that, in no event shall the Earnout Amount exceed \$20,000,000.

(b) Determination of Net Revenue. "**Business Products**" shall mean the Surviving Corporation's products or Purchaser's or its direct or indirect subsidiaries' products which incorporate the Surviving Corporation's Intellectual Property Rights or Technology (including any derivative works thereof). "**Net Revenue**" shall mean the net revenue recognized by Purchaser or its direct or indirect subsidiaries during the twelve month period beginning on the first day of Purchaser's first full fiscal quarter that begins immediately following the Effective Time (the "**Earnout Period**") from the sale of Business Products (based on U.S. GAAP revenue recognition principles used by Purchaser applied in the same manner, and using the same assumptions, accounting policies and methodologies as are consistently applied in the preparation of the Purchaser's audited financial statements).

(c) Reporting. No later than the date that is sixty days after the end of the Earnout Period, Purchaser shall prepare and deliver to Agent a report detailing the calculation of Net Revenue and the resulting payment, if any, due pursuant to this Section 1.14 (the "**Earnout Calculation**"). For a



period of thirty days following delivery of the Earnout Calculation, Agent shall have the right, at Agent's (on behalf of the Equityholders) expense and upon prior notice to Purchaser, to (i) meet with Purchaser to discuss the Earnout Calculation, and (ii) have reasonable access during normal business hours to the personnel, books and records of Purchaser and the work papers (if any) prepared by Purchaser's independent accountants that pertain to the preparation of the Earnout Calculation, in each case solely for the purpose of verifying the Earnout Calculation. Unless Agent gives notice of its disagreement (an "***Earnout Dispute Notice***") with the Earnout Calculation within thirty days after the delivery of the Earnout Calculation, the Earnout Calculation shall be final, conclusive and binding for all purposes.

(d) **Dispute Resolution**. In the event Agent submits a Dispute Notice, the matters set forth in the Dispute Notice shall be resolved using the procedures set forth in Sections 1.11(c) and 1.11(d).

(e) **Earnout Distributions**. Within five Business Days of the final determination that a payment of the Earnout Amount is due in accordance with this Section 1.14, (i) Agent will deliver to Purchaser and the Paying Agent any updates that Agent deems is reasonably necessary to the Payment Schedule, which such updates shall include a determination of the portion of the Earnout Amount each Equityholder is entitled to receive in accordance with this Agreement and (ii) Purchaser will pay (A) to the Paying Agent for further distribution to the Stockholders and Warrantholders the total Earnout Amount payable to the Stockholders and Warrantholders by means of a wire transfer of immediately available funds and (B) to the Surviving Corporation's payroll provider the amount payable to holders of Vested Options directly together with instructions that such payroll provider deliver such payments to the holders of Vested Option in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder's Percentage as set forth on the Payment Schedule. Purchaser, the Surviving Corporation and the Paying Agent will be entitled to rely on the updated Payment Schedule.

(f) **Imputed Interest**. In the event any Earnout Amount pursuant to this Section 1.14 is required to be paid to the Equityholders pursuant to the terms and provisions hereof, Purchaser shall determine and report to the appropriate Tax authorities the amount of such payment which is treated as interest for income Tax purposes (as provided by Sections 1271 through 1275 or Section 483 of the Code and related Treasury Regulations promulgated thereunder), if any, with such interest amount being referred to herein as the "***Imputed Interest Amount***." The parties acknowledge and agree that no separate cash payment of interest will be made by Purchaser with respect to the consideration payable pursuant to this Section 1.14, and Purchaser shall have no liability whatsoever with respect to any Tax obligations of the Equityholders with respect to any Imputed Interest Amount.

(g) **Earnout Standard**. During the Earnout Period, Purchaser (i) will maintain books and records sufficient to be able to determine whether the conditions to receive the Earnout Amount have been met, (ii) intends to devote substantial resources to enable the achievement of the maximum Earnout Amount, and (iii) will not take any action (or fail to take any action) the primary purpose of which is to reduce or eliminate the Earnout Amount; provided, however, that, notwithstanding (ii) and (iii) above, Purchaser will have discretion to operate its business (including the business of the Surviving Corporation) in its sole best interest without regard to how its actions (or inactions) would affect the opportunity to achieve the Earnout Amount (or any portion thereof). The parties acknowledge and agree that: (1) the Earnout Amount is speculative in nature and subject to numerous factors outside the control of Purchaser, (2) there is no assurance that the Equityholders will be entitled to any of the Earnout Amount, (3) except as expressly set forth in this Section 1.14(g), Purchaser has not promised to take any action(s) that have the objective of ensuring that the Equityholders will receive the Earnout Amount or any portion thereof, and (4) the parties

intend for the express provisions of this Section 1.14 to define Purchaser's obligations with respect to the achievement of the Earnout Amount.

(h) Change of Control. In the event of a Purchaser Change of Control during the Earnout Period, Purchaser shall ensure the covenants and obligations set forth in this Section 1.14 would be assumed in full by the acquiring Entity in the Purchaser Change of Control. In the event of (i) a disposition of the Surviving Corporation or any of its material assets during the Earnout Period that materially and negatively impacts the achievement of the Earnout Amount or (ii) a Purchaser Change of Control, the Earnout Amount shall be deemed to be accelerated in full, deemed to equal \$20,000,000, and paid on the date of the closing of such transaction, whether or not the Net Revenue was, or was likely to be, greater than the Net Revenue Target.

(i) No Assignment of Rights. The Earnout Amount and the provisions of this Section 1.14 are intended solely for the benefit of the Equityholders, and the right (if any) to receive distributions in connection with the Earnout Amount will be personal to those Persons.

1.15 Defined Terms Used in this Agreement. In addition to the terms defined above and throughout this Agreement, the following terms used in this Agreement shall be construed to have the meanings set forth or referenced below.

**"280G Payments"** has the meaning set forth in Section 4.7.

**"280G Stockholder Vote"** has the meaning set forth in Section 4.7.

**"AAA"** has the meaning set forth in Section 9.2(b).

**"Action"** means any action, claim, suit, arbitration, investigation or proceeding, in each case, by or before any Governmental Body.

**"Adjustment Escrow Fund"** has the meaning set forth in Section 1.7.

**"Advisory Group"** has the meaning set forth in Section 6.2.

**"Affiliate"** means, with respect to any Person, (i) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person, (ii) a Person who owns or controls at least 10% of the outstanding voting interests of the Person, (iii) a Person who is an officer, director, or manager, or general partner of the Person, (iv) a Person who is an officer, director, manager, general partner or trustee of, or owns at least 10% of, the outstanding voting interests of a Person described in clauses (i) through (iii) of this definition or (v) any investment 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, a Person described in clauses (i) through (iii) of this definition.

**"Affiliate Arrangements"** means the Amended & Restated Voting Agreement of the Company, Amended & Restated Investors' Rights Agreement of the Company and Amended & Restated Right of First Refusal and Co-Sale Agreement of the Company, in each case, dated as of November 5, 2010.

“**Affiliated Group**” means any affiliated group as defined in Section 1504 of the Code that has filed a consolidated return for U.S. federal income tax purposes (or any consolidated, combined or unitary group under state, local or non-U.S. Law) for a period during which the Company was a member.

“**Agent**” has the meaning set forth in the preamble to this Agreement.

“**Agent Engagement Agreement**” has the meaning set forth in Section 6.2.

“**Agent Expenses**” has the meaning set forth in Section 6.2.

“**Agent Group**” has the meaning set forth in Section 6.2.

“**Aggregate Exercise Price**” means the aggregate exercise price of all Vested Options and Warrants outstanding immediately prior to the Effective Time.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Agreement Date**” has the meaning set forth in the preamble to this Agreement.

“**Alternative Transaction**” means any transaction involving: (i) the sale, license, disposition or acquisition of all or a material portion of the Company, its divisions, or its assets, (ii) the issuance, grant, disposition or acquisition of (A) any Capital Stock, (B) any option, call, warrant or right (whether or not immediately exercisable) to acquire any Capital Stock, or (C) any security, instrument or obligation that is or may become convertible into or exchangeable for any Capital Stock, or (iii) any merger, consolidation, business combination, share exchange, dividend recapitalization, reorganization or similar transaction involving the Company; *provided, however*, that (x) the issuance of Capital Stock by the Company to Vested Optionholders or holders of Warrants upon the exercise of Vested Options or Warrants in accordance with the terms of their respective grant agreements or (y) the conversion of Preferred Stock to Common Stock in accordance with the terms of the Company’s Organizational Documents, as applicable, each in the case of the foregoing clauses (x) and (y) that are outstanding as of the Agreement Date and disclosed on the Disclosure Schedules will not be deemed to be an “**Alternative Transaction**.”

“**Ancillary Agreements**” means the Certificate of Merger, the Escrow Agreement, the Paying Agent Agreement, the Agent Engagement Agreement, and the Restrictive Covenant Agreements.

“**Arbitration**” has the meaning set forth in Section 9.2(b).

“**Arbitrators**” has the meaning set forth in Section 9.2(b).

“**Assumed Option**” has the meaning set forth in Section 1.6(d)(i).

“**Business Day**” means any day that is not a Saturday, Sunday or a legal holiday that banks located in New York, New York are closed for business.

“**Business Products**” has the meaning set forth in Section 1.14(b).

“**Cap**” has the meaning set forth in Section 5.5(a).

“**Capital Stock**” mean, collectively, shares of Common Stock and Preferred Stock.

“**Certificate of Merger**” has the meaning set forth in Section 1.1.

“**Certificates**” has the meaning set forth in Section 1.9(a).

“**Change of Control**” means, with respect to a Person, (i) the sale of all or substantially all the assets of such Person; (ii) any merger, consolidation or acquisition of such Person with, by or into another Person; or (iii) any change in the ownership of more than fifty percent (50%) of the voting Equity Interests of such Person in one or more related transactions; provided that none of (A) a merger effected exclusively for purposes of changing the domicile of such Person or (B) a transaction in which the Equity Interests of the Person immediately prior to the transaction represent or are converted into Equity Interests which represent a majority of the voting power of the surviving Person following the transaction and such Equity Interests are held in substantially the same proportion as were held immediately prior to the consummation of the transaction.

“**Claim**” means any threatened or actual claim, action, suit, proceeding, investigation or review, whether civil, criminal or administrative.

“**Claim Notice**” has the meaning set forth in Section 5.6(a).

“**Closing**” has the meaning set forth in Section 1.2.

“**Closing Bonuses**” has the meaning set forth in Section 4.1(g).

“**Closing Cash**” means the cash and cash equivalents of the Company as of 12:01 a.m. Pacific Time on the Closing Date, determined in a manner consistent with prior practice of the Company, but without giving effect to the Transaction. Notwithstanding the previous sentence, cash on hand will (i) be calculated net of uncleared checks and drafts issued by the Company (to the extent a corresponding amount has been released from accounts payable), and (ii) include uncleared checks and drafts received or deposited for the account of the Company.

“**Closing Certificate**” has the meaning set forth in Section 1.10.

“**Closing Consideration**” has the meaning set forth in Section 1.7.

“**Closing Date**” has the meaning set forth in Section 1.2.

“**Closing Date Merger Consideration**” has the meaning set forth in Section 1.11(a).

“**Closing Date Option Merger Consideration**” has the meaning set forth in Section 1.6(c)(i).

“**Closing Indebtedness**” means the Indebtedness of the Company as of 12:01 a.m. Pacific Time on the Closing Date, but without giving effect to the Transaction.

“**Closing Price**” means the average daily closing price of Purchaser’s common stock on Nasdaq during the five trading days preceding the third day prior to the Closing Date.

“**Closing Working Capital**” means, as of 12:01 a.m. Pacific Time on the Closing Date, (a) the Company’s net accounts receivable, net inventory, prepaid and other current assets (excluding Closing Cash), minus (b) the Company’s current liabilities (excluding Company Transaction Expenses and the current portion of any Closing Indebtedness) calculated in accordance GAAP and consistent with the calculation set forth on Exhibit D, but without giving effect to the Transaction.

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

“**Common Stock**” means the Company’s Common Stock, par value \$0.0001 per share.

“**Company**” has the meaning set forth in the preamble to this Agreement.

“**Company Board**” has the meaning set forth in the recitals to this Agreement.

“**Company Certificate of Incorporation**” has the meaning set forth in Section 2.4(d).

“**Company Employees**” has the meaning set forth in Section 4.5(a).

“**Company IP**” means all Intellectual Property Rights owned or purported to be owned by the Company, including the Company Registered IP.

“**Company IT Systems**” means any and all information technology and computer systems (including Software, hardware and other equipment, firmware and embedded Software) relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, which information technology and computer systems are used in the conduct of the business of the Company.

“**Company Registered IP**” means all U.S. and foreign: (i) Patents; (ii) registrations and applications for Trademarks; (iii) copyrights registrations and applications therefor; (iv) registered mask works and applications to register mask works; and (v) Domain Name registrations; in each of the foregoing clauses (i) - (v) owned, filed in the name of, or applied for by the Company with a Governmental Body, whether alone or jointly with others.

“**Company Representatives**” has the meaning set forth in Section 9.15.

“**Company Source Code**” has the meaning set forth in Section 2.10(m).

“**Company Transaction Expenses**” means (i) unpaid cash obligations (excluding amounts payable on account of Options or Restricted Stock) of the Company under or in connection with any change of control, transaction or retention bonuses, or other similar arrangements that were incurred pursuant to Contracts entered into prior to the Closing without the consent of Purchaser and are payable to any Person upon, or in connection with, the consummation of the Transaction, (ii) the aggregate amount of any Tax-related cash payments (including any applicable Tax gross-ups) payable to holders of Unvested Stock who did not make timely elections under Section 83(b)

of the Code, calculated assuming the Escrow Fund, the Expense Fund and the Earnout Amount are payable in full to the Equityholders following the Closing, (iii) the employer-paid portion of any employment and payroll Taxes that are imposed on the Company in connection with the payment of any of the obligations pursuant to clauses (i) and (ii) to the extent such Taxes are unpaid on or before the Closing Date, (iv) the fees and expenses of Agent, (v) the fees, expenses, costs and payments payable to professionals (including, without limitation, investment bankers, attorneys, accountants and other advisors retained by the Company) in connection with the negotiation, execution and delivery of this Agreement by the Company and the consummation of the Transaction, (vi) 50% of the premium of the R&W Insurance Policy, (vii) 50% of the fees and expenses of the Escrow Agent and (viii) 50% of the premium of the D&O Insurance Coverage.

“**Confidentiality Agreement**” means that certain Non-Disclosure Agreement, by and between the Company and Purchaser, dated as of March 7, 2018.

“**Consultation Period**” has the meaning set forth in [Section 1.11\(c\)](#).

“**Contaminants**” has the meaning set forth in [Section 2.10\(n\)](#).

“**Contract**” or “**contract**” means any written or oral contract, subcontract, settlement agreement, lease, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy or benefit plan to which the referenced Person is a party or by which such Person, or any of its properties or assets, is bound.

“**Copyleft License**” means any license that requires, as a condition of use, modification or distribution of any Software or content, that such Software or content, or other Software or content incorporated into, derived from, used, or distributed with such Software or content: (i) in the case of Software, be made available to any third party recipient in a form other than binary (e.g., source code) form, (ii) be made available to any third-party recipient under terms that allow preparation of derivative works, (iii) in the case of Software, be made available to any third-party recipient under terms that allow Software or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than to the extent any contrary restriction would be unenforceable under law), or (iv) be made available to any third-party recipient at no license fee. Copyleft licenses include without limitation the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, and all Creative Commons “sharealike” licenses.

“**D&O Indemnified Persons**” has the meaning set forth in [Section 4.4\(a\)](#).

“**D&O Insurance Coverage**” has the meaning set forth in [Section 4.4\(b\)](#).

“**Data Room**” means the electronic documentation site entitled “AC/DC” established with Intralinks on behalf of the Company.

“**Dispute Notice**” has the meaning set forth in [Section 1.11\(b\)](#).

“**Disputed Items**” has the meaning set forth in [Section 1.11\(b\)](#).

“**Deductible**” has the meaning set forth in Section 5.5(a).

“**Delaware Law**” has the meaning set forth in the recitals to this Agreement.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by the Company concurrently with the execution and delivery of this Agreement.

“**Dissenting Shares**” has the meaning set forth in Section 1.9(i).

“**Earnout Amount**” has the meaning set forth in Section 1.14(a).

“**Earnout Calculation**” has the meaning set forth in Section 1.14(c).

“**Earnout Dispute Notice**” has the meaning set forth in Section 1.14(c).

“**Earnout Period**” has the meaning set forth in Section 1.14(b).

“**Effective Time**” has the meaning set forth in Section 1.2.

“**Employee Benefit Plan**” means, other than any plan mandated by applicable Laws or any government-sponsored plan, any plan, program, policy, agreement or arrangement that is (i) an “employee benefit plan” within the meaning of Section 3(3) of ERISA, (ii) a stock bonus, stock purchase, stock option, restricted stock, stock appreciation right or similar equity-based plan, or (iii) any other equity, change of control, severance, deferred-compensation, retirement, profit sharing, retention, compensation, fringe benefit or similar plan, policy, program, agreement or arrangement maintained, sponsored, contributed to (or required to be contributed to) or participated in by the Company for the benefit of any current or former officer, employee, director or independent contractor of the Company, or for which the Company may reasonably be expected to have any liability.

“**Entity**” means an association, relationship, or artificial Person through which, or by means of which, an enterprise or activity may be lawfully conducted, including, without limitation, a domestic or foreign corporation, nonprofit corporation, limited liability company, general partnership, limited partnership, business trust, association, trust, estate, joint venture, cooperative or Governmental Body.

“**Environmental and Safety Requirements**” means any applicable Laws or Orders in effect at or prior to the Closing Date relating to the protection of the environment, natural resources, human or worker health and safety, and relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, control or cleanup of any Hazardous Materials in the environment and including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), and the Federal Insecticide, Fungicide, and

Rodenticide Act (7 U.S.C. § 136 et seq.), to the extent each is applicable and as each has been amended and the regulations promulgated pursuant thereto.

“**Equity Interests**” of any Person means any and all shares of capital stock, rights to purchase shares of capital stock, warrants or options (whether or not currently exercisable), participations or other equivalents of or interests in (however designated, including units thereof) the equity (including common stock, preferred stock and limited liability company, partnership and joint venture interests) of such Person, and all securities exchangeable for or convertible or exercisable into, any of the foregoing.

“**Equityholder Indemnified Parties**” has the meaning set forth in Section 5.3.

“**Equityholders**” means the Stockholders, the Warrantholders and the Vested Optionholders.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any subsidiary and any Affiliate or trade or business, whether or not incorporated, that together with the Company would be deemed to be a “single employer” within the meaning of Sections 414(b), (c), (m) or (o) of the Code.

“**Escrow Agent**” has the meaning set forth in Section 1.7.

