
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): March 13, 2019 (March 11, 2019)

MercadoLibre, Inc.

(Exact Name of Registrant as Specified in Its Charter)

**Delaware
(State or Other Jurisdiction
of Incorporation)**

**001-33647
(Commission
File Number)**

**98-0212790
(I.R.S. Employer
Identification Number)**

**Arias 3751, 7th Floor, Buenos Aires, Argentina C1430CRG
(Address of Principal Executive Offices) (Zip Code)**

**011-54-11-4640-8000
(Registrant's telephone number, including area code)**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

-
- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
-
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240-14a-12)
-
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
-
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01. Entry into a Material Definitive Agreement.

On March 11, 2019, MercadoLibre, Inc. (the “Company” or “we”) entered into a Securities Purchase Agreement (the “Common Stock Purchase Agreement”) with PayPal, Inc. (“PayPal”) whereby, subject to certain closing conditions, PayPal agreed to purchase in a private placement 1,719,790 shares of common stock, par value \$0.001 per share, of the Company (the “Common Stock”) for approximately \$750 million in the aggregate (the “Common Stock Private Placement”). The price per share in the Common Stock Private Placement will be equal to \$436.10.

Also on March 11, 2019, we entered into a Securities Purchase Agreement (the “Preferred Stock Purchase Agreement”) with Merlin DF Holdings, LP, an affiliate of Dragoneer Investment Group, LLC (“Dragoneer”), whereby, subject to certain closing conditions, Dragoneer has agreed to purchase in a private placement 100,000 shares of perpetual convertible preferred stock designated as Series A Preferred Stock, par value \$0.001 per share, of the Company (the “Preferred Stock”) for \$100 million in the aggregate (the “Preferred Stock Private Placement,” and, together with the Common Stock Private Placement, the “Private Placements”), the rights, preferences and privileges of which are set forth in a Certificate of Designation to be filed with the Secretary of State of the State of Delaware, a form of which is attached as Exhibit A to the Preferred Stock Purchase Agreement (the “Certificate of Designation”). The closing of each of the Private Placements is conditioned on the closing of the Company’s previously announced public offering of Common Stock pursuant to the Registration Statement on Form S-3 (File No. 333-230196) (the “Registration Statement”), prospectus supplement, dated March 12, 2019 and accompanying prospectus, dated March 11, 2019 included in the Registration Statement which became effective upon filing with the Securities and Exchange Commission on March 11, 2019 (the “Public Offering”). The Public Offering is expected to close on March 15, 2019.

Each of PayPal and Dragoneer has agreed to restrictions on its ability to dispose of shares of our Common Stock, Preferred Stock, as applicable, beginning on March 11, 2019 and ending (1) in the case of PayPal, 180 days after the date of the sale of Common Stock to PayPal pursuant to the Common Stock Purchase Agreement (the “PayPal Closing Date”) and (2) in the case of Dragoneer, 365 days after the date of the sale of Preferred Stock to Dragoneer pursuant to the Preferred Stock Purchase Agreement (the “Preferred Stock Closing Date”). The PayPal Closing Date is expected to be March 15, 2019. The Preferred Stock Closing Date is expected to be on or prior to March 29, 2019. The Company and PayPal also agreed to use their respective reasonable best efforts to cooperate with one another to enter into a commercial agreement, within 90 days of the PayPal Closing Date, that establishes complementary initiatives to strengthen the respective companies’ networks.

Each share of Preferred Stock will have a stated value of \$1,000, will be entitled to a cash dividend of 4% per annum, and will be convertible into shares of our Common Stock at an initial conversion price of \$479.71 (subject to adjustment pursuant to the Certificate of Designation). The Company may require the conversion of any or all of the Preferred Stock beginning on the fourth anniversary of the Preferred Stock Closing Date if certain conditions set forth in the Certificate of Designation are met. The Company may redeem any or all of the Preferred Stock for cash, shares of our Common Stock or a combination thereof (at its election, subject to certain conditions) at any time after the seventh anniversary of the Preferred Stock Closing Date for a percentage of the stated value of each share of Preferred Stock, plus any accrued and unpaid dividends at such time, as set forth in the Certificate of Designation. On specified dates after the seventh anniversary of the Preferred Stock Closing Date as set forth in the Certificate of Designation, the holders of the Preferred Stock shall have the right to redeem all of the outstanding shares of Preferred Stock for cash, shares of our Common Stock or a combination thereof (at the Company’s election, subject to certain conditions) to be determined by the formula set forth in the Certificate of Designation. Upon the occurrence of a Change of Control (as defined in the Certificate of Designation), the holders will have the right to redeem their shares of Preferred Stock for cash at a price set forth in the Certificate of Designation. The holders of the Preferred Stock shall have the right to vote on matters submitted to a vote of the holders of Common Stock on an as-converted basis unless required by applicable law.