“**Escrow Agreement**” means the escrow agreement between Purchaser, Agent and the Escrow Agent, in substantially the form attached as Exhibit E.

“**Escrow Fund**” has the meaning set forth in Section 1.7.

“**Estimated Closing Cash**” has the meaning set forth in Section 1.10.

“**Estimated Closing Indebtedness**” has the meaning set forth in Section 1.10.

“**Estimated Closing Working Capital**” has the meaning set forth in Section 1.10.

“**Estimated Company Transaction Expenses**” has the meaning set forth in Section 1.10.

“**Estimated Merger Consideration**” has the meaning set forth in Section 1.10.

“**Estimated Working Capital Adjustment Amount**” means an amount (which may be positive or negative) equal to (i) if the Estimated Working Capital is greater than the Target Working Capital, an amount equal to the Estimated Working Capital minus the Target Working Capital (which such total, for the avoidance of doubt, will be a positive number), (ii) if the Estimated Working Capital is less than the Target Working Capital, an amount equal to the Estimated Working Capital minus the Target Working Capital (which such total, for the avoidance of doubt, will be a negative number), or (iii) if the Estimated Working Capital is equal to the Target Working Capital, zero (\$0.00).

“**Exchange Act**” has the meaning set forth in Section 1.6(d)(iii).



“**Expense Fund**” has the meaning set forth in [Section 1.7](#).

“**Export Controls**” has the meaning set forth in [Section 2.25\(c\)](#).

“**FCPA**” has the meaning set forth in [Section 2.25\(a\)](#).

“**Final Adjustment Statement**” has the meaning set forth in [Section 1.11\(a\)](#).

“**Financial Statements**” has the meaning set forth in [Section 2.5](#).

“**Fundamental Representations**” has the meaning set forth in [Section 5.1](#).

“**GAAP**” means generally accepted accounting principles in the United States.

“**Governmental Body**” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether federal, state, local or foreign, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“**Hazardous Materials**” means any waste, pollutant, contaminant, or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance or material that is regulated pursuant to any applicable Environmental and Safety Requirements due to its hazardous or toxic effect on human health or the environment.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**Import Restrictions**” has the meaning set forth in [Section 2.25\(c\)](#).

“**Indebtedness**” means, as at any date of determination thereof (without duplication), any obligations of the Company in respect of: (i) any borrowed money or funded indebtedness or obligations issued in substitution for or exchange for borrowed money or funded indebtedness (including obligations with respect to principal, accrued interest, and any applicable prepayment charges or premiums); (ii) any deferred payments for the purchase price of property or assets other than trade payables; (iii) any indebtedness evidenced by any note, bond, debenture or other debt security; (iv) capital lease obligations or any lease which is required to be classified as a liability on the face of a balance prepared in accordance with GAAP; (v) any third-party indebtedness guaranteed, endorsed or assumed by, or a contingent obligation of, the Company; (vi) any drawn upon letters or credit, bankers’ acceptances or similar facilities issued for the account of the Company; (vii) any obligations with respect to any interest rate hedging, swap agreements, forward rate agreements, interest rate cap or collar agreements or other financial agreement entered into for the purpose of limiting or managing interest rate risks; (viii) all indebtedness for borrowed money secured by a Lien on property owned by the Company, whether or not the secured indebtedness is owed by the Company; (ix) all premiums, penalties and payments required to be paid or offered in connection with the payment at Closing of any of the foregoing; or (x) any outstanding dividends payable.

“**Indemnification Notice**” has the meaning set forth in [Section 5.4\(a\)](#).

“**Indemnified Party**” has the meaning set forth in [Section 5.4\(a\)](#).

“**Indemnifying Party**” has the meaning set forth in [Section 5.4\(a\)](#).

“**Indemnity Escrow Fund**” has the meaning set forth in Section 1.7.

“**Independent Accounting Firm**” means PriceWaterhouseCoopers, or another of the twenty largest accounting firms in the United States agreed to in writing by Purchaser and Agent.

“**Information Statement**” has the meaning set forth in Section 4.8.

“**Intellectual Property Rights**” means all worldwide common law and statutory rights in, arising out of, or associated with: (i) United States and foreign patents and utility models and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof and any and all invention disclosures (“**Patents**”); (ii) trade secrets, confidential information, or proprietary information; (iii) copyrights, copyrights registrations, mask works, and applications therefor, and all other rights corresponding thereto throughout the world; (iv) domain names and uniform resource locators (“**Domain Names**”); (v) industrial designs; (vi) trade names, logos, common law trademarks and service marks, any registrations or applications therefor, and related goodwill (“**Trademarks**”); (vii) all rights in databases and data collections; (viii) all moral and economic rights of authors and inventors, however denominated; and (ix) any similar or equivalent rights to any of the foregoing (as applicable).

“**Imputed Interest Amount**” has the meaning set forth in Section 1.14(f).

“**Knowledge**,” including the phrase “**to the Company’s Knowledge**,” means the knowledge of each of Manpreet Khaira, Sydney Newton, Chris O’Connor, Raj Garg, Thomas Irrgang, Michael Class, Wai Lee, Ole Bentz, and Chuck Saxe, in each case after reasonable inquiry by such Person. With respect to Intellectual Property Rights, “Knowledge” does not require any Person to conduct, have conducted, obtain, or have obtained any freedom-to-operate opinions or similar opinions of counsel or any patent, trademark or other Intellectual Property Rights clearance searches or perform any other Intellectual Property Rights-related review, provided, however, “Knowledge” will include such freedom-to-operate opinions or similar opinions of counsel, or Intellectual Property Rights clearance searches, or other Intellectual Property Rights-related review to the extent actually conducted or obtained by the Company, in each case with respect to patents.

“**Law**” or “**law**” means any foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation, Order or other requirement.

“**Lien**” and “**lien**” means any lien, charge, mortgage, pledge, easement, encumbrance, option, security interest, matrimonial or community interest, tenancy by the entirety claim, adverse claim, or any other title defect or restriction of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

“**Loss**” and “**Losses**” have the meaning set forth in Section 5.2.

“**Major Customers**” has the meaning set forth in Section 2.20(a).

“**Major Suppliers**” has the meaning set forth in Section 2.20(b).

“**Material Adverse Effect**” means any result, occurrence, fact, change, event or effect (each, an “**Effect**”) that has had or would reasonably be expected to have a material adverse effect on (a) the Company or the business, assets (including intangible assets), liabilities, condition (financial or otherwise), property or results of operations of the Company or (b) the ability of Purchaser or the Company to consummate the Merger; provided, however, that no Effect will be considered when determining whether a Material Adverse Effect has occurred to the extent such Effect resulted or arose from the following: (i) changes adversely affecting the U.S. economy or the Company’s industry generally; (ii) the announcement or pendency of the Transaction; (iii) any change in applicable Laws or the interpretation thereof; (iv) actions required to be taken under applicable Laws; (v) any change in GAAP or the interpretation thereof; (vi) an earthquake or other natural disaster; or (vii) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America; provided, further in the case of clauses (i), (iii), (iv), (v), (vi) or (vii), only to the extent that any such Effects do not have a materially disproportionate adverse impact on the business, assets (including intangible assets), liabilities, condition (financial or otherwise), property or results of operations of the Company relative to other Persons in the industries in which the Company operates

“**Material Contracts**” has the meaning set forth in Section 2.9(b).

“**Merger**” has the meaning set forth in the recitals to this Agreement.

“**Merger Consideration**” means an amount equal to (i) \$405,000,000, plus (ii) an amount equal to the Closing Cash, minus (iii) an amount equal to the Closing Indebtedness, plus (iv) the Working Capital Adjustment Amount (which may be negative), minus (v) an amount equal to the Company Transaction Expenses, plus (vi) the Aggregate Exercise Price, plus (vii) the Earnout Amount (when and if such amount becomes payable in accordance with this Agreement).

“**Merger Sub**” has the meaning set forth in the preamble to this Agreement.

“**Net Revenue**” has the meaning set forth in Section 1.14(b).

“**Net Revenue Target**” means (i) if the Closing Date occurs on or prior to September 28, 2018, an amount equal to \$84,475,922 or (ii) if the Closing Date occurs on or after September 29, 2018, an amount equal to \$90,080,000.

“**OFAC Sanctioned Person**” means any government, country, corporation or other Entity, group or individual with whom or which the OFAC Sanctions prohibit a U.S. Person from engaging in transactions, and includes without limitation any Person that appears on the current OFAC list of Specially Designated Nationals and Blocked Persons (the “**SDN List**”). For ease of reference, and not by way of limitation, OFAC Sanctioned Persons other than governments and countries can be found on the SDN List on OFAC’s website at [www.treas.gov/offices/enforcement/ofac/sdn](http://www.treas.gov/offices/enforcement/ofac/sdn).

“**Open Source License**” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including but not limited to any

license approved by the Open Source Initiative, or any Creative Commons License. For avoidance of doubt, Open Source Licenses include without limitation Copyleft Licenses.

“**Open Source Software**” means any Software or content subject to an Open Source License.

“**Option Merger Consideration**” has the meaning set forth in [Section 1.6\(c\)](#).

“**Options**” means outstanding options to acquire shares of Common Stock, granted pursuant to the Stock Incentive Plan.

“**Order**” or “**order**” means any order, injunction, judgment, doctrine, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“**Ordinary Course**” means an action taken in connection with the business of the Company that is consistent with the past practices taken in the ordinary course of the normal day-to-day operations of the Company.

“**Organizational Documents**” means any charter, certificate of formation, articles of incorporation, declaration of partnership, articles of association, bylaws, operating agreement, limited liability company agreement, partnership agreement or similar formation or governing documents and instruments of any Person.

“**Outside Date**” has the meaning set forth in [Section 8.1\(b\)\(ii\)](#).

“**Paying Agent**” has the meaning set forth in [Section 1.9\(a\)](#).

“**Paying Agent Agreement**” means the paying agent agreement between Purchaser, Agent and the Paying Agent, in substantially the form attached as [Exhibit E](#).

“**Payment Schedule**” has the meaning set forth in [Section 1.8](#).

“**Payoff Letters**” has the meaning set forth in [Section 1.10](#).

“**Per Common Share Consideration**” means an amount in cash (if any) per Common Stock determined by dividing (i) the Merger Consideration minus the Escrow Fund, the Expense Fund and the Earnout Amount, by (ii) the sum of the number of shares of Common Stock issued and outstanding immediately prior to the Effective Time on a fully-converted, fully-exercised basis, including the number of shares of Common Stock issuable upon conversion of all Preferred Stock outstanding immediately prior to the Effective Time into Common Stock, and the exercise, in full, of all Vested Options and Warrants immediately prior to (and not terminated at or prior to) the Effective Time but excluding Unvested Stock and Unvested Options.

“**Per Common Share Earnout Amount**” means an amount in cash (if any) per Common Stock determined by dividing (i) the Earnout Amount minus the Total Preferred Share Earnout Amount, by (ii) the sum of the number of shares of Common Stock issued and outstanding immediately prior to the Effective Time on a fully-converted, fully-exercised basis, including the number of shares of Common Stock issuable upon conversion of all Preferred Stock outstanding

immediately prior to the Effective Time into Common Stock, and the exercise, in full, of all Vested Options and Warrants immediately prior to (and not terminated at or prior to) the Effective Time but excluding Unvested Stock and Unvested Options.

“**Percentage**” means the fraction (expressed as a percentage) set forth next to such Equityholder’s name on the Payment Schedule, which represents (i) the number of shares of Common Stock held by such Equityholder including any shares of Common Stock subject to Warrants or Vested Options, but excluding any Unvested Stock or Unvested Options (in each case, after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by [Section 4.14](#)) divided by (ii) the number of shares of Common Stock outstanding as of the Effective Time including any shares of Common Stock subject to Warrants or Vested Options, but excluding any Unvested Stock or Unvested Options (in each case, after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by [Section 4.14](#)).

“**Permits**” has the meaning set forth in [Section 2.16](#).

“**Permitted Liens**” means (a) statutory Liens and other governmental assessments for the payment of current Taxes that are not yet delinquent or that are being contested in good faith by appropriate Action; (b) Liens imposed by Law, such as carriers’, material men’s, mechanics’, warehousemen’s, and other like Liens incurred in the Ordinary Course with respect to which payment is not due; (c) statutory or common law Liens to secure obligations to landlords, lessors, or renters, in each case incurred in the Ordinary Course and that do not materially impair the Company’s ownership or use of such property or assets or operation of its business; and (d) nonexclusive licenses to Company IP or Company-owned Technology and contractual restrictions on licenses to Company IP or Company-owned Technology.

“**Person**” means a natural person or an Entity.

“**Pre-Closing Period**” has the meaning set forth in [Section 4.1](#).

“**Preferred Stock**” means, collectively, the Series A-1 Preferred Stock, the Series A-2 Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, and the Series E Preferred Stock.

“**Preliminary Adjustment Statement**” has the meaning set forth in [Section 1.11\(a\)](#).

“**Purchaser**” has the meaning set forth in the preamble to this Agreement.

“**Purchaser Change of Control**” means a Change of Control of Purchaser.

“**Purchaser Indemnified Parties**” has the meaning set forth in [Section 5.2](#).

“**R&W Insurance Policy**” means an insurance policy issued by the R&W Insurer and bound as of the Agreement Date in substantially the same form as attached at [Exhibit G](#), which provides coverage for the benefit of Purchaser or its designee as the named insured for breaches of certain of the representations and warranties of the Company.

“**R&W Insurer**” means AIG Specialty Insurance Company or any of its Affiliates.

“**Real Property**” has the meaning set forth in Section 2.7.

“**Real Property Leases**” has the meaning set forth in Section 2.7.

“**Release**” means any release, spill, leak, emission, deposit, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposing, dumping, dispersion or migration of Hazardous Materials into, under, above, onto or from any indoor or outdoor medium, including: (i) the movement of Hazardous Materials through, in, under, above, or from any medium; (ii) the movement of Hazardous Materials off site from any Real Property; and (iii) the abandonment of barrels, tanks, containers or other closed receptacles containing Hazardous Materials.

“**Requisite Stockholder Vote**” has the meaning set forth in Section 2.3(a).

“**Restricted Stock**” means shares of Common Stock issued pursuant to the Stock Incentive Plan (or issued pursuant to the exercise of Options) that remain subject to vesting, repurchase or forfeiture conditions which have not lapsed as of immediately prior to the Effective Time.

“**Restrictive Covenant Agreements**” has the meaning set forth in the recitals to this Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Series A-1 Preferred Stock**” means the Company’s Series A-1 Preferred Stock, par value \$0.0001 per share.

“**Series A-2 Preferred Stock**” means the Company’s Series A-2 Preferred Stock, par value \$0.0001 per share.

“**Series B Preferred Stock**” means the Company’s Series B Preferred Stock, par value \$0.0001 per share.

“**Series C Preferred Stock**” means the Company’s Series C Preferred Stock, par value \$0.0001 per share.

“**Series D Preferred Stock**” means the Company’s Series D Preferred Stock, par value \$0.0001 per share.

“**Series E Preferred Stock**” means the Company’s Series E Preferred Stock, par value \$0.0001 per share.

“**Software**” means software in either source code or object code form.

“**Stock Incentive Plan**” means, collectively, the Company’s 2004 Stock Incentive Plan and the Company’s 2014 Stock Incentive Plan, each as amended from time to time.

“**Stockholders**” means holders of shares of Capital Stock as of immediately prior to the Effective Time.

“**Surviving Corporation**” has the meaning set forth in Section 1.1.

“**Target Working Capital**” means \$7,000,000.

“**Tax**” or “**Taxes**” means (i) all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment related tax (including employee withholding or employer payroll tax or Federal Insurance Contributions Act tax), social security, unemployment, production, capital gains, goods and services, alternative or add-on minimum, environmental, excise, severance, stamp, occupation, property and estimated taxes, withholding or backup withholding, severance tax, customs duties, fees, and any other governmental charges in the nature of taxes imposed by a taxing authority, (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i) above, and (c) all amounts described in clauses (i) and (ii) above payable as a result of having been a member of an Affiliated Group, or as a result of successor or transferee liability, or by Contract.

“**Tax Returns**” means any returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Taxes or the administration of any Laws or administrative requirements relating to any Taxes.

“**Technical Deficiencies**” has the meaning set forth in Section 2.10(n).

“**Technology**” means collectively, all designs, formulas, methods, processes, schematics, technical drawings, specifications, algorithms, procedures, techniques, ideas, know-how, Software, computer programs (whether in source code, object code or human readable form), tools, inventions, creations, trade secrets, improvements, works of authorship, other similar materials and content and all recordings (including voice recordings), graphs, drawings, reports, analyses, other writings and any other embodiment of the above, in any form or media, whether or not specifically listed herein, and all related technology, documentation and other materials used in, incorporated in, embodied in or displayed by any of the foregoing, or used in the use, design, development, reproduction, maintenance or modification of any of the foregoing.

“**Third Party Claim**” has the meaning set forth in Section 5.4(b).

“**Transaction**” has the meaning set forth in the recitals to this Agreement.

“**Transaction Agreements**” means this Agreement, the Disclosure Schedules, the Ancillary Agreements, and any agreement entered into in connection with or pursuant to this Agreement or the Ancillary Agreements.

“*Transmittal Letter*” has the meaning set forth in Section 1.9(b).

“*Unvested Option*” shall mean any Option (or portion thereof) that is not a Vested Option.

“*Unvested Option Exchange Ratio*” has the meaning set forth in Section 1.6(d)(i)

“*Unvested Stock*” has the meaning set forth in Section 1.6(g).

“*Vested Option*” shall mean any Option (or portion thereof) that is outstanding and vested immediately prior to the Effective Time or that vests as a result of the consummation of the Transaction.

“*Vested Optionholder*” has the meaning set forth in Section 1.6(c).

“*WARN Act*” has the meaning set forth in Section 2.14(c).

“*Warrant*” means a warrant to acquire Capital Stock of the Company, including without limitation, the right to acquire shares of Series C Preferred Stock issued to Velocity Financial Group, Inc.

“*Warrant Consideration*” means with respect to each share of Common Stock issuable under a particular Warrant (after giving effect to the conversion of all shares of Preferred Stock to Common Stock contemplated by Section 4.14), an amount equal to the excess, if any, of (a) the Per Common Share Consideration over (b) the exercise price payable in respect of such share of Common Stock issuable under such Warrant.

“*Warrantholder*” has the meaning set forth in Section 1.6(e).

“*Working Capital Adjustment Amount*” means an amount (which may be positive or negative) equal to (i) if the Closing Working Capital is greater than the Estimated Working Capital, an amount equal to the Closing Working Capital minus the Estimated Working Capital (which such total, for the avoidance of doubt, will be a positive number), (ii) if the Closing Working Capital is less than the Estimated Working Capital, an amount equal to the Closing Working Capital minus the Estimated Working Capital (which such total, for the avoidance of doubt, will be a negative number), or (iii) if the Closing Working Capital equals the Estimated Working Capital, zero (\$0.00).

“*Written Consent*” has the meaning set forth in Section 1.12(a)(i).

**2. Representations and Warranties of the Company.** The Company hereby represents and warrants to Purchaser that, except as set forth in the correspondingly numbered Disclosure Schedules, which exceptions shall be deemed to be part of the representations and warranties made hereunder, that the following representations are true and correct:

2.1 Organization, Good Standing, Corporate Power and Qualification. The Company is a corporation, duly formed, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted. The Company has made available



to Purchaser true and complete copies of the Organizational Documents of each of the Company, in each case as amended through the Effective Time.

2.2 No Subsidiaries. The Company does not own, and has never owned, any equity securities or other ownership interest in any other Person.

2.3 Authorization; No Breach; Valid and Binding Agreement.

(a) The Company has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement and the other Transaction Agreements to which it is or will be a party and, subject to, in the case of the consummation of the Merger, the adoption of this Agreement by (i) a majority of the outstanding shares of Preferred Stock and (ii) a majority of the outstanding shares of Capital Stock (each of (i) and (ii), the “*Requisite Stockholder Vote*”), to consummate the Transaction. The execution and delivery of this Agreement and the other Transaction Agreements to which it is or will be a party by the Company and the consummation by the Company of the Transaction has been duly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement or the other Transaction Agreements to which it is or will be a party or to consummate the Transaction, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Stockholder Vote. The Requisite Stockholder Vote is the only vote or consent of the holders of any class or series of the Capital Stock necessary to approve and adopt this Agreement, approve the Merger, and consummate the Transaction.

(b) The execution and delivery of this Agreement and the Transaction Agreements to which it is or will be a party by the Company and the consummation of the Transaction by the Company do not and will not (i) violate, conflict with, result in any breach of, or constitute a default under any of the provisions of the Organizational Documents of the Company, (ii) violate or result in any loss or rights, breach or constitute a violation or default (or give rise to any right of termination, cancellation or the acceleration of any payment) under any Material Contract or (iii) assuming compliance with any applicable requirements of the HSR Act or other antitrust Laws, violate any Law to which the Company is subject.

(c) Assuming that this Agreement and each other Transaction Agreement to which the Company is or will be a party are valid and binding obligations of Purchaser, this Agreement and each such other Transaction Agreement constitutes a valid and binding obligation of the Company, enforceable in accordance with their applicable terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other Laws of general application affecting enforcement of creditors’ rights generally, and as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

2.4 Capitalization.

(a) Schedule 2.4(a) sets forth a true and complete list of the number of issued and outstanding shares of each class of the Capital Stock and Warrants (including the Common Stock equivalent as determined in accordance with the Company Certificate of Incorporation for each share of Preferred Stock upon the conversion of such share of Preferred Stock to Common Stock in accordance with Section 4.14), the names of the record holders thereof, and the number of shares of Capital Stock and Warrants held by each such holder.

(b) Schedule 2.4(b) sets forth a true and complete list of all outstanding (i) Options, including the names of the record holders thereof, the date of grant, the expiration date, the exercise

price, the vesting schedule (including any acceleration terms), and an indication of whether such Option was intended as of its grant date to be an “incentive stock option” under Section 422 of the Code or a non-qualified stock option, and (ii) Restricted Stock, including the names of the record holders thereof, the date of grant, the vesting schedule (including any acceleration terms) and whether, to the Company’s Knowledge, an 83(b) election was timely filed.

(c) All of the issued and outstanding shares of Capital Stock have been duly authorized and validly issued and are fully paid and nonassessable. There are no outstanding subscriptions, stock options, restricted stock units, stock appreciation rights, phantom equity, warrants, commitments, preemptive rights, agreements, arrangements or commitments of any kind to which the Company is a party relating to the issuance of, or outstanding securities convertible into or exercisable or exchangeable for, any shares of Capital Stock of any class or other Equity Interests of the Company. There are no agreements to which the Company is a party with respect to the voting of any shares of Capital Stock of the Company or which restrict the transfer of any such shares. There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of Capital Stock, other Equity Interests or any other securities of the Company. The Company is not under any obligation to register under the Securities Act any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities.

(d) The Merger Consideration to be distributed to each holder of Preferred Stock upon the Effective Time will result in such holder receiving its full liquidation preference as set forth in Article IV, Section(B)(2)(a) of the Company’s Fifth Amended and Restated Certificate of Incorporation dated November 5, 2010 (as amended) (“*Company Certificate of Incorporation*”).

2.5 Financial Statements. Schedule 2.5 sets forth true and correct copies of the Company’s audited consolidated financial statements for the twelve-month periods ended December 31, 2016 and December 31, 2017 and its unaudited consolidated financial statements for the six-month period ending June 30, 2018 (collectively, the “*Financial Statements*”). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except that unaudited Financial Statements may not contain all footnotes required by GAAP. The Financial Statements (a) fairly present the consolidated financial condition and operating results of the Company as of the dates, and for the periods, indicated therein and (b) are based on and are consistent with the books and records of the Company. The Company maintains a system of accounting established and administered in accordance with GAAP. The Company has not received notice (written, verbal or otherwise) from any Person of any (1) “significant deficiency” in the internal controls over financial reporting of the Company, (2) “material weakness” in the internal controls over financial reporting of the Company or (3) fraud, whether or not material, that involves management or other employees of the Company who have a significant role in the internal controls over financial reporting of the Company.

#### 2.6 Absence of Certain Developments; Undisclosed Liabilities.

(a) Since December 31, 2017 and prior to the Agreement Date, the Company (i) has operated in the Ordinary Course, (ii) has not suffered a Material Adverse Effect or (iii) has not engaged in any activities or actions that would require the consent of Purchaser under Section 4.1 (other than Sections 4.1(b), 4.1(g) and 4.1(m)) if such activity or action were taken after the Effective Time;

(b) The Company does not have any material liability that would be required to be set forth or reserved against in financial statements prepared in accordance with GAAP, except for liabilities (i) accrued or reserved against in the Financial Statements, (ii) incurred in the Ordinary Course

since June 30, 2018 (none of which is material, either individually or in the aggregate and none of which relates to breach of Contract, breach of warranty, tort, or claims of infringement or violation of Law), or (iii) which constitute Company Transaction Expenses.

2.7 Real Property: Assets. The Company does not own and has never owned any real property. Schedule 2.7(a) contains a true and complete list of all leases, subleases and occupancy agreements, together with any amendments thereto (the “**Real Property Leases**”), with respect to all real property leased, subleased or otherwise used or occupied by the Company (the “**Real Property**”). The Real Property Leases are in full force and effect, and the Company holds a valid and existing leasehold interest under each such Real Property Lease, subject to the application of any bankruptcy or creditor’s rights Laws, and subject to Permitted Liens. All Real Property, including, all buildings, structures, fixtures and building systems included thereof, is in good operating condition and repair and is suitable for the conduct of the Company’s business as currently conducted. All improvements (if any) to be constructed on the Real Property pursuant to any Real Property Lease have been completed in accordance with and currently satisfy the terms of such Real Property Lease. Neither the Company nor any other party to the Real Property Leases, are in breach or default of the applicable Real Property Lease. The Company has not subleased, licensed or otherwise granted any Person the right to use or occupy the Real Property or any portion thereof. The Company has good and valid title to, or, in the case of the Real Property and assets, valid leasehold interests in, all of its respective tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens, except (i) as reflected in the Financial Statements and (ii) Permitted Liens. All equipment owned or leased by the Company currently in use and held for future use is, to the Company’s Knowledge, (i) adequate for the conduct of the business of the Company as currently conducted and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear.

## 2.8 Tax Matters.

(a) The Company has timely filed (or has had timely filed) all income and other material Tax Returns that it was required to file (or to have filed), taking into account any valid extensions of time to file, and all such Tax Returns are true, complete and correct in all material respects. All Taxes due and payable by the Company (whether or not shown as owing by the Company on such Tax Returns) have been fully paid.

(b) The unpaid Taxes of the Company (i) did not, as of the date of the most recent Financial Statements, exceed the accrued liability for Taxes (rather than any accrued liability for deferred Taxes established to reflect timing differences between book and Tax income) set forth in such Financial Statements and (ii) will not exceed that accrued liability as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company in filing their Tax Returns.

(c) The Company is not the subject of a Tax audit, examination or Action with respect to any Taxes, and to the Company’s Knowledge, no such audit, examination or Action is threatened. No assessment or deficiency of Tax has been proposed in writing against the Company.

(d) There are no outstanding agreements, waivers or arrangements extending the statutory period of limitation applicable to any claim for, or the period for the collection or assessment of, Taxes due from or with respect to the Company.

(e) The Company (i) is not and has never been a member of an affiliated, consolidated, combined, unitary or similar group for any Tax purpose (other than the group of which they are currently members and the common parent of which is the Company), and (ii) except for liabilities

pursuant to, and Contracts which are, commercial agreements the primary purpose of which is unrelated to Taxes (A) has no liability for the Taxes of any Person other than itself under Section 1.1502-6 of the Treasury Regulations (or any similar provision of U.S. state or local or non-U.S. Law), as a transferee or successor, or by Contract, and (B) is not a party to or bound by, and has no obligations under any Tax allocation, Tax sharing, Tax indemnification or other similar Contract.

(f) The Company has duly and timely withheld or collected all Taxes that the Company is required by Law to withhold or collect, and has duly and timely paid over to the appropriate Governmental Body such Taxes to the extent due and payable.

(g) The Company will not 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 made prior to the Closing, (ii) closing agreement or similar agreement entered into with any Governmental Body prior to the Closing, (iii) installment sale or open transaction made prior to the Closing, (iv) prepaid income received on or prior to the Closing Date, or (v) election under Section 108(i) of the Code (or any corresponding provision of state, local or non-U.S. Law).

(h) The Company has not distributed stock of another Person, or has had its stock distributed to another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

(i) No written claim has been made by any Tax authority in a jurisdiction where the Company has not filed a Tax Return that it is or may be subject to Tax by such jurisdiction.

(j) The Company is not, and has never been, a “United States real property holding corporation” within the meaning of Section 897 of the Code.

(k) There are no Liens on any of the assets of the Company with respect to Taxes, other than Permitted Liens.

(l) The Company will not be required to pay any Tax after the Closing Date as a result of an election made pursuant to Section 965(h) of the Code.

(m) No Person holds shares of stock of the Company that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made.

(n) The Company has duly and timely collected all amounts on account of any sales or transfer Taxes, including goods and services, harmonized sales and state, provincial or territorial sales Taxes, required by applicable Laws to be collected by it and has duly and timely remitted to the appropriate taxing authority any such amounts required by Law to be remitted by it.

(o) The Company has obtained evidence of payments sufficient to support any foreign Tax credits claimed for any Taxes paid by it to any non-U.S. taxing authorities.

(p) The Company makes no representation or warranty as to the amount, availability or usability of any Tax attributes (including net operating losses or Tax credits) with respect to taxable periods beginning after the Closing Date.

## 2.9 Contracts and Commitments.

(a) The Company is not party to any:

(i) agreement or indenture relating to the borrowing of money or to mortgaging, pledging or otherwise placing a Lien (other than a Permitted Lien) on assets of the Company;

(ii) guaranty of any obligation for borrowed money, Indebtedness or other guaranty of any obligation;

(iii) lease or agreement under which it is lessee of, or holds or operates any personal property owned by any other party, for which the annual rental exceeds \$100,000 (excluding the Real Property Leases);

(iv) lease or agreement under which it is lessor of, or permits any third party to hold or operate any personal property, for which the annual rental exceeds \$100,000 (excluding the Real Property Leases);

(v) Contract or group of related Contracts with the same party for the purchase of products or services, or the license of Intellectual Property Rights or Technology, that provide for annual payments by the Company in excess of \$100,000 during the year ended December 31, 2017 (excluding the Real Property Leases);

(vi) Contract or group of related Contracts with a customer that provides annual billings (based on the year ended December 31, 2017) to the Company in excess of \$100,000, excluding purchase orders received in the Ordinary Course that total less than \$500,000;

(vii) Contract relating to any proposed acquisition of any capital stock or business of any other Person or disposition of the stock of any of the Company or all or substantially all of the assets of the Company, in each case, in effect as of the Agreement Date;

(viii) Contract prohibiting or materially restricting the ability of the Company to conduct its business in any geographical area or to compete with any Person;

(ix) Contract that contains most favored customer pricing provisions in favor of any third party;

(x) Contracts with any Governmental Body (other than license agreements or Permits entered into in the Ordinary Course);

(xi) Contracts with any Major Customer or Major Supplier excluding purchase orders issued or received in the Ordinary Course that total less than \$500,000;

(xii) Contracts under which the Company has advanced or loaned any other Person amounts in the aggregate exceeding \$50,000;

(xiii) joint venture, limited liability company and partnership agreements or other agreement involving the sharing of profits, losses, costs or liabilities with any third party;

(xiv) Contracts for capital expenditures in excess of \$100,000;

(xv) Contracts that grant exclusive rights to a counterparty or require the Company to purchase all or substantially all of its requirements for a product or service from a particular Person;

(xvi) any (A) collective bargaining agreement or (B) Contract with any union, labor organization, works council or other employee representative of a group of employees; and

(xvii) any other Contract the termination or which or default under which would be reasonably likely to have a Material Adverse Effect.

(b) The Company has not violated or breached, or committed any default under, any of the Real Property Leases or the Contracts set forth on Schedule 2.9(a) or Schedule 2.10(d) (such Real Property Leases and Contracts collectively, the “**Material Contracts**”). To the Company’s Knowledge, no other Person has violated or breached, or is in default under, any Material Contract, and no event has occurred and is continuing through the Company’s actions or inactions that will result in a violation or breach of any of the provisions of any Material Contract or permit termination, modification or acceleration of such Material Contract. With respect to each Material Contract: (i) such Material Contract is legal, valid, binding, enforceable, free and clear of any Lien (other than Permitted Liens), and in full force and effect on identical terms as set forth in the copies provided to Purchaser, subject to bankruptcy and insolvency laws and principles of equity; (ii) such Material Contract, subject to obtaining any necessary consents disclosed on Schedule 2.3(b), will continue to be so enforceable following the Closing, except for those Material Contracts that by their terms will expire prior to the Closing Date or are otherwise terminated prior to the Closing Date in accordance with their terms, and (iii) neither the Company, nor to the Company’s Knowledge, any other party(ies) thereto, have repudiated or threatened in writing to repudiate any provision of such Material Contract, and there is no dispute pending or, to the Company’s Knowledge, threatened in writing under any such Material Contract. The copies of the Material Contracts made available to Purchaser are true and complete in all material respects.

#### 2.10 Intellectual Property.

(a) Schedule 2.10(a) contains a complete and accurate list of all (i) Company Registered IP, including for each item, the name of the owner(s) of record, the applicable jurisdiction, status, application or registration number, and date of application, registration, or issuance, as applicable, (ii) any pending or threatened actions, proceedings, or claims (excluding routine prosecution efforts before the United States Patent and Trademark Office or equivalent foreign authority) before any court, tribunal (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) or Governmental Body in which the Company Registered IP is involved, and (iii) any actions that must be taken within sixty days after the Closing Date for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Company Registered IP, including the payment of any registration, maintenance or renewal fees or the filing of any responses to office actions, documents, applications or certificates.

(b) Each item of Company Registered IP is subsisting (or applied for) and, excluding pending applications, to the Company’s Knowledge, valid and enforceable. All necessary

registration, maintenance and renewal fees that fall due in connection with Company Registered IP within the next 60 days after the Agreement Date have been made, and all necessary documents, recordations and certificates in connection with such Company Registered IP that fall due within the next 60 days after the Agreement Date have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, perfecting and maintaining such Company Registered IP. The Company has recorded each assignment of inventor rights in Company Registered IP that are patents or patent applications with the applicable Governmental Body.

(c) No Company IP is subject to any order, decree, or judgment of a Governmental Body restricting the use, transfer, or licensing thereof by the Company, or which affects the validity, use or enforceability of such Company IP, excluding office actions from the United States Patent and Trademark Office or equivalent foreign authority. The Company exclusively owns, and has title to, each item of Company IP free and clear of any Lien, other than Permitted Liens. The Company (i) has not granted any exclusive license of or exclusive right to Company IP; and (ii) does not jointly own Company IP.

(d) Schedule 2.10(d) contains a complete and accurate list of all contracts and agreements to which the Company is a party (i) with respect to Company IP licensed to any Person or under which any Person receives any other right under Company IP, other than (a) non-exclusive end user licenses, including website terms of use and privacy policies, (b) non-disclosure agreements containing customary terms, (c) employee, contractor, developer, fabrication, assembly, testing house, and other Contracts made in the Ordinary Course containing customary non-exclusive licenses to Company IP for the purpose of the counterparty performing services for or on behalf of the Company, (d) sales, marketing, reseller or distributor agreements containing non-exclusive customary licenses or rights in connection with the advertising, marketing, sale or supply of the Company's products; and (ii) pursuant to which a Person has licensed any Intellectual Property Rights to the Company or under which the Company receives any other right under such Intellectual Property Rights, other than (W) agreements that are immaterial to the Company's business, (X) licenses of commercially available Software on standard terms, including licenses for Open Source Software, (Y) non-disclosure agreements containing customary terms, and (Z) agreements with current and former employees, contractors, and consultants under customary terms.

(e) The operation of the business of the Company, including the design, development, manufacture, use, import, sale licensing or other exploitation of the services and products of the Company, has not infringed, violated, or misappropriated any Intellectual Property Rights of any Person or constituted unfair competition or trade practices under applicable law, and does not, and will not (when conducted as the Company's business is conducted immediately prior to the Closing), infringe, violate, or misappropriate any Intellectual Property Rights of any Person or constitute unfair competition or trade practices under applicable law. There are no, and have been no, actions, claims, proceedings, or suits alleging any such infringement, misappropriation, violation, unfair competition or trade practices by the Company, and the Company has not received written notice, and to the Company's Knowledge, oral notice, from any Person with respect thereto. The Company has not received written notice, and to the Company's Knowledge, oral notice, from any Person alleging that the Company is obligated or has a duty to defend, indemnify, or hold harmless any other Person with respect to, or has assumed any liabilities or is otherwise responsible for, any such allegations of infringement, misappropriation, violation, dilution, unfair competition or trade practices.

(f) To the Knowledge of the Company, no Person has infringed, violated, diluted, or misappropriated, or is infringing, violating, diluting, or misappropriating, any Company IP. The Company has not provided any Person with any notice alleging such infringement, violation, dilution, or

misappropriation and there are no, and have been no actions, claims, proceedings, or suits to which the Company is or was a party with respect to any such infringement, violation, dilution, or misappropriation.