On March 12, 2019, we entered into an underwriting agreement (the “Underwriting Agreement”) with Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “Underwriters”) relating to the Public Offering. Pursuant to the Underwriting Agreement, the Company agreed to sell to the Underwriters, and the Underwriters agreed to purchase from the Company, subject to and upon the terms and conditions set forth therein, an aggregate of 2,083,334 shares of Common Stock. In addition, the Underwriters have a 30-day option to purchase up to 312,500 additional shares of Common Stock from the Company.

The Underwriting Agreement contains customary representations, warranties and covenants and includes the terms and conditions for the sale of the shares by the Company to the Underwriters, indemnification and contribution obligations and other terms and conditions customary in agreements of this type.

The foregoing descriptions of certain terms of the Underwriting Agreement, the Common Stock Purchase Agreement and the Preferred Stock Purchase Agreement (to which the form of Certificate of Designation is attached as Exhibit A) are not complete and are qualified in their entirety by reference to the full text of such documents, which are included as Exhibits 1.1, 10.1 and 10.2 hereto, respectively, and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

The information regarding the Private Placements set forth in Item 1.01 of this Current Report is incorporated by reference into this Item 3.02. Each of the Private Placements will be undertaken in reliance upon an exemption from the registration requirements of the Securities Act, pursuant to Section 4(a)(2) thereof. The Common Stock issued pursuant to the Common Stock Purchase Agreement, the Preferred Stock issued pursuant to the Preferred Stock Purchase Agreement and the Common Stock issuable upon conversion of the Preferred Stock may not be re-offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed herewith.

Exhibit Number	Description
1.1	Underwriting Agreement by and between MercadoLibre, Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC.
10.1	Securities Purchase Agreement, dated as of March 11, 2019, by and between MercadoLibre, Inc. and PayPal, Inc.
10.2	Securities Purchase Agreement, dated as of March 11, 2019, by and between MercadoLibre, Inc. and Merlin DF Holdings, LP.

EXHIBIT INDEX

Exhibit Number	Description
1.1	Underwriting Agreement by and between MercadoLibre, Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC.
10.1	Securities Purchase Agreement, dated as of March 11, 2019, by and between MercadoLibre, Inc. and PayPal, Inc.
10.2	Securities Purchase Agreement, dated as of March 11, 2019, by and between MercadoLibre, Inc. and Merlin DF Holdings, LP.

SIGNATURES

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

MERCADOLIBRE, INC.

Date: March 13, 2019

By: /s/ Pedro Amt
Name: Pedro Amt
Title: Chief Financial Officer

2,083,334 Shares

MercadoLibre, Inc.

Common Stock (\$0.001 Par Value Per Share)

UNDERWRITING AGREEMENT

March 12, 2019

GOLDMAN SACHS & CO. LLC
J.P. MORGAN SECURITIES LLC
MORGAN STANLEY & CO. LLC

As Representatives of the
several Underwriters listed
in Schedule I hereto

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

MercadoLibre, Inc., a Delaware corporation (the “**Company**”), proposes to issue and sell to the several underwriters listed in Schedule I hereto (the “**Underwriters**”), for whom Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, are acting as representatives (the “**Representatives**”), an aggregate of 2,083,334 shares of common stock, par value \$0.001 per share, of the Company (the “**Firm Shares**”). The Company also proposes to issue and sell to the several Underwriters not more than an additional 312,500 shares of common stock, par value \$0.001 per share, of the Company (the “**Additional Shares**”), if and to the extent that you, as Representatives of the offering, shall have determined to exercise, on behalf of the Underwriters, the right to purchase such shares of common stock granted to the Underwriters in Section 2 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the “**Shares**.” The shares of common stock of the Company to be outstanding after giving effect to the sales contemplated hereby are hereinafter referred to as the “**Common Stock**.”