(g) Neither this Agreement nor the transactions contemplated hereby will cause, or give any other Person the right or option to cause, by reason of any contract or agreement to which the Company is a party: (i) a loss of, or imposition of any security interest or Lien on, any Company IP or Intellectual Property Rights owned by Purchaser or its Affiliates; (ii) any Person being granted rights, access, or a license to, or the placement in or release from escrow, of any Technology owned by Company, including Company Source Code; (iii) the Company, Purchaser or any of its Affiliates granting or assigning to any Person any right in or license to any Intellectual Property Rights; (iv) the Company, Purchaser or any of its Affiliates being bound by, or subject to, any non-compete or other contractual restriction on the operation or scope of their business (excluding non-competes that run in Company's favor); (v) the termination or material and adverse alteration of the Company's right in or to any Company IP or Purchaser's or its Affiliates' rights in or to any Intellectual Property Rights owned by Purchaser or its Affiliates; or (vi) the Company, Purchaser or any of its Affiliates being obligated to pay any royalties or other amounts to any Person in excess of those payable by the Company prior to the Closing Date.

(h) The Company (i) takes and has taken steps reasonable under the circumstances to protect the rights of the Company in the trade secrets of the Company that the Company wishes to maintain as confidential and that is not otherwise disclosed by the Company's published Patents, patent applications, copyrights or other Company IP filings or products and services, and (ii) has protected the information of third parties provided to the Company under an obligation of confidentiality in accordance with its contractual obligations. Without limiting the foregoing, the Company has not disclosed trade secrets or the information of third parties provided to the Company under an obligation of confidentiality except pursuant to a written agreement or contract containing customary non-disclosure and confidentiality restrictions, except where failure to do so would not be material. To the Knowledge of the Company, no current or former employee, consultant, or independent contractor of the Company has either misappropriated or disclosed without authorization any trade secrets or any information of third parties provided to the Company under an obligation of confidentiality.

(i) The Company has required each current and former employee, consultant, and independent contractor who is or was involved in the conception, development, authoring, creation, or reduction to practice of any material Intellectual Property Rights for or on the behalf of the Company to execute a valid and enforceable agreement (except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other Laws of general application affecting enforcement of creditors' rights generally, and as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies) assigning all such assignable Intellectual Property Rights to the Company (and containing a waiver of non-assignable moral rights), and all such current and former employees, consultants, and independent contractors have executed such an agreement. To the Knowledge of the Company, no such employee, consultant, or independent contractor is, or has been in, breach of such agreements. To the Knowledge of the Company, no current or former employee, consultant, or independent contractor of the Company is bound by any agreement restricting such employee, consultant, or independent contractor from performing such employee's, consultant's, or independent contractor's duties for the Company or in breach of any agreement with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to such employee's, consultant's, or independent contractor's activities as an employee, consultant, contractor, or agent of the Company.

(j) To the Company's Knowledge solely with respect to portions of the Company's products and services that are owned by third parties, no funding of a Governmental Body, or



funding, facilities or resources of a university, college, hospital, military, other educational institution or research center was used in the creation or development of any services or products of the Company or the Company IP. To the Knowledge of the Company, no current or former employee, consultant or independent contractor of the Company who was involved in, or who contributed to, the creation or development of any services or products of the Company or the Company IP, has performed services for a Governmental Body, university, college, hospital, military, or other educational institution or research center at the same time during which such employee, consultant or independent contractor was also performing services for the Company.

(k) The Company has not participated in any standards-setting activities nor made or undertaken any commitment or obligation to license, or offer to license, any Intellectual Property Rights as a result of or in connection with its participation in any standards-setting activities.

(l) Schedule 2.10(l) sets forth a list of all Open Source Software that has been incorporated into, or bundled with, any services or products distributed by or on behalf of the Company, and for each such item of Open Source Software: (i) the name and version number of the Open Source Software; (ii) the name and version number of the applicable license; (iii) the manner in which such Open Source Software is incorporated into, or bundled with, any Company services or products (such as by static or dynamic linking); (iv) whether such Open Source Software was modified by or on behalf of the Company. The Company is in compliance with all licenses for Open Source Software used by the Company. The Company does not use and has never used any Open Source Software under a Copyleft License, or any modification or derivative thereof, in a manner that requires (to maintain the license thereunder) the Company's (A) distributing or disclosing the Company services or products in source code form; (B) licensing the services or products of the Company or Intellectual Property Rights for the purpose of making modifications or derivative works; or (C) licensing or distributing the services or products of the Company or Intellectual Property Rights at no charge; excluding in the case of subsection (A) through (C) above, third-party Open Source Software incorporated into or bundled with the services or products of the Company. The Company does not license Open Source Software under the Affero GPL license.

(m) Schedule 2.10(m) sets forth a complete and accurate list of: (i) each Person (other than current employees, contractors and agents of the Company and other third parties who are involved in the development, manufacturing, testing, or assembly of the products and services of the Company and subject to written confidentiality agreements with respect thereto, including EDA vendors, developers, manufacturers, testing houses and assembly houses, and other than immaterial sample source code provided by the Company in the Ordinary Course to customers) that has a copy of or right to license or possess the source code for any services or products of Company (such Software source code, "**Company Source Code**") and (ii) any contract or agreement (including any source code escrow agreement) governing such Person's possession of or license to Company Source Code. All of such Persons have executed valid and enforceable contracts or agreements with the Company (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other Laws of general application affecting enforcement of creditors' rights generally, and as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies) that require such Person to maintain the confidentiality of Company Source Code, and, to the Knowledge of the Company, none of such contracts or agreements has been breached. Other than those items listed in Schedule 2.10(m), the Company is not bound by any contract or agreement pursuant to which the Company is obligated to provide or license to any Person any Company Source Code (other than contracts or agreements with the Company's employees, contractors and agents and other third parties who are involved in the development, manufacturing, testing, or assembly of the products and services of the Company (including EDA vendors, developers, manufacturers, testing houses and assembly houses) and subject to written confidentiality agreements with respect thereto

and other than immaterial sample source code provided by the Company in the Ordinary Course to customers) or has deposited or may be required to deposit with any escrow agent or other Person any Company Source Code. No Person has claimed, or demanded, in writing, or to Company's Knowledge, orally, that any Company Source Code that is held in escrow be delivered or released by the escrow agent, and no Company Source Code which is held in escrow has ever been delivered or released by the escrow agent to any Person other than the Company. No event has occurred that entitles any Person to receive, and the Company has no particular reason to expect that any Person will receive, any Company Source Code from an escrow agent or from any other Person. This Section 2.10(m) does not apply to Open Source Software.

(n) To the Knowledge of the Company, neither the services and products of the Company, nor the Company IT Systems, contain or have ever contained any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access to, maliciously disable, erase, or otherwise harm software, hardware or data (collectively, "**Contaminants**"). There are, and for the past three (3) years have been, no defects, technical concerns or problems in any of the services or products of the Company that would prevent the same from performing substantially in accordance with their published specifications (collectively, "**Technical Deficiencies**"). The Company has not received any written complaints from any customers alleging they contain any Contaminants or Technical Deficiencies (other than product warranty claims made in the Ordinary Course).

(o) The Company has taken reasonable steps relative to the nature of the Company IT Systems and Company's resources to protect and ensure proper operation, monitoring and use of the Company IT Systems that are owned by the Company or within its control. The Company IT Systems, to the Company's Knowledge with respect to Company IT Systems not owned by and to the extent not within the Company's control, are, as a whole, adequate and sufficient, and in good working condition, to perform the information technology operations necessary for the conduct of the business of the Company. The Company has not experienced within the past thirty-six months any material disruption to, or material interruption in, its conduct of its business attributable to a defect, bug, breakdown or other failure or deficiency on the part of the Company IT Systems that remains unresolved. There have been, to the Company's Knowledge, no material unauthorized intrusions or breaches of the security of the Company IT Systems and, to the Company's Knowledge, the data and information which they store or process has not been corrupted in any discernible manner or accessed without the authorization of the Company. The Company has taken steps to provide for the back-up and recovery of the data and information critical to the conduct of their business.

2.11 Litigation. There is no Action (excluding investigation) pending, at Law or in equity, or before or by any Governmental Body, or threatened in writing against the Company or its properties, assets or business or any of their respective officers, directors or stockholders related to the business of the Company. There is no Action by the Company pending or which the Company intends to initiate and, to the Company's Knowledge, there is no specific reason to expect the commencement of any Action. The Company is not subject to any outstanding Order, settlement agreement or consent decree arising from any Action, at Law or in equity, or with any Governmental Body. As of the Agreement Date, to the Company's Knowledge, there is no investigation currently pending or threatened in writing against the Company by a Governmental Body.

2.12 Governmental Consents. Assuming compliance with any applicable requirements of the HSR Act or other antitrust Laws, the Company is not required to make any declaration to or registration or filing with, or to obtain any Permit from, any Governmental Body in connection with the execution and delivery by the Company of this Agreement or any other Transaction Agreement or the consummation of the Transaction, except for declarations, registrations, filings, or Permits that are immaterial.

## 2.13 Employee Benefit Plans.

(a) Schedule 2.13(a) sets forth a true and correct list of each material Employee Benefit Plan (other than with respect to Contracts based on form agreements that have been made available to Purchaser and disclosed on Schedule 2.13(a) provided such Contracts do not materially differ from the forms upon which they are based). With respect to each material Employee Benefit Plan, the Company has delivered or made available to Purchaser copies, to the extent applicable, of (i) the plan and trust documents, including any amendments, and the most recent summary plan description, (ii) the most recent determination or opinion letter from the Internal Revenue Service with respect to each Employee Benefit Plan intended to qualify under Section 401(a) of the Code, (iii) all material correspondence to or from any governmental agency relating to any Employee Benefit Plan for the three most recent plan years, (iv) the three most recent annual actuarial valuations, if any, and (v) the three most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any.

(b) The Company and its ERISA Affiliates do not sponsor, maintain or contribute to (and are not required to contribute to), and in the past six (6) years, have not sponsored, maintained or contributed to (and were not required to contribute to) any retirement plan or arrangement that is subject to Title IV of ERISA, is a multiemployer pension plan (as defined in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA), or is subject to Section 412 of the Code. No Employee Benefit Plan pays for or provides health or life insurance benefits to retirees or former employees of the Company, other than health continuation coverage required pursuant to COBRA or other applicable Laws. No Employee Benefit Plan that is subject to ERISA holds employer securities or employer real property as a plan asset.

(c) The Employee Benefit Plans have been maintained and administered in compliance in all material respects with applicable Law and the terms of the Employee Benefit Plans. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is the subject of a favorable opinion letter from the Internal Revenue Service on the form of such Employee Benefit Plan on which the Company can rely and, to the Company's Knowledge, there are no facts or circumstances that would be reasonably likely to adversely and materially affect the qualified status of any such Employee Benefit Plan. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 or 407 of ERISA and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Employee Benefit Plan that has resulted in any material liability to the Company. All contributions, reserves or premium payments required to have been made or accrued, or that are due, as of the Agreement Date to or with respect to the Employee Benefit Plans have been timely made or accrued.

(d) Each Employee Benefit Plan that is subject to ERISA can be amended, terminated or otherwise discontinued in accordance with its terms, without any liability to Purchaser, the Company or any ERISA Affiliate (other than routine and ordinary administration expenses or liabilities in respect of claims incurred prior to such amendment, termination or discontinuance, any accrued benefits, and ordinary administrative expenses associated with the amendment or termination).

(e) No Action, suit or claim (excluding claims for benefits incurred in the Ordinary Course) has been brought or is pending or, to the Company's Knowledge, threatened against or with respect to any Employee Benefit Plan or the assets or any fiduciary thereof (in that Person's capacity as a fiduciary of such Employee Benefit Plan). There are no audits, inquiries or proceedings pending or, to the Company's Knowledge, threatened by the Internal Revenue Service, Department of Labor, or other governmental agency with respect to any Employee Benefit Plan.

(f) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement (alone or together with any other event which, standing alone, would not by itself trigger such entitlement or acceleration) will not (i) entitle any Person to any payment, forgiveness of indebtedness, vesting, distribution, or increase in benefits under or with respect to any Employee Benefit Plan, (ii) otherwise trigger any acceleration (of vesting or payment of benefits or otherwise) under or with respect to any Employee Benefit Plan, or (iii) trigger any obligation to fund any Employee Benefit Plan.

(g) There is no contract, plan or arrangement covering any current or former employee, director or consultant of the Company that, individually or collectively, would give rise to the payment as a result of the transactions contemplated by this Agreement of any amount that would not be deductible by the Company by reason of Section 280G of the Code.

(h) No Employee Benefit Plan has failed to comply with Section 409A of the Code in a manner that would result in any Tax, interest or penalty thereunder. The Company does not have any liability or obligation to pay or reimburse any Taxes, or related penalties or interest, that may be incurred by any current or former employee, director or independent contractor of the Company, including pursuant to Code Section 4999 or Code Section 409A.

(i) No Employee Benefit Plan is maintained outside the jurisdiction of the United States, or covers any employee residing or working outside the United States.

#### 2.14 Employment and Labor Matters.

(a) Schedule 2.14(a) accurately lists all current employees of the Company as of the Agreement Date, and for each such employee, his or her: (i) job position and work location, (ii) classification as full-time, part-time or seasonal, (iii) classification as exempt or non-exempt under applicable state, federal or foreign overtime regulations, (iv) hourly rate of compensation or base salary (as applicable), (v) bonus or commission opportunity, (vi) vacation accrual rate, (vii) accrued but unused vacation, (viii) visa type (if any), (ix) commencement date of employment with the Company, and (x) the Entity that employs such employee (if not the Company).

(b) The Company is in material compliance with all applicable Laws and its own policies regarding employment, equal opportunity, nondiscrimination, immigration, labor and wage and hour matters, benefits, collective bargaining, occupational safety and health, and/or privacy rights of employees. For the last three years, the Company has not been a party to any court, arbitration, or administrative proceeding in which the Company was, or is, alleged to have violated any statutes, laws, ordinances, rules or regulations, or any orders, rulings, decrees, judgments or arbitration awards of any court, arbitrator or any government agency relating to employment, equal opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, occupational safety and health, and/or privacy rights of employees. For the last three years, with respect to the Company's employees, no labor organization or group of employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Company's Knowledge, threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. The Company does not recognize and is not obligated to recognize a works council, union, employee representatives, or similar employee representation. The Company is not a party to, or otherwise subject to, any collective bargaining agreement, modern award or other Contract with any labor organization or other representative of the Company's employees. There are and have been for the last three years no strikes, work stoppages, slowdowns, lockouts, arbitrations or grievances, or other material labor disputes, pending or, to the Company's Knowledge,

threatened in writing against or involving the Company's employees or the Company. To the Company's Knowledge, none of the Company's employees are obligated under any Contract or subject to any Order that would conflict with the Company's business in any material respect. The Company is not delinquent in any material respect in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, severance payments, bonuses, or other direct compensation. The Company has provided in all material respects all required sick leave, paid time off or vacation to all employees. The employment of each employee of the Company is terminable at the will of the Company.

(c) In the last three years, the Company has not effectuated (i) a "plant closing" as defined in the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the "**WARN Act**") (or any similar state, local or foreign law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or (ii) a "mass layoff" as defined in the WARN Act (or any similar state, local or foreign law) affecting any site of employment or facility of the Company.

2.15 Insurance. Schedule 2.15 lists each insurance policy providing coverage to the Company, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. The Company is not in default with respect to its obligations under any of such insurance policies. There is no claim by the Company pending under any of such policies or bonds as to which coverage has been denied or disputed or that the Company has a reason to believe will be denied or disputed by the underwriters thereof. In addition, there is no pending claim which, if successful, would have a total value (inclusive of defense expenses) in excess of the policy limits. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, will be paid if incurred prior to the Closing Date). The Company has not received any written notice of cancellation, termination, or nonrenewal with respect to any insurance policy.

2.16 Compliance with Laws; Permits. The Company is and has for the last three years been in compliance in all material respects with all applicable Laws of applicable Governmental Bodies. There is no proceeding or disciplinary Action currently pending, or to the Company's Knowledge, threatened against the Company by a Governmental Body. During the last three years, the Company has not received any written notice from any Governmental Body regarding any actual, alleged or potential violation by the Company of, or failure by the Company to comply with, any applicable Laws and, to the Company's Knowledge, no such communication is threatened or pending, and no event has occurred or circumstances exist with respect to the Company that would reasonably be expected to give rise to or serve as the basis for any such communication. All approvals, filings, permits and licenses of Governmental Bodies (collectively, "**Permits**") required to conduct the business of the Company are in the possession of the Company, are in full force and effect and are being complied with, except for such Permits the failure of which to be in the possession of, or to be in compliance with, would not be reasonably expected to be material to the Company. Schedule 2.16 sets forth a list of all Permits held by the Company that are material to the conduct of the business of the Company. The Company is duly qualified to transact business and is in good standing in each jurisdiction listed on Schedule 2.16(a), which constitute those jurisdictions where the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to obtain such qualification would not reasonably be expected to be material to the Company.

2.17 Environmental Compliance and Conditions.

(a) The Company has obtained, and are and at all prior times have been in material compliance with the terms and conditions of, all material Permits required to conduct the business

of the Company under Environmental and Safety Requirements. Schedule 2.17 sets forth a complete list of such Permits and the expiration date of each.

(b) The Company is and at all prior times has been in material compliance with applicable Environmental and Safety Requirements.

(c) The Company has not received a written Claim, notice or demand letter from any Governmental Body or any other Person, and to Company's Knowledge none has been threatened, alleging liability under Environmental and Safety Requirements as to which there remains any outstanding material liabilities or obligations.

(d) The Company has not generated, treated, stored, Released, or disposed of any Hazardous Material on any property currently owned, leased or operated by the Company, or at any other location, except in material compliance with applicable Environmental and Safety Requirements.

(e) To the Company's Knowledge, none of the Real Property is affected by any condition, and there has been no activity or failure to take any action by the Company, that could reasonably be expected to result in any material liability or obligation under any Environmental and Safety Requirements.

(f) The Company has not assumed by contract, agreement, or operation of law, or otherwise agreed, to (i) indemnify or hold harmless any other Person for any material violation of any Environmental and Safety Requirements or any material obligation or liability thereunder (other than general indemnities that do not specifically relate to Environmental and Safety Requirements); (ii) assume any material liability for any Release of any Hazardous Material, conduct any response, removal or remedial action with regard to any Release of any Hazardous Material, or implement any institutional controls (including any deed restrictions) regarding any existing Hazardous Materials; or (iii) give a release or waiver of liability that would waive or impair any claim, demand, or action related to any material Release of any Hazardous Material in, on, under, to or from any Real Property against a previous owner or operator of any Real Property or against any other Person who may be potentially responsible for such Release.

(g) No underground storage tanks, friable asbestos, lead-based paint, or polychlorinated biphenyls for which the Company is liable or responsible, are located at any property currently owned, leased or operated by the Company.