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement, including a prospectus, (file number 333-230196) on Form S-3, relating to the Common Stock (the “**Shelf Securities**”), including the Shares, to be offered from time to time by the Company. The registration statement as amended as of its most recent effective date, including the information (if any) deemed to be part of the registration statement at such time of effectiveness pursuant to Rule 430A or Rule 430B under the Securities Act of 1933, as amended (the “**Securities Act**”), is hereinafter referred to as the “**Registration Statement**,” and the related prospectus covering the Shelf Securities dated March 11, 2019 is hereinafter referred to as the “**Basic Prospectus**.” The Basic Prospectus as supplemented by the accompanying prospectus supplement specifically relating to the Shares, in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act), is hereinafter referred to as the “**Prospectus**,” and the term “**preliminary prospectus**” means any preliminary form of the Prospectus.

For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, “**Time of Sale Prospectus**” means the documents and pricing information set forth in Schedule II hereto, and “**broadly available road show**” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person. As used herein, the terms “**Registration Statement**,” “**Basic Prospectus**,” “**preliminary prospectus**,” “**Time of Sale Prospectus**” and “**Prospectus**” shall include the documents, if any, incorporated by reference therein as of the date hereof. The terms “**supplement**,” “**amendment**” and “**amend**” as used herein with respect to the Registration Statement, the Basic Prospectus, the Time of Sale Prospectus, any preliminary prospectus or the Prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties.* The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose or pursuant to Section 8A under the Securities Act are pending before or, to the knowledge of the Company, threatened by the Commission. If the Registration Statement is an automatic shelf registration statement as defined in Rule 405 under the Securities Act, the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to use the Registration Statement as an automatic shelf registration statement and the Company has not received notice that the Commission objects to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Time of Sale Prospectus or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) as of the most recent effective date of the Registration Statement and any post-effective amendment thereto, the Registration Statement and any such post-effective amendment did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement and the Prospectus comply, and as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (iv) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date (as defined in Section 5), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (v) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (vi) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule II hereto, and electronic road shows, if any, each furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.

(d) The consolidated financial statements and the related notes thereto of the Company and its consolidated subsidiaries included or incorporated by reference in the Time of Sale Prospectus and the Prospectus present fairly the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby; and the other financial information included or incorporated by reference in the Time of Sale Prospectus and the Prospectus has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly the information shown thereby.

(e) Since the date of the most recent consolidated financial statements of the Company included or incorporated by reference in the Time of Sale Prospectus and the Prospectus, (i) there has not been any material change in the capital stock, long-term debt, notes payable or current portion of long-term debt of the Company or any of its subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole, except in each case as otherwise disclosed in the Time of Sale Prospectus and the Prospectus.

(f) The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under this Agreement (a "**Material Adverse Effect**"). The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Schedule III to this Agreement.

(g) The Company has an authorized capitalization as set forth in the Time of Sale Prospectus and the Prospectus under the heading “Description of our Capital Stock;” all the outstanding shares of common stock of the Company prior to the issuance of Shares have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options, except as disclosed in the Time of Sale Prospectus and the Prospectus; the common stock of the Company conforms in all material respects to the description thereof contained in the Time of Sale Prospectus and the Prospectus; and all the outstanding shares of capital stock or other equity interests of each subsidiary owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(h) The Company has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the due and proper authorization of the consummation by it of the transactions contemplated thereby has been duly and validly taken.

(i) This Agreement has been duly authorized, executed and delivered by the Company.

(j) This Agreement conforms in all material respects to the description thereof contained in the Time of Sale Prospectus and the Prospectus.

(k) Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws (including *estatutos sociales* and *estatutos sociales*) or similar constitutive or organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(l) The Shares have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of such Shares will not be subject to any preemptive or similar rights.

(m) The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws (including *estatutos sociales* and *estatutos sociales*) or similar constitutive or organizational documents of the Company or any of its subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority.

(n) No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement, the sale of the Shares to be sold and the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations, orders and registrations or qualifications as may have been obtained under the Securities Act and such as may be required under applicable state securities laws in connection with the purchase and resale of the Shares by the Underwriters and such other approvals as have been obtained.

(o) There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could reasonably be expected to have a Material Adverse Effect; no such investigations, actions, suits or proceedings are, to the knowledge of the Company, threatened or contemplated by any governmental or regulatory authority or threatened by others.

(p) Deloitte & Co. S.A., who has audited the consolidated financial statements of the Company and its subsidiaries included in the Annual Report on Form 10-K for the year ended December 31, 2018, which is incorporated by reference in the Base Prospectus, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(q) The Company and its subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or, (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as disclosed in the Time of Sale Prospectus and the Prospectus, (i) the Company and its subsidiaries own or possess adequate rights to use all material uniform resource locators (URLs), patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) material for the conduct of their respective businesses as they are currently conducted (collectively, “**Intellectual Property**”); (ii) there are no third parties who have established or, to the Company’s knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Time of Sale Prospectus and the Prospectus, disclose is licensed to the Company; (iii) to the Company’s knowledge, there is no infringement by third parties of any Intellectual Property; (iv) to the Company’s knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the Company’s or its subsidiaries’ rights in or to any Intellectual Property, and the Company or any of its subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) to the Company’s knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company or any of its subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) to the Company’s knowledge, there is no pending or threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes, misappropriates or otherwise violates any patent, trademark, trade name, service mark, copyright, trade secret or other proprietary rights of others, and the Company or any of its subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vii) to the best of the Company’s knowledge, the Company and its subsidiaries have complied in all material respects with the terms of any agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements that are material for the conduct of their respective businesses as they are currently conducted are in full force and effect; and (viii) to the best of the Company’s knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(r) To the best of the Company’s knowledge, no relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in a registration statement to be filed with the Commission and that is not so described in the Time of Sale Prospectus and the Prospectus.

(s) The Company is not, and after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an “investment company” or an entity “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the “**Investment Company Act**”).

(t) Except as described in the Time of Sale Prospectus and the Prospectus, the Company and its subsidiaries have paid all material federal, state, local and non-U.S. taxes and filed all material tax returns required to be paid or filed through the date hereof except for any taxes (i) for which an extension has been obtained or (ii) which are being contested in good faith and by appropriate proceedings (provided adequate reserves have been provided for such taxes); and except as otherwise disclosed in the Time of Sale Prospectus and the Prospectus, there is no material tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets.

(u) The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Time of Sale Prospectus and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(v) Neither the Company nor any of its subsidiaries is engaged in any illegal labor practice, except as would not, individually or in the aggregate, have a Material Adverse Effect. No labor disturbance by or dispute with employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its subsidiaries’ principal suppliers, contractors or customers, except as would not, individually or in the aggregate, have a Material Adverse Effect.

(w) (i) The Company and its subsidiaries (x) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “**Environmental Laws**”); (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (z) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its subsidiaries, except in the case of each of (x) and (y) above, for any such failure to comply, or failure to receive required permits, licenses or approvals, or cost or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

(x) The Company and its subsidiaries maintain an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(y) The Company and its subsidiaries maintain systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, 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, including, but not limited to internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (v) interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Time of Sale Prospectus and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission’s rules and guidelines applicable thereto. Except as disclosed in the Time of Sale Prospectus and the Prospectus, there are no material weaknesses in the Company’s internal controls. The Company’s auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls over financial reporting.