(h) All Phase One, Phase Two, and other environmental assessments or reports, and all environmental compliance audits of facilities now or formerly owned, leased, controlled or operated by the Company have been made available on the Company's electronic data site

(i) Notwithstanding anything to the contrary in this Agreement, the representations and warranties set forth in this Section 2.17 are the only representations and warranties made by the Company under this Agreement in relation to environmental, health or safety matters, or Hazardous Materials including any arising under Environmental and Safety Requirements.

2.18 Affiliate Transactions. The Company is not currently nor, for the last three years, has it engaged in or been party to any transaction (including any Contract) with any of its officers, directors or record or beneficial owner of 5% or more of the Capital Stock of the Company or, to Company's Knowledge, any of such Person's immediate family members or Affiliates, other than employment, management retention, stock option, and other compensation agreements or matters that are de minimis. No officer, director or record or beneficial owner of 5% or more of the Capital Stock currently owns, directly or indirectly, in whole or in part, or maintains any direct or indirect interest in, any tangible or intangible property used by the

Company in the operation of its business or the use of which is material to the operation of such business (taken as a whole).

2.19 Brokerage Fees. Except for fees and expenses of Morgan Stanley which are included in the Company Transaction Expenses, there are no obligations for brokerage commissions, finders' fees or similar compensation in connection with the Transaction based on any agreement made by or on behalf of the Company for which Purchaser or the Surviving Corporation would be liable following the Closing.

2.20 Customers and Suppliers.

(a) Schedule 2.20(a) sets forth a true, correct and complete list of each of the ten largest customers of the Company (with customer being defined as the brand and not the ODM), based on the aggregate amount paid to the Company (i) during the twelve-month period ended on December 31, 2017 and (ii) for the six-month period ended June 30, 2018 (the "**Major Customers**"). The Company is not engaged in any material dispute with any of the Major Customers and, to the Company's Knowledge, no Major Customer has provided written notice that it intends to terminate, limit, materially change the terms of (including any announced or requested change in quantities or pricing) or materially reduce its business relations with the Company. As of the Agreement Date, the Company has no particular reason to believe that the Transaction is reasonably likely to have an adverse effect on the business relationship of the Company with any Major Customer.

(b) Schedule 2.20(b) sets forth a true, correct and complete list of each of the ten largest suppliers of the Company based on the aggregate amount paid by the Company (i) during the twelve-month period ended on December 31, 2017 and (ii) for the six-month period ended June 30, 2018 (the "**Major Suppliers**"). The Company is not engaged in any material dispute with any of the Major Suppliers and, to the Company's Knowledge, no Major Supplier has provided written notice that it intends to terminate, limit, materially change the terms of (including any announced or requested change in quantities or pricing) or materially reduce its business relations with the Company. As of the Agreement Date, the Company has no particular reason to believe that the consummation of the Transaction is reasonably likely to have an adverse effect on the business relationship of the Company with any Major Supplier.

2.21 Inventory. The inventories reflected in the Financial Statements are properly recorded and reserved for thereon in accordance with GAAP. All of the inventories recorded in the Financial Statements consist in all material respects of, and all inventories on the Closing Date will consist in all material respects of, items of a quality usable or saleable in the Ordinary Course, except for obsolete, damaged or defective inventory that has been written off or written down to fair market value on the Financial Statements or for which adequate reserves have been established on the Financial Statements. In the last three years, the Company has not received written notice requesting a recall of any item of inventory.

2.22 Accounts Receivable. All accounts receivable (including those accounts receivable reflected in the Financial Statements that have not yet been collected): (a) represent sales actually made in the Ordinary Course; (b) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course; (c) do not represent obligations for goods sold on consignment; and (d) are not the subject of any Action brought by or on behalf of the Company. Since June 30, 2018, the Company has collected its accounts receivable in the Ordinary Course, and has not accelerated any such collections.

2.23 Bank Accounts. Schedule 2.23 lists all of the bank accounts or safe deposit boxes of the Company, in each case together with the account number and box number (designating each authorized signatory and the level of each signatory's authorization).

2.24 Product and Service Warranties. There is no pending Action (excluding investigations) or, to the Company's Knowledge, threatened Action (including investigations) relating to any product manufactured, distributed or sold or any service provided by the Company, and alleged to have been defective or improperly designed or manufactured or provided or in breach of any product warranty. To the Company's Knowledge, there exists no threatened material warranty claims relating to the Company's business.

2.25 FCPA; Compliance with Office of Foreign Assets Control.

(a) The Company has not nor, to the Company's Knowledge, have any of its directors, officers or employees (in their capacity as such) made, directly or indirectly, any offer, or payment or promise to pay, or gift or promise to give or authorized such an offer, promise or gift, of any money or anything of value, directly or indirectly, to (i) any foreign official (as such term is defined in the U.S. Foreign Corrupt Practices Act (the "*FCPA*")) for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a Governmental Body or (ii) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a Governmental Body, in the case of both (i) and (ii) above in violation of any applicable Law and in order to assist the Company or any of its Affiliates to obtain or retain business for, or direct business to, the Company.

(b) Neither the Company nor any of its respective directors, officers or employees is an OFAC Sanctioned Person. The Company and its directors, officers or employees (in their capacity as such) are in material compliance with, and have not violated, the USA Patriot Act of 2001, as amended through the Effective Time, to the extent applicable to such Person and all other applicable anti-money laundering Laws.

(c) The Company has been in compliance with all applicable Laws regarding export control ("*Export Controls*"), including the including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control and the International Traffic in Arms Regulations maintained by the Department of State and any applicable anti-boycott compliance regulations and the Company has been in compliance with all applicable import Laws ("*Import Restrictions*"), including Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations.

(d) No Action is pending or, to the Company's Knowledge, threatened, concerning or relating to any export or import activity of the Company and no voluntary self-disclosures have been filed by or for the Company with respect to possible violations of any Export Controls or Import Restrictions.

**3. Representations and Warranties of Purchaser**. Purchaser hereby represents and warrants to the Company that the following representations are true and correct:

3.1 Organization, Good Standing, Qualification and Power. Each of Purchaser and Merger Sub has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and has all requisite corporate authority to carry on its business



as currently conducted. Each of Purchaser and Merger Sub is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its business or the ownership of its assets makes such qualification necessary.

3.2 Authorization. Each of Purchaser and Merger Sub has full power and authority to enter into this Agreement and the Transaction Agreements to which it is a party. This Agreement and the Transaction Agreements to which Purchaser and/or Merger Sub are a party, when executed and delivered by Purchaser and/or Merger Sub, as applicable, will constitute valid and legally binding obligations of Purchaser and/or Merger Sub, as applicable, enforceable in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other Laws of general application affecting enforcement of creditors' rights generally, and as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3.3 No Violation. Neither Purchaser nor Merger Sub is subject to or obligated under its Organizational Documents, any applicable Law, or rule or regulation of any Governmental Body, or any material agreement or instrument, or any license, franchise or Permit, or subject to any Order, writ, injunction or decree, which would be breached or violated in any material respect by Purchaser's or Merger Sub's execution, delivery or performance of this Agreement.

3.4 Sufficient Funds. Purchaser has and will, at the Effective Time, have cash and cash equivalents and/or available sources of credit sufficient to consummate the Merger, including payment in cash of the aggregate Merger Consideration at the Closing and the payment of all related fees and expenses. Purchaser acknowledges that its obligations under this Agreement are not contingent or conditioned in any manner on obtaining any financing.

3.5 Governmental Consents and Filings. Purchaser is not required to make any declaration to or registration or filing with, or to obtain any permit from, any Governmental Body in connection with the execution and delivery by Purchaser of the Transaction Agreements to which Purchaser is to be a party or the consummation by Purchaser of the Transaction, except for declarations, registrations, filings, or Permits that are immaterial or customarily obtained after Closing.

3.6 Litigation. There are no proceedings pending or, to Purchaser's knowledge, threatened in writing against or affecting Purchaser at law or in equity, or before or by any Governmental Body, which would affect Purchaser's performance under this Agreement or the consummation of the Merger.

3.7 Activities of Merger Sub. Merger Sub was formed solely for the purpose of effecting the Merger. Merger Sub has not and will not prior to the Effective Time engage in any activities other than those contemplated by this Agreement and has, and will have as of immediately prior to the Effective Time, no liabilities other than those contemplated by this Agreement.

3.8 Brokers' Fees. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the Transaction based on any arrangement or agreement made by or on behalf of Purchaser.

3.9 No Other Representations and Warranties; Non-Reliance. Notwithstanding anything to the contrary in this Agreement, Purchaser, on behalf of itself and Merger Sub, acknowledges and agrees that (a) Purchaser has conducted to its satisfaction an independent investigation of the financial condition, operations, assets, liabilities, properties and business of the Company; (b) the representations and warranties set forth in Section 2 of this Agreement constitute the sole and exclusive representations and warranties of the Company; and (c) other than those representations and warranties of the Company set forth

in Section 2, neither the Company nor any other Person on the Company's behalf, is making, and Purchaser and Merger Sub disclaim reliance on, any representation or warranty of any kind whatsoever, express or implied, at law or in equity, with respect to the Company or its business organization, assets, or properties.

#### 4. Covenants.

4.1 Conduct of Business Prior to Closing. Except as provided or permitted herein, as set forth in Schedule 4.1 or as consented to by Purchaser (which consent shall not be unreasonably withheld), during the period commencing on the Agreement Date and ending at the Closing or such earlier date as this Agreement may be terminated in accordance with its terms (the "**Pre-Closing Period**"), the Company shall use commercially reasonable efforts to (a) act and carry on its business in the Ordinary Course, (b) maintain and preserve in all material respects the Company's business organization, assets, properties (reasonable wear and tear excluded) and relationship with customers, suppliers, employees and others having business dealings with them, (c) perform and comply with the Material Contracts and comply with all applicable Laws, (d) maintain their respective books and records in the usual, regular and ordinary manner, on a basis consistent with past practice, (e) continue to collect accounts receivable and pay accounts payable in the Ordinary Course, and (f) preserve their goodwill and ongoing operations. Without limiting the generality of the foregoing, except as expressly provided or contemplated by this Agreement, as required by Law or as set forth in Schedule 4.1, during the Pre-Closing Period, the Company shall not directly or indirectly, do any of the following without the consent of Purchaser (which consent shall not be unreasonably withheld), in each case, other than in the Ordinary Course:

(a) split, combine or reclassify any of its Capital Stock or issue or authorize the issuance of any other securities or other Equity Interests in respect of, in lieu of or in substitution for shares of its Capital Stock;

(b) authorize for issuance, issue or sell or agree or commit to issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock of any class or any other securities or Equity Interests (other than the issuance of shares of Capital Stock upon the exercise of Options or Warrants that are outstanding on the Agreement Date);

(c) amend or make any change to the Organizational Documents of the Company, or change the authorized Capital Stock or Equity Interests of the Company;

(d) (i) incur any Indebtedness (or obtain any new or additional commitment from any Person to provide any such Indebtedness, except for borrowings under the Company's existing credit facilities that will be fully satisfied at the Closing), (ii) issue, sell or amend any debt securities of the Company, (iii) guarantee any debt securities of another Person, (iv) make any loans, advances (other than routine advances not in excess of \$1,000 to employees of the Company in the Ordinary Course) or capital contributions to, or investment in, any other Person, other than the Company; or (v) create any Lien on any material assets of the Company other than a Permitted Lien;

(e) (i) make any material change in its borrowing arrangements or (ii) knowingly waive, release, write off or assign any material rights or claims;

(f) materially change accounting policies or procedures, except as required by applicable Laws or by GAAP;

(g) except as required by applicable Laws or under the terms of any Employee Benefit Plan as of the Agreement Date, (i) adopt, amend or terminate any Employee Benefit Plan (including any underlying agreements), except as required to maintain the qualified status of such Employee Benefit Plan, (ii) increase or grant any increase in the compensation, bonus or benefits of, or pay, grant or promise any bonus to, any current or former employee, director or independent contractor other than (A) base salary increases made in the Ordinary Course that do not exceed individually, 5% per employee, and, in the aggregate, 1% of the overall total salary paid by the Company, in either case, as compared with the individual and aggregate salaries paid by the Company as of immediately prior to the Agreement Date, or (B) bonuses to be paid to employees as of the Closing Date (collectively, “**Closing Bonuses**”), which such Closing Bonuses will be treated as a Company Transaction Expense, (iii) grant or pay any severance or change in control pay or benefits to, or otherwise increase the severance or change in control pay or benefits of, any current or former employee, director or independent contractor other than Closing Bonuses, (iv) take any action to accelerate the vesting or payment of, or otherwise fund or secure the payment of, any compensation or benefits under any Employee Benefit Plan, or (v) hire or fire (other than for cause) any employee with an annual base salary in excess of \$150,000;

(h) make any capital expenditure other than those set forth in the Company’s annual budget;

(i) acquire, sell, lease, pledge or otherwise dispose of or encumber any material properties or material assets of the Company other than purchases or inventory or fixed assets in the Ordinary Course;

(j) license any Company IP, other than non-exclusive licenses granted in the Ordinary Course;

(k) terminate, abandon, withdraw or otherwise fail to maintain any Company Registered IP;

(l) make, revoke or change any material Tax election or method of Tax accounting, enter into any closing agreement, settle or compromise any liability with respect to Taxes, or consent to any claim or assessment relating to Taxes or waive the statute of limitations for any such claim or assessment, except as required by applicable Law;

(m) amend or terminate, or waive any right under, any Material Contract;

(n) settle or compromise any litigation or other disputes;

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

(p) declare or pay any non-cash dividend or make any cash distribution after the delivery of the Closing Certificate in respect of any of its Capital Stock;

(q) make any material change to, fail to renew or otherwise allow any insurance policy applicable to the Company to lapse;

(r) enter into new lines of business or discontinue an existing line of business; or

(s) enter into any agreement, commitment or undertaking to do any of the activities prohibited by the foregoing provisions.

Except with respect to Purchaser's approval rights set forth in this Section 4.1, nothing contained in this Agreement shall give Purchaser, directly or indirectly, the right to control or direct the operations of the Company prior to the Closing. Prior to the Closing, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations and shall be permitted to use cash on hand to pay down existing Indebtedness.

4.2 Access to Information. Subject to applicable Law and to the terms and conditions of the Confidentiality Agreement, between the Agreement Date and the Closing Date, the Company shall give Purchaser and its representatives (including any insurers and underwriters in respect of the R&W Insurance Policy, financing sources or investors, each in compliance with applicable Law) reasonable access upon reasonable advance notice and during normal business hours to the facilities, properties, management, Company Employees, books and records of the Company as from time to time may be reasonably requested in advance. Any such investigation or request by Purchaser shall not unreasonably interfere with any of the businesses or operations of the Company. Purchaser shall not, prior to the Closing Date, have any contact whatsoever with respect to the Company or with respect to the Transaction with any partner, lender, lessor, vendor, customer, supplier, employee or consultant of the Company, except in consultation with the Company and then only with the express prior approval of the Company, which approval shall not be unreasonably withheld; provided that the Company agrees that each of the Company Employees with which Purchaser has had direct contact prior to the Agreement Date are hereby deemed approved for further contact prior to the Closing Date. All requests by Purchaser for access or information shall be submitted or directed exclusively to an individual or individuals to be designated in writing by the Company.

4.3 Press Releases and Communications. Prior to the Closing, no party to this Agreement shall make, and shall cause their respective Affiliates to not make, any public announcements in respect of this Agreement or the Transaction without the prior written consent of the other party (such consent not to be unreasonably withheld) except for any filings required to be made with the Securities and Exchange Commission or any other filings required by applicable Law or expressly contemplated by this Agreement. Notwithstanding the foregoing, Purchaser may, on or after the Agreement Date, issue a press release announcing the execution of this Agreement in substantially the same form as provided to the Company prior to the Agreement Date.

#### 4.4 Officers' and Directors' Indemnification.

(a) Purchaser agrees that all rights to indemnification, advancement or exculpation existing in favor of, and all limitations on the personal liability of, each present and former director, officer, employee, fiduciary and agent of the Company (the "***D&O Indemnified Persons***") provided for in their respective Organizational Documents (all of which have been made available to Purchaser) or in any indemnification agreement set forth on Schedule 4.4(a) in effect as of the Agreement Date with respect to any such rights relating to matters occurring prior to the Closing Date, will survive the Transaction and continue in full force and effect following the Closing Date. The indemnification, advancement and liability limitation or exculpation provisions of each of the Company's Organizational Documents will not be amended, repealed or otherwise modified after the Closing Date in any manner that would adversely affect the rights thereunder of the D&O Indemnified Persons, unless such modification is required by applicable Law. Without limiting the general indemnification and advancement rights of the D&O Indemnified Persons under this Section 4.4(a), from and after the Closing Date, Purchaser and the Surviving Corporation also agree to indemnify, advance to and hold harmless the present and former officers and directors of the Company

in respect of acts or omissions occurring prior to the Closing to the extent such right to indemnification or advancement is provided for in the indemnification agreements set forth on Schedule 4.4(a), a true and complete copy of which has been made available to Purchaser.

(b) Prior to the Effective Time, the Company shall purchase an extended period endorsement under the Company's existing directors' and officers' liability insurance coverage for the Company's directors and officers in a form acceptable to the Company and Purchaser that shall provide such directors and officers with coverage for six years following the Closing Date of not less than the existing coverage and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company (the "***D&O Insurance Coverage***"), provided that the full cost and all premiums associated with such D&O Insurance Coverage are paid in lump sum by the Purchaser at the Closing, with 50% of such costs or premiums being treated as a Company Transaction Expense. Purchaser shall, and shall cause the Surviving Corporation to continue to honor the obligations under the D&O Insurance Coverage, provided, that neither Purchaser nor the Surviving Corporation shall be required to pay any additional premium amounts following the Closing with respect to such coverage, including any additional premium amounts to maintain such D&O Insurance Coverage.

(c) The obligations under this Section 4.4 shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Person to whom this Section 4.4 applies without the consent of such D&O Indemnified Person (it being expressly agreed that the D&O Indemnified Person to whom this Section 4.4 applies shall be third party beneficiaries of this Section 4.4 and shall be entitled to enforce the covenants contained in this Agreement).