(z) The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Time of Sale Prospectus and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(aa) The Company and its subsidiaries have insurance against such losses and risks as the Company reasonably believes is prudent for companies engaged in similar business in similar industries; all policies of insurance insuring the Company or any of its subsidiaries or their respective businesses, assets, directors and officers and employees are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies and instruments; there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any such subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(bb) Neither the Company nor any of its subsidiaries, nor any director, officer or employee of the Company or any of its subsidiaries nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended ("FCPA") or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company and its subsidiaries have instituted, maintain and enforce, policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws. Neither the Company nor its subsidiaries will use, directly or indirectly, the proceeds of the offering of the Shares hereunder in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

(cc) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its subsidiaries conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(dd) Neither the Company nor any of its subsidiaries, directors, officers or employees, nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“**UNSC**”), the European Union, Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea and Syria (each, a “**Sanctioned Country**”), provided however, notwithstanding the above, the Company maintains subsidiaries in Venezuela; and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as initial purchaser, underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(ee) The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares *provided* that the Company expresses no opinion regarding any actions taken by the Underwriters in this regard).

(ff) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Time of Sale Prospectus and the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(gg) Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included or incorporated by reference in the Time of Sale Prospectus and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(hh) There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(ii) There are no securities or preferred stock of or guaranteed by the Company or any of its subsidiaries that are rated by a "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) in the Exchange Act.

(jj) The Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, to the best of the Company's knowledge. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("**Personal Data**")) used in connection with their businesses, and to the best of the Company's knowledge, there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(kk) Except for any net income, capital gains or franchise taxes imposed on the Underwriters by Brazil, Argentina or Mexico or any political subdivision or taxing authority thereof or therein as a result of any present or former connection (other than any connection resulting from the transactions contemplated by this Agreement) between the Underwriters or any subsequent purchasers of the Shares and the jurisdiction imposing such tax, no stamp duties or other issuance or transfer taxes are payable by or on behalf of the Underwriters in Brazil, Argentina or Mexico or any political subdivision or taxing authority thereof solely in connection with (A) the execution, delivery and performance of this Agreement, (B) the sale and delivery of the Shares in the manner contemplated by this Agreement and the Prospectus or (C) the sale and delivery by the Underwriters of the Shares as contemplated herein and in the Prospectus (other than any sales and deliveries of Shares to subsequent purchasers with a present or former connection to such jurisdictions, for which we express no opinion); *provided*, however, that for the avoidance of doubt, part (A) of this clause (kk) shall not be interpreted to include proceedings initiated in Argentina in connection with the enforcement of this Agreement.

(ll) The choice of laws of the State of New York as the governing law of this Agreement is a valid choice of law under the laws of Brazil, Argentina and Mexico and will be honored by the courts of these countries, provided, that in the case of Argentina, such laws do not contravene public policy and provided, further, that the decision of a foreign court complies with the requirements of Section 517 of the National Code of Civil and Commercial Procedure of Argentina; the Company has the power to submit, and pursuant to Section 20 of this Agreement has legally, validly, effectively and irrevocably submitted, to the jurisdiction of any federal or state court in the State of New York, County of New York; and service of process effected in the manner set forth in this Agreement, assuming validity under the laws of the State of New York, will be effective, under the laws of Brazil, Argentina and Mexico to confer valid personal jurisdiction over the Company, *provided* that, in the case of Argentina, the summons are served by a court officer.

(mm) The Company and its obligations under the Agreement are subject to suit, and neither the Company nor any of its properties or assets has any right of immunity, on any grounds, from any action, suit or proceeding, from the giving of any relief in any action, suit or proceeding, from set-off or counter claim, from the jurisdiction of any Brazilian, Argentinean, Mexican or U.S. federal or New York state court, as the case may be, from service of process, attachment upon or prior to judgment, or attachment in aid of execution of judgment, or from execution of a judgment, or from other legal process or proceeding for the giving of any relief or for the enforcement of a judgment, in any such court, with respect to its obligations, liabilities or any other matter arising out of or relating to this Agreement.

(nn) No subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(oo) To ensure the legality, validity, enforcement or admissibility into evidence in a legal or administrative proceeding in Brazil, Argentina or Mexico of this Agreement, it is not necessary that this Agreement be filed or recorded with any governmental or regulatory authority or court or that any registration tax, stamp duty or similar tax be paid on or in respect of this Agreement other than court costs (including without limitation, filing fees and deposits to guarantee judgment required by a court in Brazil, Argentina or Mexico).

(pp) Except as otherwise disclosed in the Time of Sale Prospectus and the Prospectus, no exchange control authorization or any other authorization, approval, consent or license of any governmental or regulatory authority or court in Brazil, Argentina or Mexico is required for the payment of any amounts payable to the Underwriters under this Agreement; and all such payments made to the Underwriters will not be subject to income, withholding or other taxes under laws and regulations of Brazil, Argentina or Mexico, respectively, or any political subdivision or taxing authority thereof or therein and will otherwise be free and clear of any other tax, duty, withholding or deduction in Brazil, Argentina or Mexico, respectively, or any political subdivision or taxing authority thereof or therein and without the necessity of obtaining any governmental authorization in Brazil, Argentina or Mexico, respectively, or any political subdivision or taxing authority thereof or therein.

(qq) Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Shares.

(rr) Each preliminary prospectus filed as part of the registration statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(ss) There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.

2. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase at \$470.64 a share (the "**Purchase Price**") the number of Firm Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the number of Firm Shares to be sold as the number of Firm Shares set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of Firm Shares.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Underwriters the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, up to 312,500 Additional Shares at the Purchase Price, provided, however, that the amount paid by the Underwriters for any Additional Shares shall be reduced by an amount per share equal to any dividends declared by the Company and payable on the Firm Shares but not payable on such Additional Shares. You may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement. Any exercise notice shall specify the total number of Additional Shares to be purchased by the Underwriters and the date on which such shares are to be purchased. Each purchase date must be at least three business days after written notice is given and may not be earlier than the closing date for the Firm Shares nor later than ten business days after the date of such notice. Additional Shares may be purchased as provided in Section 2 hereof solely for the purpose of covering sales of shares in excess of the number of the Firm Shares. On each day, if any, that Additional Shares are to be purchased (an “**Option Closing Date**”), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Firm Shares set forth in Schedule I hereto opposite the name of such Underwriter, and the Company agrees to sell the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Additional Shares set forth in Schedule I hereto.

The Company agrees that, without the prior written consent of Goldman Sachs & Co. LLC and J.P. Morgan Securities LLC, on behalf of the Underwriters, it will not, during the period ending 90 days after the date of the Prospectus (the “**Restricted Period**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) or any other securities so owned convertible into or exercisable or exchangeable for Common Stock or publicly announce the intention to do any of the foregoing; or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; or (3) participate in the filing of any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock.

The restrictions contained in the preceding paragraph shall not apply to (a) the Shares to be sold hereunder, (b) the issuance by the Company of shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof of which the Underwriters have been advised in writing, or (c) the filing by the Company of any registration statement on Form S-8 or a successor form.

3. *Terms of Public Offering.* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Shares as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Shares are to be offered to the public initially at \$480.00 a share (the “**Public Offering Price**”) and to certain dealers selected by you at a price that represents a concession not in excess of \$5.616 a share under the Public Offering Price.

4. *Payment and Delivery.* Payment for the Firm Shares shall be made to the Company in Federal or other immediately available funds to such account or accounts as may be designated by the Company against delivery of such Firm Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on March 15, 2019 or at such other time on the same or such other date, not later than March 21, 2019, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the “**Closing Date.**”

Payment for any Additional Shares shall be made to the Company in Federal or other immediately available funds to such account or accounts as may be designated by the Company against delivery of such Additional Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on the date specified in the corresponding notice described in Section 2 or at such other time on the same or on such other date, in any event not later than April 13, 2019, as shall be designated in writing by you.

The Firm Shares and Additional Shares shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the applicable Option Closing Date, as the case may be. The Firm Shares and Additional Shares shall be delivered to you on the Closing Date or an Option Closing Date, as the case may be, for the respective accounts of the several Underwriters. The Purchase Price payable by the Underwriters shall be reduced by (i) any transfer taxes paid by, or on behalf of, the Underwriters in connection with the transfer of the Shares to the Underwriters duly paid and (ii) any withholding required by law, except for (A) any withholding imposed on an Underwriter by reason of any connection between the Underwriter and a taxing jurisdiction, other than entering into this Agreement, receiving payments hereunder, performing its obligations hereunder or enforcing its rights hereunder, or (B) any withholding imposed by reason of the failure by an Underwriter to comply with a request to provide certification, information, documents or other evidence concerning the nationality, residence, identity or status of the Underwriter, to make any declaration or similar claim or to satisfy any other reporting requirement required by a statute, treaty, regulation or administrative practice of the jurisdiction imposing such withholding or taxes as a precondition to exemption from all or part of such withholding or taxes.