#### 4.5 Employee Benefits Arrangements.

(a) During the period commencing at Closing and ending on the date which is twelve months from the Closing (or if earlier, the date of the employee's termination of employment with the Company), Purchaser shall, and shall cause the Company to, provide all persons who were employed by the Company immediately preceding the Closing, including those on vacation, leave of absence or disability (the "***Company Employees***") with (i) substantially similar types and levels of cash compensation opportunities in the aggregate for each Company Employee as provided immediately prior to the Closing (without taking into account any Closing Bonuses) and (ii) substantially similar benefits (including vacation, paid time-off and severance) in the aggregate for each Company Employee as provided to similarly situated employees of Purchaser. Purchaser shall, and shall cause the Company to, treat, and cause the applicable benefit plans (excluding any equity or equity based compensation plans and defined benefit retirement plans) to treat, the service of Company Employees attributable to any period before the Closing as service rendered to Purchaser or the Company for all purposes (other than benefit accrual under a defined benefit retirement plan), including but not limited to, eligibility to participate, vesting and for other appropriate benefits, including, but not limited to, applicability of any minimum waiting periods for participation. Without limiting the foregoing, Purchaser shall not, and shall cause the Company not to, treat any Company Employee as a "new" employee for purposes of any exclusions under any health or similar plan of Purchaser or the Company for a pre-existing medical condition, and any deductibles (but not co-pays) paid under any of the Company's health plans shall be credited towards deductibles under the health plans of Purchaser or the Company. Purchaser shall, and shall cause the Company, to use commercially reasonable efforts to make appropriate arrangements with its insurance carrier(s) to provide for such results.

(b) In addition to the Estimated Merger Consideration, Purchaser and the Company would mutually agree on an employee retention pool to be established at the Closing and funded by the Purchaser.

(c) The Company will adopt, or will cause to be adopted, all necessary corporate resolutions (which shall be subject to Purchaser's reasonable review and approval) to terminate each 401(k) plan sponsored or maintained by the Company, effective as of no later than one day prior to Closing. Immediately prior to such termination, the Company will have made or, if such payments are not yet due and payable, accrued, all necessary payments to fund the contributions: (i) necessary or required to maintain the tax-qualified status of the 401(k) plan; (ii) for elective deferrals made pursuant to the 401(k) plan for the period prior to termination; and (iii) for any employer contributions (including, without limitation, any matching contributions, if any) for the period prior to termination. The Company shall provide Purchaser with a copy of resolutions duly adopted by the Company Board so terminating any such 401(k) plan.

(d) The provisions of this Section 4.5 are solely for the benefit of the parties to this Agreement and nothing in this Section 4.5 or elsewhere in this Agreement, expressed or implied, shall be construed to (i) create a right in any Company Employee to employment with Purchaser, the Surviving Corporation or any of their respective Affiliates or shall restrict in any way the rights of Purchaser, the Surviving Corporation or any of their respective Affiliates to terminate such employee's services at any time for any reason or no reason, (ii) limit the right of Purchaser, the Company, the Surviving Corporation or any of their respective Affiliates to amend or terminate any employee benefit plan, (iii) create any third party rights, benefits or remedies of any nature whatsoever in any Company Employee (or any beneficiaries or dependents thereof) or any other Person that is not a party to this Agreement, or (iv) be treated as establishing or amending any employee benefit plan or arrangement of Purchaser, the Company or any of their respective Affiliates.

4.6 Confidentiality. The parties (other than Agent) shall adhere to the terms and conditions of the Confidentiality Agreement, provided, however, that Purchaser's and its Affiliates' obligations set forth in the Confidentiality Agreement will terminate with respect to information relating solely to the Company. Agent shall keep all information received by it in connection with the Transaction confidential and provided further, that, following the Closing, Agent shall be permitted to (a) after the public announcement of the Merger contemplated by Section 4.3, publicly announce that it has been engaged to serve as the Agent in connection with this Agreement as long as such announcement does not disclose any of the other terms of this Agreement or the Transaction; and (b) disclose information as required by Law or to employees, advisors, agents or consultants of Agent and to the Equityholders, in each case who have a need to know such information, provided that such persons are subject to and agree to be bound by the confidentiality obligations set forth in this Section 4.6.

4.7 280G Covenant. To the extent required, prior to the Closing, the Company shall use commercially reasonable efforts to submit to its shareholders, for approval (in a manner and with a disclosure document reasonably satisfactory to Purchaser) by a vote of such shareholders as is required pursuant to Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder (the "**280G Stockholder Vote**"), any such payments or other benefits that may, separately or in the aggregate, cause there to be "parachute payments" within the meaning of Section 280G of the Code and the Treasury Regulations thereunder (the "**280G Payments**"), such that, if the 280G Stockholder Vote is received approving the 280G Payments, such 280G Payments shall not cause there to be "excess parachute payments" under Section 280G of the Code and the Treasury Regulations thereunder. Prior to such 280G Stockholder Vote, the Company shall use commercially reasonable efforts to obtain, from each Person whom the Company reasonably believes to be with respect to the Company a "disqualified individual" (as defined in Section 280G of the Code and the Treasury Regulations thereunder) and who might otherwise receive or have the right or entitlement to receive a parachute payment under Section 280G of the Code, a written waiver pursuant to which such Person agrees to waive any and all right or entitlement to such parachute payment, to the extent such payment would cause any payment not to be deductible pursuant to Section 280G of the Code. Such

waivers shall cease to have any force or effect with respect to any item covered thereby to the extent the 280G Stockholder Vote for such item is obtained.

4.8 Information Statement. No later than two Business Days following receipt of the Requisite Stockholder Consent, the Company will deliver to those Stockholders who did not execute the Requisite Stockholder Consent an information statement (the “**Information Statement**”) in form and substance reasonably acceptable to Purchaser which shall (i) provide notice to the Stockholders of the Company Board’s adoption of this Agreement and approval of the Merger to the Stockholders, pursuant to and in accordance with the applicable provisions of Delaware Law, (ii) provide the requisite notice of appraisal rights under Delaware Law, (iii) provide notice to the Stockholders that the Company has obtained the Requisite Stockholder Consent, (iv) provide due notice of the request for Stockholder action and (v) request that such Stockholder execute the Written Consent. For the avoidance of doubt, each of the Stockholders who execute the Requisite Stockholder Consent will have received a substantially complete draft of the Information Statement prior to such Stockholder delivering its Written Consent. The Company shall promptly confirm to Purchaser the date on which the Information Statement was sent. Whenever any event occurs which should be set forth in an amendment or supplement to the Information Statement so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein not misleading, the Company or Purchaser, as the case may be, will promptly inform the other of such occurrence and cooperate in making any appropriate amendment or supplement to, and/or mailing to the Stockholders of, such amendment or supplement.

4.9 Further Assurances. From and after the Closing, as and when requested by any party, each party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions, as such other party may reasonably deem necessary to fulfill its obligations under any Transaction Agreement, or that is necessary or desirable to fully effectuate the purposes of any Transaction Agreement, to effect the Transaction and to provide for the orderly and efficient transition of the ownership of the Company to Purchaser.

4.10 Notice of Breaches. From and after the Agreement Date until the earlier of the Effective Time or the termination of this Agreement in accordance with Section 8, the Company will promptly deliver to Purchaser supplemental information concerning events or circumstances occurring subsequent to the execution and delivery of this Agreement which would render any representation, warranty or statement in this Agreement or the Disclosure Schedules inaccurate or incomplete in any material respect or that would, if uncured, cause any of the conditions to Closing set forth in Section 7 not to be satisfied. No such supplemental information will be deemed to alter the Company’s representations and warranties or its statements and disclosures in the Disclosure Schedule, or to avoid or cure any misrepresentation or breach of warranty by the Company or to constitute an amendment of any of the Company’s representations or warranties in this Agreement or any of the Company’s statements and disclosures in the Disclosure Schedule.

4.11 Exclusivity. From and after the Agreement Date until the earlier of the Effective Time or the termination of this Agreement in accordance with Section 8, the Company will not, nor will the Company permit any of its officers, directors, employees, stockholders, representatives or agents to, directly or indirectly, (a) initiate, solicit, encourage or otherwise facilitate any inquiry, proposal, offer or discussion with any party (other than Purchaser) concerning any Alternative Transaction; (b) license all or any portion of the Company IP outside the Ordinary Course; (c) furnish any non-public information concerning the business, properties or assets of the Company or any division of the Company to any party (other than Purchaser), in each case, in connection with an Alternative Transaction; or (d) engage in discussions or negotiations with any party (other than Purchaser) concerning any Alternative Transaction. In the event that the Company or any of the Company’s Affiliates receives, prior to the Effective Time or the termination of

this Agreement in accordance with Section 8, any offer, proposal, or request, directly or indirectly, of the type referenced in clause (a) or (b) above, or any request for disclosure or access as referenced in clause (c) above, the Company will immediately notify Purchaser thereof, including information as to the identity of the offeror or the party making any such offer or proposal and the specific terms of such offer or proposal, as the case may be, and such other information related thereto to which the Company has reasonable access, as Purchaser may reasonably request.

4.12 Termination of Affiliate Arrangements. On or prior to the Closing Date, the Company will cause all Affiliate Arrangements to be settled (irrespective of the terms of payment), terminated and canceled without any further liability to, or obligation of, the Company, from and after the Closing.

4.13 Data Room Documentation. Within five Business Days following the Closing, the Company representatives will authorize Intralinks to, and request that it, copy to a suitable electronic medium all documents posted to the Data Room as of the Agreement Date in the same order and manner as such documents are set forth in the Data Room and will deliver three complete copies to Purchaser.

4.14 Preferred Stock Conversion. Prior to the Closing, the Company will deliver evidence to Purchaser that the requisite majority of the holders of Preferred Stock have, on behalf of all holders of Preferred Stock, elected to convert all outstanding shares of Preferred Stock to Common Stock pursuant to Article IV, Section (B)(4)(b) of the Company Certificate of Incorporation. In the event the requisite majority of holders of Preferred Stock fails to elect to convert all outstanding shares of Preferred Stock to Common Stock, the Company will, in good faith, cooperate with Purchaser to amend this Agreement to account for such non-conversion of the Preferred Stock and the payment of the Merger Consideration related thereto.

## **5. Indemnification; Remedies**

5.1 Survival. The representations and warranties of the parties contained in this Agreement and all covenants and agreements of the parties that are to be performed at or prior to the Closing will survive the Closing until the date that is twelve months after the Closing Date; provided, however, that with respect to a claim for a breach of the representations and warranties of the Company set forth in Section 2.1 (Organization, Good Standing, Corporate Power and Qualification), Section 2.2 (No Subsidiaries), Section 2.3(a) and 2.3(c) (Authorization; Valid and Binding Agreement), Section 2.4 (Capitalization) and Section 2.19 (Brokers) (all of such representations and warranties collectively, the “*Fundamental Representations*”) and actual fraud, such notice must be delivered on or prior to the date that is ninety days following the expiration of the applicable statute of limitations. All of the covenants contained in this Agreement that by their nature are required to be performed after the Closing will survive the Closing until fully performed or fulfilled, unless and only to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance. Notwithstanding the preceding two sentences, any breach of any covenant, agreement, representation or warranty in respect of which indemnification may be sought under this Agreement will survive the time at which it would otherwise terminate pursuant to the preceding two sentences, if notice of such breach giving rise to such right of indemnification shall have been given to the party against whom such indemnification may be sought prior to such time.

5.2 Indemnification by the Equityholders. Each of the Equityholders (i) jointly and severally up to the amount of the Indemnity Escrow Fund and (ii) severally, but not jointly, for any amounts in excess of the Indemnity Escrow Fund, hereby agrees to indemnify, reimburse and hold Purchaser, the Company and their respective directors, officers, employees, Affiliates, stockholders, members, partners,



agents, attorneys, representatives, successors and assigns (collectively, "**Purchaser Indemnified Parties**") harmless from and against, and to pay to the applicable Purchaser Indemnified Parties, the amount of any and all losses, liabilities, obligations, deficiencies, judgments, damages, interest, fines, assessments, costs and expenses (including reasonable costs of investigation and defense and reasonable attorneys' fees) (individually, a "**Loss**" and, collectively, "**Losses**") incurred by such Purchaser Indemnified Party arising out of or resulting from:

- (a) the failure of any of the representations or warranties made by the Company in this Agreement to be true and correct;
- (b) the breach, non-compliance or non-fulfillment by the Equityholders or, prior to the Closing, the Company of any covenant or other agreement on the part of the Equityholders or the Company under this Agreement; and
- (c) any inaccuracy in the Payment Schedule.

5.3 Indemnification by Purchaser and Merger Sub. Subject to the other provisions of this Section 5, Purchaser and Merger Sub hereby agree to indemnify, reimburse and hold the Equityholders, their respective directors, officers, employees, Affiliates, stockholders, members, partners, agents, attorneys, representatives, successors and assigns (collectively, "**Equityholder Indemnified Parties**") harmless from and against, and to pay to the applicable Equityholder Indemnified Parties, the amount of any and all Losses arising out of or resulting from:

- (a) the failure of any of the representations or warranties made by Purchaser or Merger Sub in this Agreement to be true and correct as of the Closing Date; and
- (b) the breach of any covenant, non-compliance or non-fulfillment or other agreement on the part of Purchaser or Merger Sub under this Agreement.

#### 5.4 Indemnification Procedures.

(a) A claim for indemnification for any matter not involving a Third Party Claim (as defined below) may be asserted by any Purchaser Indemnified Party or Equityholder Indemnified Party (an "**Indemnified Party**") by written notice to the party from whom indemnification is sought (the "**Indemnifying Party**"), which notice will include a reasonably detailed description of the indemnification claim and the amount (which may be estimated in good faith) for which indemnity is sought (an "**Indemnification Notice**"), provided that with respect to any claim against the Equityholders generally or any Equityholder specifically, Purchaser shall provide such Indemnification Notice to Agent, on behalf of the Equityholder(s), which Indemnification Notice shall be deemed having been provided to such Equityholder(s). If the Indemnifying Party (or Agent, on behalf of the Equityholders) shall object in writing to any Indemnification Notice by an Indemnified Party made pursuant to this Section 5.4(a) within thirty days of receiving notice of such claim, then the parties shall attempt in good faith for a period of up to thirty days from the date such notice is received to agree upon the rights of the respective parties with respect to the claim.

(b) In the event that any Action shall be instituted or that any claim or demand shall be asserted by any third party in respect of which payment may be sought under Section 5.2 or 5.3 (regardless of the limitations set forth in Section 5.5) (a "**Third Party Claim**"), the Indemnified Party seeking indemnification under this Agreement shall give reasonably prompt written notice of such Third Party Claim, provide a copy of all papers served with respect to such Third Party Claim (if any), identify the basis of the

Indemnified Party's request for indemnification under this Agreement and provide an estimate of any Losses suffered with respect thereto (if reasonably determinable), provided that if the Equityholders are the Indemnifying Party, such Indemnification Notice shall be given to Agent. The failure of the Indemnified Party to give reasonably prompt notice of any Third Party Claim shall not release, waive or otherwise affect the Indemnifying Party's obligations with respect thereto except to the extent such failure to notify materially prejudices the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify or reimburse the Indemnified Party, the Indemnifying Party shall have the right, but not the obligation, to solely control the defense (represented by counsel of its choice) and defend against, negotiate, settle or otherwise deal with any Third Party Claim which relates to any Losses indemnified against hereunder; provided, however, that the Indemnifying Party will not enter into any settlement agreement without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld). Notwithstanding the preceding sentences, in the event of a Third Party Claim against any Indemnified Party where (i) the assumption of the defense by the Indemnifying Party is reasonably likely to cause a Purchaser Indemnified Party to lose coverage under the R&W Insurance Policy, (ii) a Purchaser Indemnified Party or the R&W Insurer is required to assume the defense of such Third Party Claim pursuant to the R&W Insurance Policy, (iii) the Third Party Claim for indemnification relates to or arises in connection with any criminal Action, (iv) the Third Party Claim seeks an injunction or other equitable relief or judgment against the Indemnified Party, (v) the Indemnified Party has been advised by legal counsel that there is a conflict of interest between the Indemnified Party and the Indemnifying Party in the conduct of the defense of such Third Party Claim, or (vi) due to the limitations elsewhere in this Section 5, the Indemnifying Party's indemnification liability in respect of such Third Party Claim is less than the amount being sought, the Indemnified Party may, by notice to the Indemnifying Party, assume (or, as applicable, cause the R&W Insurer to assume) the exclusive right to defend, compromise or settle such Third Party Claim, but the Indemnifying Party will not be bound by any determination of any such Third Party Claim so defended for the purposes of this Agreement or any compromise or settlement with respect thereto effected without its prior written consent (which consent will not be unreasonably withheld).

(c) If the Indemnifying Party does not notify the Indemnified Party that the Indemnifying Party elects to defend the Indemnified Party pursuant to Section 5.4(b) within thirty days (or such shorter period as the Indemnified Party may reasonably specify where such Third Party Claim requires resolution or response in a shorter period) after receipt of any Indemnification Notice, then the Indemnified Party will defend itself against the applicable Third Party Claim, and be reimbursed for its reasonable cost and expense (but only if the Indemnified Party is actually entitled to indemnification hereunder) in regard to the Third Party Claim with counsel selected by the Indemnified Party, in all appropriate Actions, which such Actions will be prosecuted diligently by the Indemnified Party. In such circumstances, the Indemnified Party will defend any such Third Party Claim in good faith and have full control of such defense and Action; provided, however, that Indemnifying Party will not be bound by any determination of any such Third Party Claim so defended for the purposes of this Agreement or any compromise or settlement with respect thereto effected without its prior written consent (which consent will not be unreasonably withheld).

(d) After any final decision, judgment or award shall have been rendered by a Governmental Body of competent jurisdiction, or a settlement shall have been consummated, or the Indemnified Party and the Indemnifying Party shall have arrived at a mutually binding agreement with respect to a Third Party Claim or a claim under Section 5.4(a) hereof, the Indemnified Party shall forward to the Indemnifying Party notice of any sums due and owing by the Indemnifying Party pursuant to this Section 5 with respect to such matter and the Indemnifying Party shall be required to pay all of such sums so due and owing to the Indemnified Party in accordance with Section 5.6.

## 5.5 Limitations on Liability.

(a) The Purchaser Indemnified Parties' right to indemnification under Section 5.2 shall be subject to the following limitations: (i) Purchaser shall not have the right to be indemnified pursuant to Section 5.2 unless and until Purchaser shall have incurred, on a cumulative basis following the Closing, Losses in excess of \$2,025,000 (the "**Deductible**") in which event the right to be indemnified shall apply to all Losses in excess of the amount of the Deductible, but subject to the other terms and limitations in this Agreement and (ii) the aggregate amount of Losses for which the Equityholders shall be obligated to provide indemnity under Section 5.2 shall not exceed the Indemnity Escrow Fund plus the right to offset against the Earnout Amount (if any) that becomes due and payable under this Agreement but has not yet been paid (the "**Cap**"); provided that any Losses resulting from a breach of the Fundamental Representations, from Section 5.2(c) and in the case of actual fraud shall not be subject to the Cap and will instead in no event exceed the aggregate amount of the Merger Consideration. In furtherance of the foregoing, the maximum aggregate amount of Losses for which the Purchaser Indemnified Parties as a group may be entitled to indemnification under this Agreement from a specific Equityholder shall in no event exceed the aggregate amount of cash proceeds actually received by such Equityholder in his/her/its capacity as an Equityholder pursuant to this Agreement plus such Equityholder's allocable portion of the Earnout Amount, if any, which such allocable portion shall be subject to offset by Purchaser.