5. *Conditions to the Underwriters' Obligations.* The obligations of the Company to sell the Shares to the Underwriters and the several obligations of the Underwriters to purchase and pay for the Shares on the Closing Date or the Additional Shares on the Option Closing Date, as the case may be as provided herein, are subject to the following conditions:

(a) The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date or the Option Closing Date, as the case may be; and the statements of the Company and its officers and made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or the Option Closing Date, as the case may be.

(b) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or the Option Closing Date, as the case may be:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) of the Exchange Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus.

(c) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, a certificate, dated the Closing Date or the Option Closing Date, as the case may be, and signed by an executive officer of the Company, to the effect set forth in Section 5(b)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date or the Option Closing Date, as the case may be, and that the Company has complied in all material respects with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date or the Option Closing Date, as the case may be.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(d) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, an opinion and negative assurance letter of Cleary Gottlieb Steen & Hamilton LLP, outside counsel for the Company, each dated the Closing Date or the Option Closing Date, as the case may be, substantially in the form heretofore provided to counsel for the Underwriters and otherwise reasonably satisfactory in form and substance to the Representatives.

(e) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, an opinion and negative assurance letter of Davis Polk & Wardwell LLP, counsel for the Underwriters, each dated the Closing Date or the Option Closing Date, as the case may be, in form and substance reasonably satisfactory to the Representatives.

(f) The Underwriters shall have received, on each of the date hereof and the Closing Date or the Option Closing Date, as the case may be, a letter dated the date hereof or the Closing Date or the Option Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Deloitte & Co. S.A., the independent registered public accounting firm, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letters delivered as of the date hereof and the Closing Date and the Option Closing Date shall use a "cut-off date" not earlier than three business days prior to the date hereof, the Closing Date and the Option Closing Date, respectively.

(g) The Underwriters shall have received, on each of the date hereof and on the Closing Date or the Option Closing Date, as the case may be, certificates dated the date hereof or the Closing Date or the Option Closing Date, as the case may be, as the case may be, of the Company's chief financial officer with respect to certain financial data contained in the Time of Sale Prospectus and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to the Representatives.

(h) The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and certain shareholders, officers and directors of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(i) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or the Option Closing Date, as the case may be, prevent the issuance or sale of the Firm Shares; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or the Option Closing Date, as the case may be, prevent the issuance or sale of the Firm Shares.

(j) The Representatives shall have received on and as of the Closing Date or the Option Closing Date, as the case may be, satisfactory evidence of the good standing of the Company in its jurisdiction of organization, in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdiction.

(k) The Firm Shares shall be eligible for clearance and settlement through DTC.

6. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, one signed copy of the Registration Statement (including exhibits thereto and documents incorporated by reference) and for delivery to each other Underwriter a conformed copy of the Registration Statement (without exhibits thereto but including documents incorporated by reference) and to furnish to you in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period mentioned in Section 7(e) or 7(f) below, as many copies of the Time of Sale Prospectus, the Prospectus, any documents incorporated therein by reference and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) To furnish to you a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which you reasonably object.

(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Shares at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters, the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Shares may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.

(g) To cooperate in qualifying the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request.

(h) To make generally available to the Company's security holders and to you as soon as practicable an earnings statement covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(i) The Company will advise the Representatives promptly, and confirm such advice in writing, (i) of the issuance of a stop order suspending the effectiveness of the Registration Statement or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A under the Securities Act, (ii) of the issuance by any governmental or regulatory authority of any order preventing or suspending the use of any of the Time of Sale Prospectus or the Prospectus or the initiation or threatening of any proceeding for that purpose; (iii) of the occurrence or development of any event at any time prior to the completion of the initial offering of the Shares as a result of which any of the Time of Sale Prospectus or the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when such Time of Sale Prospectus or the Prospectus is delivered to a purchaser, not misleading; and of the receipt by the Company of any notice with respect to any suspension of the qualification of the Shares for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable best efforts to prevent the issuance of any such order preventing or suspending the effectiveness of the Registration Statement or the use of any of the Time of Sale Prospectus or the Prospectus or suspending any such qualification of the Shares and, if any such order is issued, will use its reasonable best efforts to obtain as soon as possible the withdrawal thereof.