(b) Notwithstanding anything in this Agreement to the contrary, no breach of any representation, warranty or covenant contained in this Agreement shall give rise to any right on the part of Purchaser, after the consummation of the Transaction, to rescind this Agreement or the Transaction.

(c) Notwithstanding anything in this Agreement to the contrary, the amount of any Losses payable by the Equityholders in accordance with this Section 5 shall be net of any alternative insurance proceeds or indemnification proceeds reasonably available, directly or indirectly, to the Purchaser Indemnified Parties with respect to such Losses less the aggregate amount of all costs and expenses incurred by the Purchaser Indemnified Parties in connection with the recovery of such proceeds (including payment of deductibles and self-insured retention amounts) and less the present value of all insurance policy premium increases reasonably anticipated therefrom. If Purchaser actually receives any insurance proceeds or indemnification proceeds after an indemnification payment is made to it by the Equityholders under this Section 5, Purchaser shall as promptly as practicable deliver to the Escrow Agent for deposit to the Escrow Fund the amount of such proceeds at such time or times as and to the extent that such proceeds are realized by Purchaser less the aggregate amount of all costs and expenses incurred by the Purchaser Indemnified Parties in connection with the recovery of such proceeds (including payment of deductibles and self-insured retention amounts) and less the present value of all insurance policy premium increases reasonably anticipated therefrom; provided, however, that if the Escrow Fund no longer exists, Purchaser shall (i) pay to the Paying Agent for further distribution to the Stockholders and Warrantholders such amount payable to the Stockholders and Warrantholders by means of a wire transfer of immediately available funds and (ii) pay to its payroll provider such amount payable to holders of Vested Options directly and instruct such payroll provider to deliver such payments to the holders of Vested Option in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder's Percentage as set forth on the Payment Schedule. Purchaser shall use commercially reasonable efforts to recover insurance proceeds or any other amounts from third parties (including, without limitation, under the R&W Insurance Policy), related to any Losses for which indemnification is sought pursuant to this Section 5.

(d) Any Loss for which a Purchaser Indemnified Party is entitled to indemnification under this Section 5 shall be determined without duplication of recovery by reason of the

state of facts giving rise to such Loss constituting a breach of more than one representation, warranty or covenant.

(e) Any Losses of a party pursuant to this Section 5 shall be disregarded to the extent such Losses were specifically accrued in connection with the determination of the Closing Cash, Closing Indebtedness, Closing Working Capital, or Closing Company Transaction Expenses.

(f) For purposes of this Section 5, for any representation or warranty that is limited by the words “Material Adverse Effect,” “material” or by any similar term or limitation, the failure of such representation or warranty to be true and correct and the amount of Losses subject to indemnification hereunder shall be determined as if the words “Material Adverse Effect,” “material” or any similar term or limitation were not included therein.

(g) Notwithstanding anything in this Agreement to the contrary and other than to the extent awarded in connection with a Third Party Claim, Losses for which an Indemnified Party may seek indemnification under this Section 5 shall not include, and no party to this Agreement will be liable to another party for, punitive damages.

#### 5.6 Procedures for Claims Against, and Distributions of, Funds Deposited with Escrow Agent.

(a) Claims. At the time a Purchaser Indemnified Party gives, or at any time after a Purchaser Indemnified Party gives, Agent written notice of such Purchaser Indemnified Party’s indemnification claim in accordance with Section 5.4 of this Agreement, Purchaser may make a written claim against the Indemnity Escrow Fund by delivering written notice of same (the “**Claim Notice**”) to the Escrow Agent as more particularly provided in the Escrow Agreement (in which event Purchaser will provide a copy of such Claim Notice to Agent). Any such Claim Notice will include a reasonably detailed description of the indemnification claim and the amount (which may be estimated in good faith) for which indemnity is sought. The Escrow Agent will distribute the Indemnity Escrow Fund in accordance with the terms of the Escrow Agreement; provided that any dispute between Purchaser and Agent shall be resolved pursuant to Section 9.2.

(b) Final Distribution of the Indemnity Escrow Fund. On the date that is twelve months after the Closing Date, Purchaser and Agent will deliver a joint written instruction to the Escrow Agent to (i) pay to the Paying Agent for further distribution to the Stockholders and Warranholders the amount of the Indemnity Escrow Fund payable to the Stockholders and Warranholders by means of a wire transfer of immediately available funds and (ii) pay to its payroll provider the amount of the Indemnity Escrow Fund payable to holders of Vested Options directly and instruct such payroll provider to deliver such payments to the holders of Vested Option in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder’s Percentage as set forth on the Payment Schedule.

(c) Order of Payments. To the extent amounts are required to be paid by the Equityholders to a Purchaser Indemnified Party pursuant to a claim for indemnification pursuant to Section 5, such amounts shall be first satisfied from the Indemnity Escrow Fund, in accordance with the terms hereof and of the Escrow Agreement, until the Indemnity Escrow Fund is reduced to \$0.00 (due to the release of such funds pursuant to this Section 5.6 or otherwise), and thereafter by offset against the Earnout Amount, and finally (only in the event of actual fraud, breach of a Fundamental Representation or pursuant to Section 5.2(c)) such amounts shall be payable directly by the Equityholders (subject to Section 5.5 and the other limitations set forth in this Agreement) severally in proportion to their respective Percentages as set forth on the Payment Schedule.

5.7 Tax Treatment of Indemnity Payments. The Company, the Equityholders, Purchaser and the Surviving Corporation agree to treat any indemnity payment made pursuant to this Section 5 as an adjustment to the Merger Consideration for federal, state, local and foreign income Tax purposes.

5.8 Exclusive Remedy; Further Limitations. The indemnification provisions set forth in this Section 5 shall be the sole and exclusive remedy of the parties (other than Agent with respect to Section 6.2) with respect to any and all claims from and after the Closing Date arising out of the subject matter of this Agreement. For the avoidance of doubt, nothing contained in this Agreement shall be construed to limit the Purchaser Indemnified Parties' rights under the R&W Insurance Policy.

**1. Agent**

1.1 Appointment of Agent. By virtue of the approval of this Agreement and the Merger, and by the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, and without any further action of any of the Equityholders or the Company, the Equityholders hereby appoint Shareholder Representative Services LLC as the exclusive representative, agent and attorney-in-fact of the Equityholders to take all actions on behalf of the Equityholders in connection with this Agreement and the agreements ancillary hereto. All such actions shall be deemed to be facts ascertainable outside this Agreement and shall be binding on the Equityholders and their successors as if expressly confirmed and ratified in writing by the Equityholders, and all defenses which may be available to the Equityholders to contest, negate, or disaffirm the action of Agent taken in good faith under this Agreement, the Escrow Agreement or Agent Engagement Agreement are waived. Without limiting the foregoing, Agent shall have the authority:

- (a) to consummate the Transaction and to pay such Equityholders' expenses incurred in connection with the negotiation and performance of this Agreement (whether incurred prior to, on or after the Agreement Date);
- (b) to give and receive notices and communications;
- (c) to authorize or object to delivery to Purchaser of cash from the Escrow Fund and to effect the distribution of any funds payable by Purchaser under this Agreement that are for the benefit of Equityholders which are released from the Escrow Fund or otherwise payable for the benefit of the Equityholders pursuant to the provisions of this Agreement;
- (d) to deduct and/or hold back any funds that may be payable to any Equityholder pursuant to the terms of this Agreement and the Escrow Agreement in order to pay any amount that may be payable by such Equityholder hereunder, in each case on a basis consistent with their Percentage;
- (e) to make any determinations, agree to, negotiate, enter into settlements and compromises of, any matters contemplated by this Agreement, including in connection with the determination or the adjustment of, or any other matter pertaining to, the Merger Consideration;
- (f) to execute and deliver on behalf of such Equityholder any amendment or waiver to the terms of this Agreement;
- (g) to disburse funds to third parties for expenses and liabilities;

(h) to engage, employ and obtain the advice of legal counsel, accountants and other professional advisors and rely on their advice and counsel, and to incur and pay fees and expenses of such advisors;

(i) to take all actions necessary or appropriate in the judgment of Agent for the accomplishment of the foregoing or permitted by the terms of this Agreement, the Escrow Agreement or Agent Engagement Agreement; and

(j) to do each and every act and exercise any and all rights which such Equityholder, or any or all of the Equityholders collectively, are permitted or required to do or exercise under this Agreement.

Notwithstanding the foregoing, Agent shall have no obligation to act on behalf of the Equityholders, except as expressly provided herein, in the Escrow Agreement and in Agent Engagement Agreement, and for purposes of clarity, there are no other obligations of Agent in any ancillary agreement, schedule, exhibit or the Disclosure Schedules. This grant of authority (including the appointment of agency and the power of attorney and the immunities and rights to indemnification granted pursuant to this Agreement and the Agent Engagement Agreement) (i) is coupled with an interest and will be irrevocable and will not be terminated by any Equityholder or by operation of Law, whether by the death, incompetence, bankruptcy, liquidation or incapacity of any Equityholder or the occurrence of any other event, and any action taken by Agent will be as valid as if such death, incompetence, bankruptcy, liquidation, incapacity or other event had not occurred, regardless of whether or not any Equityholder or Agent will have received any notice thereof and shall be binding on any successor thereto and (ii) shall survive the delivery of an assignment by any Equityholder of the whole or fraction of his, her or its interest in the Escrow Fund. A new Agent may be designated by the Equityholders receiving at Closing a majority in interest of the proceeds paid to the Equityholders at Closing in their capacities as Equityholders pursuant to the Transaction, upon not less than ten days' prior written notice to Purchaser. No bond shall be required of Agent. After the Closing, notices or communications to or from Agent shall constitute notice to or from each of the Equityholders. Agent may resign at any time in accordance with the terms of the Agent Engagement Agreement.

1.2 Exculpation and Indemnification of Agent Group. Certain Equityholders have entered into an engagement agreement (the "**Agent Engagement Agreement**") with Agent to provide direction to Agent in connection with its services under this Agreement, the Escrow Agreement and the Paying Agent Agreement (such Equityholders, including their individual representatives, collectively hereinafter referred to as the "**Advisory Group**"). Neither Agent nor its members, managers, directors, officers, agents and employees nor any member of the Advisory Group (all of the foregoing collectively, the "**Agent Group**") shall be liable to the Equityholders for any act done or omitted hereunder, under the Escrow Agreement or under Agent Engagement Agreement while acting in good faith and without gross negligence or willful misconduct and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Agent Group shall not be liable to the Equityholders for any action or omission pursuant to the advice of counsel. The Equityholders shall indemnify, defend and hold harmless the Agent Group 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 Expenses**") arising out of or in connection with any Agent Group member's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Agent Expense is suffered or incurred; provided, that in the event that any such Agent Expense that was previously paid to an Agent Group Member is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of such Agent Group member, such Agent Group member will reimburse the Equityholders the amount of such indemnified Agent

Expense to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the applicable member of the Agent Group by the Equityholders, any such Agent Expense may be recovered by the Agent Group member from (a) the funds in the Expense Fund, (b) the amounts in the Escrow Fund but only at such time as there are remaining amounts available that would otherwise be distributable to the Equityholders, and (c) from any Earnout Amounts but only at such time as there are any such amounts available that would otherwise be distributable to the Equityholders; provided, that while this Section 6.2 allows the Agent Group to be paid from the aforementioned sources of funds, this does not relieve the Equityholders from their obligation to promptly pay such Agent Expenses as they are suffered or incurred, nor does it prevent Agent from seeking any remedies available to it at Law or otherwise. In no event will Agent be required to advance its own funds on behalf of the Equityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of the Equityholders set forth in this Agreement are not intended to be applicable to the indemnities provided to the Agent Group under this Section 6.2.

1.3 Expense Fund. The Expense Fund will be used (a) for the purposes of paying directly, or reimbursing Agent for, any third party expenses pursuant to this Agreement and the Transaction Agreements or (b) as otherwise directed by the Advisory Group. The Equityholders will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to Agent any ownership right that they may otherwise have had in any such interest or earnings. Agent is not providing any investment supervision, recommendations or advice and will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. Agent will hold these funds separate from its corporate funds, will not use these funds for its operating expenses and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of Agent's responsibilities, Agent shall disburse any remaining balance of the Expense Fund to the Paying Agent for further distribution to the Stockholders and Warranholders the amount payable to the Stockholders and Warranholders by means of a wire transfer of immediately available funds and pay to the Company's payroll provider the amount of the Expense Fund payable to holders of Vested Options directly and instruct such payroll provider to deliver such payments to the holders of Vested Option in the next regularly scheduled payroll of the Surviving Corporation, each in accordance with such Equityholder's Percentage as set forth on the Payment Schedule. For tax purposes, the Expense Fund shall be treated as having been received and voluntarily set aside by the Equityholders at the time of Closing. Agent is not acting as a withholding agent or in any similar capacity in connection with the Expense Fund and is not responsible for any tax reporting or withholding with respect thereto. Subject to Advisory Group approval, Agent may contribute funds to the Expense Fund from any consideration otherwise distributable to the Equityholders.

1.4 Acceptance of Appointment; Survival of Immunities. By his, her or its signature to this Agreement, the initial Agent hereby accepts the appointment contained in this Agreement, as confirmed and extended by this Agreement, and agrees to act as Agent and to discharge the duties and responsibilities of Agent pursuant to the terms of this Agreement. All of the immunities and rights to indemnification granted to Agent Group under this Agreement shall survive (i) the resignation or removal of Agent or any member of Agent Group, and (ii) the Closing and/or any termination of this Agreement or the Escrow Agreement.

1.5 Actions of Agent. A decision, act, consent or instruction of Agent shall constitute a decision of all Equityholders and shall be final, binding and conclusive upon each such Equityholder, and the Escrow Agent, Paying Agent, Purchaser, Merger Sub and Surviving Corporation may rely upon any decision, act, consent or instruction of Agent as being the decision, act, consent or instruction of each and every such Equityholder. The Escrow Agent, Paying Agent, Purchaser, Merger Sub and Surviving Corporation are hereby irrevocably relieved from any liability to any Person for any acts done by them in

accordance with such decision, act, consent or instruction of Agent. The Equityholders acknowledge that Agent shall not be required to expend or risk its own funds or otherwise incur any financial liability in the exercise or performance of any of its powers, rights, duties or privileges or administration of its duties. Furthermore, Agent shall not be required to take any action unless Agent has been provided with funds, security or indemnities which, in its determination, are sufficient to protect Agent against the costs, expenses and liabilities which may be incurred by Agent in performing such actions. Agent shall be entitled to: (i) rely upon the Payment Schedule, (ii) rely upon any signature believed by it to be genuine, and (iii) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Equityholder or other party.

1.6 Reliance. Following the Closing, Purchaser shall be entitled to deal exclusively with Agent on all matters relating to this Agreement (other than with respect to any direct payment obligations of the Equityholders) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Equityholder by Agent, and on any other action taken or purported to be taken on behalf of any Equityholder by Agent, as being fully binding upon such Person. After the Closing, notices or communications to or from Agent shall constitute notice to or from each of the Equityholders. Any decision or action by Agent hereunder, including any agreement between Agent and Purchaser relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Equityholders and shall be final, binding and conclusive upon each such Person. No Equityholder shall have the right to object to, dissent from, protest or otherwise contest the same. No Person will have any cause of action against Purchaser, the Surviving Corporation, or any of their representatives for any action taken by Purchaser in reliance upon any decision, act, consent, waiver or instruction of Agent; and Purchaser is hereby relieved from any liability to any Person for any acts done by it in accordance with such decision, act, consent, waiver or instruction of Agent. The provisions of this Section 6.6, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one or more Equityholders, or by operation of Law, whether by death or other event.

## **2. Conditions to Merger.**

2.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction (or waiver by the party entitled to the benefit thereof to the extent permitted by applicable Law) at or prior to the Effective Time of the following conditions and each party (other than Agent) agrees to use its reasonable best efforts to satisfy the following conditions:

(a) Governmental Approvals. The waiting periods (and any extensions thereof) applicable to the consummation of the Merger under any other applicable Law shall have expired or been terminated.

(b) No Legal Prohibition. No Governmental Body of competent jurisdiction shall have:

(i) enacted, issued, promulgated, entered, enforced or deemed applicable to the Merger any applicable Law that is in effect and has the effect of making the Merger illegal or which has the effect of prohibiting the consummation of the Merger; or

(ii) issued or granted any Order (whether temporary, preliminary or permanent) that has the effect of making the Merger illegal or which has the effect of prohibiting the consummation of the Merger.



2.2 Additional Purchaser and Merger Sub Conditions. The obligations of Purchaser and Merger Sub to consummate the Merger shall be further subject to the satisfaction or waiver by Purchaser of each of the following conditions at or prior to the Closing:

(a) Compliance with Agreements and Covenants. The Company shall have performed in all material respects its agreements, covenants and other obligations required by this Agreement to be performed or complied with by the Company at or prior to the Closing Date and delivered all items required to be delivered by the Company pursuant to Section 1.12(a).

(b) Accuracy of Representations and Warranties.

(i) The Fundamental Representations (A) shall have been true and correct in all respects, other than de minimis inaccuracies, as of the Agreement Date, and (B) shall be true and correct in all respects, other than de minimis inaccuracies, on and as of the Closing Date with the same force and effect as if made on and as of such date, except (i) in each case, for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct in all respects, other than de minimis inaccuracies, as of such particular date) and (ii) the representations set forth in Section 2.4 shall not be deemed to be inaccurate as a result of (a) the exercise of any Option or Warrant expressly set forth on Schedule 2.4(a) or (b) the conversion to Common Stock of any share of Preferred Stock expressly set forth on Schedule 2.4(b) or issued pursuant to a Warrant expressly set forth on Schedule 2.4(a).

(ii) The representations and warranties of the Company set forth in this Agreement (other than the Fundamental Representations), without giving effect to materiality, Material Adverse Effect or similar qualifications, shall be true and correct on and as of the Agreement Date and the Closing Date with the same force and effect as if made on and as of such date, except (A) for any failure to be so true and correct which has not had, or would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, and (B) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct as of such particular date, except for any failure to be so true and correct as of such date which has not had, or would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect).

(c) Receipt of Officers' Certificate. Purchaser and Merger Sub shall have received a certificate, signed for and on behalf of the Company by a duly authorized officer of the Company, certifying the satisfaction of the conditions set forth in Section 7.2(a), Section 7.2(b) and Section 7.2(d).

(d) No Material Adverse Effect. No Effect will have occurred that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) Closing Deliverables. The Company shall have delivered each of the closing deliverables set forth in Section 1.12(a).

(f) Requisite Stockholder Vote. The Requisite Stockholder Vote will have been obtained and evidence of such delivered to Purchaser.

2.3 Additional Company Conditions. The obligations of the Company to consummate the Merger shall be further subject to the satisfaction or waiver by the Company of each of the following conditions prior to or at the Closing:

(a) Compliance with Agreements and Covenants. Purchaser and Merger Sub shall have performed or complied in all material respects with all agreements, covenants and obligations required by this Agreement to be performed or complied with by each of them at or prior to the Closing Date and shall have delivered all items required to be delivered by the Company pursuant to Section 1.12(b).

(b) Accuracy of Representations and Warranties. The representations and warranties of Purchaser and Merger Sub set forth in this Agreement, without giving effect to materiality, Material Adverse Effect or similar qualifications, shall be true and correct on and as of the Agreement Date and the Closing Date with the same force and effect as if made on and as of such date, except (A) for any failure to be so true and correct which has not had, or would not reasonably be expected to adversely impact, individually or in the aggregate, Purchaser's ability to consummate the Transaction and (B) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct as of such particular date, except for any failure to be so true and correct as of such date which has not had, or would not reasonably be expected to adversely impact, individually or in the aggregate, Purchaser's ability to consummate the Transaction).

(c) Receipt of Officers' Certificate. The Company shall have received a certificate, signed for and on behalf of Purchaser and Merger Sub by a duly authorized officer of each of Purchaser and Merger Sub, certifying the satisfaction of the conditions set forth in this Section 7.3(a) and Section 7.3(b).

(d) R&W Insurance Policy. Purchaser shall have bound the R&W Insurance Policy as of the Agreement Date and shall provide for payment of the premium concurrent with the Closing.

(e) Closing Deliverables. Purchaser shall have delivered each of the closing deliverables set forth in Section 1.12(b).

(f) Requisite Stockholder Vote. The Requisite Stockholder Vote will have been obtained.

### 3. Termination.

3.1 Termination. This Agreement may be terminated and the Merger abandoned at any time prior to Closing:

(a) by the mutual written consent of Purchaser and the Company;

(b) by either of the Company, on the one hand, or Purchaser, on the other hand, by written notice to the other:

(i) if any Governmental Body shall have issued an injunction or taken any other action that permanently restrains, enjoins or otherwise prohibits the consummation of the Merger, and such injunction shall have become final and non-appealable; or

(ii) if the consummation of the Merger shall not have occurred on or before the date (such date the "**Outside Date**") that is the date that is one hundred eighty days from the Agreement Date; provided that the right to terminate this Agreement under this Section 8.1(b)(ii) shall not be available to any party whose failure to comply with any provision of this Agreement has been the primary cause of, or resulted in, the failure of the Merger to occur on or before such date; provided, further that such failure to comply is not capable of being cured or has not been cured

within thirty days after the giving of notice thereof to the party seeking to terminate this Agreement from the other party to this Agreement;

(c) by the Company, if the Company is not then in material breach of any term of this Agreement, upon written notice to Purchaser, upon a material breach of any representation, warranty or covenant of Purchaser contained in this Agreement, provided that such breach is not capable of being cured or has not been cured within thirty days after the giving of notice thereof by the Company to Purchaser, such that the conditions set forth in Sections 7.1 and 7.3 cannot be satisfied or cured prior to the Outside Date;

(d) by Purchaser, if Purchaser is not then in material breach of any term of this Agreement, upon written notice to Company, upon a material breach of any representation, warranty or covenant of the Company contained in this Agreement, provided, however, that such breach is not capable of being cured or has not been cured within thirty days after the giving of notice thereof by Purchaser to the Company, such that the conditions set forth in Sections 7.1 and 7.2 cannot be satisfied or cured prior to the Outside Date; or

(e) by Purchaser, if the Company has not obtained the Requisite Stockholder Vote within two Business Days of the Agreement Date.

3.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of Purchaser, the Company, or Agent or any of their respective Affiliates and all rights and obligations of any party shall cease, provided, however, that notwithstanding anything herein to the contrary (a) the provisions set forth in this Section 8.2, Section 9.2 (Governing Law and Dispute Resolution), and Section 9.6 (Fees and Expenses) shall survive the termination of this Agreement and (b) in the event of the termination of this Agreement, nothing herein shall relieve any party from liability for actual fraud in connection with this Agreement and the Transaction. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms.

#### 4. Miscellaneous.

4.1 Successors and Assigns. Neither this Agreement nor any rights hereunder shall be assigned in whole or in part by any party without the prior written consent of the other parties. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except for the express obligations and liabilities of the Equityholders and as otherwise expressly provided in this Agreement.

#### 4.2 Governing Law and Dispute Resolution.

(a) This Agreement shall be governed and construed in accordance with law of the State of Delaware excluding any other conflict of law rules that would lead to the application of the law of another jurisdiction.

(b) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules (“*Arbitration*”), and judgment on the award rendered by

the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Los Angeles, California. The Arbitration shall be conducted by a panel of three arbitrators having experience with corporate transactions involving mergers and acquisitions generally, and preferably with experience in the technology sector (the “*Arbitrators*”). The Arbitration shall not permit “discovery” as provided for in state or federal courts. Disclosure of documents or other tangible materials to be used by either party in any presentation to the Arbitrators must include both inculpatory and exculpatory documents or materials concerning the claim(s) at issue in the Arbitration. The parties agree the Arbitration proceedings shall be confidential and private, and the Arbitrators shall otherwise conduct the proceedings in keeping with the Commercial Arbitration Rules now in effect or as hereafter modified. In this regard, the parties acknowledge that interim, injunctive, emergency relief may be sought from the Arbitrators and/or the AAA and agree to forego court process for such relief absent first seeking such relief as provided in the arbitration forum. The parties also agree that the prevailing party in any arbitration proceeding shall be entitled to an award of attorneys’ fees and costs. The Arbitrators shall issue a reasoned award. For the purposes of enforcement of any arbitral award the parties waive any defenses to the lack of convenience of proceedings brought in any court within the United States, and also waive any defense of lack of personal service of process so long as service of any demand for Arbitration is made as provided for by the Commercial Arbitration Rules and delivered as required pursuant to the notice provisions of this Agreement.

(c) THE PARTIES WAIVE ANY RIGHTS THEY MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS AGREEMENT OR THE TRANSACTION.

4.3 Counterparts. This Agreement may be executed and delivered by facsimile or .PDF signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

4.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) on the day of transmission if sent by e-mail to the e-mail address given below (provided no delivery failure message is received by the sender), (c) when sent by confirmed facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next Business Day, (d) three Business Days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (e) one Business Day after deposit with a nationally recognized overnight courier, specifying next Business Day delivery. All communications shall be sent to the respective parties at the address and/or facsimile number set forth below, or to such other address or facsimile number as subsequently modified by written notice given in accordance with this Section 9.5.

If to Purchaser or the Company following the Closing:

Skyworks Solutions, Inc.  
5221 California Ave.  
Irvine, CA 92617  
Attention: Robert Terry, Senior Vice President, General Counsel and Secretary  
Email: robert.terry@skyworksinc.com and contracts@skyworksinc.com  
Facsimile No.: (949) 231-3206

With a copy, which shall not constitute notice, to:

O'Melveny & Myers LLP  
610 Newport Center Drive, Suite 1700  
Newport Beach, CA 92660  
Attention: Mark D. Peterson and Nikole M. Kingston  
Email: mpeterson@omm.com and nkingston@omm.com  
Facsimile No.: (949) 823-6994

If to the Company prior to the Closing, to:

Avnera Corporation  
1600 NW Compton Dr. #300  
Beaverton, OR 97006  
Attention: Chief Executive Officer  
Email: manpreet@avnera.com

If notice is given to the Company prior to the Closing, a copy (which shall not constitute notice) shall also be sent to:

DLA Piper LLP (US)  
401 Congress Avenue, Suite 2500  
Austin, TX 78701  
Attention: Philip Russell, P.C.  
Facsimile No.: (512) 457-7001  
Email: Philip.Russell@dlapiper.com

If to Agent to:

Shareholder Representative Services LLC  
950 17<sup>th</sup> Street, Suite 1400  
Denver, CO 80202  
Attention: Managing Director  
Facsimile No.: (303) 623-0294  
Email: deals@srsacquiom.com

If notice is given to Agent, a copy (which shall not constitute notice) shall also be sent to:

DLA Piper LLP (US)  
401 Congress Avenue, Suite 2500  
Austin, TX 78701  
Attention: Philip Russell, P.C.  
Facsimile No.: (512) 457-7001  
Email: Philip.Russell@dlapiper.com

4.6 Fees and Expenses. Except for the Company Transaction Expenses, which, assuming the Closing occurs, shall be deducted from the Merger Consideration pursuant to Section 1.12(b)(v) and paid by Purchaser in accordance with the Payment Schedule, or as otherwise expressly set forth in this Agreement, each of the parties shall bear its own fees and expenses incurred in connection with the Transaction. For the avoidance of doubt, Purchaser shall be responsible for the costs and expenses of obtaining and maintaining (i) the R&W Insurance Policy, with Purchaser paying 50% of the premium in respect thereof and the other 50% being treated as a Company Transaction Expense, (ii) the D&O Insurance Coverage, with Purchaser paying 50% of the premium in respect thereof and the other 50% being treated as a Company Transaction Expense, (iii) the Escrow Agent, with Purchaser paying 50% of the costs and expenses and the other 50% being treated as a Company Transaction Expense, and (iv) the Paying Agent.

4.7 Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the terms of any of the Transaction Agreements, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

4.8 Amendments and Waivers. Any term of this Agreement may be amended or terminated only with the express written consent of Purchaser and (i) prior to the Closing, the Company or (ii) following the Closing, Agent. Compliance with any term or provision of this Agreement with which a party was or is obligated to comply may only be waived by Purchaser, on its own behalf, and (i) by the Company prior to the Closing, on its own behalf, or (ii) by following the Closing, by Agent, on behalf of the Equityholders and on its own behalf. Any amendment or waiver not effected in accordance with this Section 9.8 shall be null and void.

#### 4.9 Specific Performance.

(a) The parties hereby acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including such party's failure to take all actions as are necessary on such party's part in accordance with the terms and conditions of this Agreement to consummate the Merger, may cause irreparable injury to the other parties, for which damages, even if available, may not be an adequate remedy. Accordingly, each party is entitled to seek (i) the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations and (ii) the granting by any court of the remedy of specific performance of such party's obligations hereunder.

(b) Any party seeking an injunction or injunctions to prevent breaches or threatened breaches of, or to enforce compliance with this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

(c) Prior to the Closing, if any Action is brought to enforce specifically the performance of the terms and provisions of this Agreement, the Outside Date shall automatically be extended by (i) the amount of time during which such Action is pending, plus twenty Business Days, or (ii) such other time period established by the court presiding over such Action.

4.10 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable

manner in order that the Transaction is consummated as originally contemplated to the greatest extent possible.

4.11 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by Law or otherwise afforded to any party, shall be cumulative and not alternative.

4.12 Entire Agreement. The Transaction Agreements, including all exhibits and schedules thereto and the Confidentiality Agreement constitute the entire agreement of the parties and supersede all prior agreements, letters of intent and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement, the other Transaction Agreements and the Confidentiality Agreement. Notwithstanding anything to the contrary contained in this Agreement, except as set forth in Section 2 of this Agreement, the Company is not making any representation or warranty of any kind whatsoever, express or implied, at law or in equity, with respect to this Agreement or the Transaction and Purchaser is solely relying on the representations and warranties of the Company set forth in Section 2 in determining whether to acquire the Company.

4.13 Joint Negotiation and Drafting. The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

4.14 Interpretation.

(a) Any capitalized terms used in any schedule or exhibit to this Agreement and not otherwise defined therein shall have the meanings set forth in this Agreement.

(b) Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

(c) The terms “hereof,” “herein,” “hereof,” “hereto” and “hereunder” and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement.

(d) Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified.

(e) The terms “includes,” “including” and similar terms shall be deemed to mean “including, without limitation,”

(f) The use of “or” is not intended to be exclusive unless expressly indicated otherwise.

(g) Reference to any Person includes such Person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

(h) Reference to any agreement (including this Agreement), document or instrument shall mean such agreement, document or instrument as amended, modified or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(i) For the avoidance of doubt, any subtraction of a negative number or amount hereunder shall be equal to the addition of the absolute value of such negative number or amount.

(j) The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

(k) For any document or other item to have been “made available” heretofore or prior to the Agreement Date, such document or other item must be deposited in the Data Room and Purchaser provided access thereto at least twenty-four (24) hours prior to the Agreement Date.

4.15 Post-Closing Representation. The parties acknowledge and agree that DLA Piper LLP (US) (the “**Company Representatives**”) has acted as counsel to the Company in connection with the Transaction. Purchaser, and the Surviving Corporation following the Closing, expressly and knowingly consents to the Company Representatives representing any or all of the Equityholders or Agent in any matter after the Closing arising out of this Agreement or any of the other Transaction Agreements that is or may be adverse to Purchaser or the Surviving Corporation. This consent constitutes an advance waiver of any conflict of interest claim against the Company Representatives arising out of the Transaction Agreements or any of the other as a result of such firm representing the Company, and the Surviving Corporation following the Closing, further agree that, as to all communications among the Company Representatives, the Company, Agent and any Equityholder that relate to the negotiation of this Agreement and the attorney-client privilege related thereto may be controlled by Agent and shall not pass to or be claimed by Purchaser or any of its Affiliates (including the Surviving Corporation following the Closing); provided that, in the event that a dispute arises between Purchaser or Surviving Corporation, on the one hand, and a third party, on the other hand, Purchaser and/or the Surviving Corporation may assert the attorney-client privilege to prevent disclosure of confidential communications by the Company Representatives to such third party.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties have executed this Agreement and Plan of Merger as of the Agreement Date.

**COMPANY:**

**Avnera Corporation**

By: /s/ Manpreet S. Khaira  
Name: Manpreet S. Khaira  
Title: Chief Executive Officer

**AGENT**

**Shareholder Representative Services LLC**

By: /s/ Sam Riffe  
Name: Sam Riffe  
Title: Executive Director

*Signature Page to Agreement and Plan of Merger*

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IN WITNESS WHEREOF, the parties have executed this Agreement and Plan of Merger as of the Agreement Date.

**PURCHASER:**

**Skyworks Solutions, Inc.**

By: /s/ Liam K. Griffin  
Name: Liam K. Griffin  
Title: President and Chief Executive Officer

**MERGER SUB:**

**AI Acquisition Corp.**

By: /s/ Liam K. Griffin  
Name: Liam K. Griffin  
Title: President

*Signature Page to Agreement and Plan of Merger*

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Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Skyworks Solutions, Inc. hereby agrees to furnish supplementally copies of any of the omitted schedules and exhibits upon request by the Securities and Exchange Commission.

## SUBSIDIARIES OF THE REGISTRANT

Name	Jurisdiction Of Incorporation
Skyworks Filter Solutions Japan Co., Ltd.	Japan
Skyworks Global Pte. Ltd.	Singapore
Skyworks International Investments, LLC	Delaware
Skyworks Ireland Limited	Ireland
Skyworks Luxembourg S.a r.l	Luxembourg
Skyworks Semiconductor	France
Skyworks Solutions Canada Inc.	Canada
Skyworks Solutions Commercial Co., Ltd. (Shenzhen)	Peoples Republic of China
Skyworks Solutions Commercial Co., Ltd. (Shenzhen) - Beijing Branch	Beijing
Skyworks Solutions Commercial Co., Ltd. (Shenzhen) - Shanghai Branch	Shanghai
Skyworks Solutions Co., Ltd.	Japan
Skyworks Solutions de Mexico, S de R.L. de C.V.	Mexico
Skyworks Solutions (Hong Kong) Limited	Hong Kong
Skyworks Solutions Korea Limited	Korea
Skyworks Solutions Limited	United Kingdom
Skyworks Solutions Luxembourg S.a.r.l.	Luxembourg
Skyworks Solutions Oy	Finland
Skyworks Solutions Worldwide, Inc.	Delaware
Skyworks Solutions Worldwide, Inc., Taiwan Branch	Taiwan
Skyworks Solutions Worldwide, Inc., Malaysia Branch	Malaysia
Advanced Analogic Technologies Incorporated	Delaware
Advanced Analogic Technologies (China), Inc.	Peoples Republic of China
Avnera Corporation	Delaware
Axiom Microdevices, Inc.	Delaware
ICWave, LLC	Massachusetts
Isolink, Inc.	California
Skyworks Filter Solutions Korea, Inc.	Korea
Quantance, Inc.	Delaware
SiGe Semiconductor, Inc.	Delaware
SiGe Semiconductor (U.S.), Corp.	Delaware
SiGe Semiconductor (Europe) Limited	United Kingdom
Trans-Tech, Inc.	Maryland

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors

Skyworks Solutions, Inc.:

We consent to the incorporation by reference in the registration statements (No. 333-48394 and No. 333-85024) on Form S-8 of Alpha Industries, Inc. and in the registration statements (Nos. 333-91524, 333-100312, 333-100313, 333-122333, 333-131628, 333-131629, 333-132880, 333-134375, 333-150780, 333-150782, 333-162960, 333-176282, 333-176285, 333-176286, 333-179117, 333-191311, and 333-204310) on Form S-8 of Skyworks Solutions, Inc. of our reports dated November 14, 2018, with respect to the consolidated balance sheets of Skyworks Solutions, Inc. and subsidiaries as of September 28, 2018 and September 29, 2017, and the related consolidated statements of operations, comprehensive income, cash flows, and stockholders' equity for each of the years in the three-year period ended September 28, 2018, and the related notes (collectively, the "consolidated financial statements"), and the effectiveness of internal control over financial reporting as of September 28, 2018, which reports appear in the September 28, 2018 annual report on Form 10-K of Skyworks Solutions, Inc.

/s/ KPMG LLP

Irvine, California  
November 14, 2018

## CERTIFICATION OF THE CEO PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Liam K. Griffin, certify that:

1. I have reviewed this annual report on Form 10-K of Skyworks Solutions, 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 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: November 14, 2018

/s/ Liam K. Griffin

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Liam K. Griffin

President and Chief Executive Officer

## CERTIFICATION OF THE CFO PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kris Sennesael, certify that:

1. I have reviewed this annual report on Form 10-K of Skyworks Solutions, 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 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: November 14, 2018

/s/ Kris Sennesael

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Kris Sennesael

Senior Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Skyworks Solutions, Inc. (the "Company") on Form 10-K for the period ending September 28, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Liam K. Griffin, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Liam K. Griffin

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Liam K. Griffin  
President and Chief Executive Officer

November 14, 2018



CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Skyworks Solutions, Inc. (the "Company") on Form 10-K for the period ending September 28, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kris Sennesael, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Kris Sennesael

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Kris Sennesael  
Senior Vice President and Chief Financial Officer  
November 14, 2018