(j) The Company will not to take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Shares.

7. *Expenses.* Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Underwriters, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 6(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incurred in connection with any required review and qualification of the offering of the Shares by FINRA, (v) all costs and expenses incident to listing the Shares on the Nasdaq Global Select Market and other national securities exchanges and foreign stock exchanges, (vi) the costs and charges of any transfer agent, registrar or depository, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company and travel and lodging expenses of the representatives and officers of the Company and any such consultants, (viii) the document production charges and expenses associated with printing this Agreement and (ix) all other costs and expenses incident to the performance of the obligations of the Company. It is understood, however, that except as provided in this Section, Section 9 entitled "Indemnity and Contribution" and the last paragraph of Section 11 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, stock transfer taxes payable on resale of any of the Shares by them and any advertising expenses connected with any offers they may make.

8. *Covenants of the Underwriters.* Each Underwriter severally covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

9. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, any untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus or any amendment or supplement thereto, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, any “road show” as defined in Rule 433(h) under the Securities Act (a “**road show**”), or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, except insofar as such losses, claims, damages or liabilities are caused by, any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by the Representatives consists of the information described as such in subsection (b) below. The Company further agrees to reimburse any stamp tax payable upon presentation for enforcement of this Agreement. Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the directors and officers of the Company and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus or any amendment or supplement thereto, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, any road show, or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through the Representative expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus, road show or the Prospectus or any amendment or supplement thereto, it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Registration Statement, the Time of Sale Prospectus and the Prospectus: the names and corresponding share amounts set forth in the table of Underwriters in the first paragraph of text under the caption “Underwriters” in the Prospectus, the third paragraph of text under the caption “Underwriters” in the Time of Sale Prospectus and the Prospectus concerning the terms of offering by the Underwriters and the tenth paragraph of text under the caption “Underwriters” in the Time of Sale Prospectus and the Prospectus concerning stabilization by the Underwriters.

(b) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 9(a) or 9(b), such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the indemnifying party has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified party; (iii) the indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the indemnifying party; or (iv) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Underwriters, their respective officers and directors and all persons, if any, who control any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act or who are affiliates of any Underwriter within the meaning of Rule 405 under the Securities Act and (ii) the fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors and officers and each person, if any, who controls the Company within the meaning of either such Section, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Underwriters and such control persons and directors, officers and affiliates of any Underwriters, such firm shall be designated in writing by the Representatives. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for reasonable fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(c) To the extent the indemnification provided for in Section 9(a) or 9(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 9(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 9(d)(i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Shares. The relative fault of any indemnified party on the one hand and any indemnifying party on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such indemnified party or such indemnifying party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 9 are several in proportion to the respective number of Shares they have purchased hereunder, and not joint.

(d) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 9 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 9(c). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 9(c) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(e) The indemnity and contribution provisions contained in this Section 9 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter, any person controlling any Underwriter, its officers or directors or any affiliate of any Underwriter or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares.

10. *Termination.* This Agreement may be terminated in the absolute discretion of the Representatives by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or, in the case of the Additional Shares, prior to the Option Closing Date (i) trading generally shall have been suspended or materially limited on or by any of the New York Stock Exchange, the Nasdaq Global Select Market, the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade; (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred; (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities; or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date or the Option Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Time of Sale Prospectus or the Prospectus.

11. *Effectiveness; Defaulting Underwriters.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or an Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Firm Shares set forth opposite their respective names in Schedule I bears to the aggregate number of Firm Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the number of Shares that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 11 by an amount in excess of one-ninth of such number of Shares without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares and the aggregate number of Firm Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares to be purchased on such date, and arrangements satisfactory to you and the Company for the purchase of such Firm Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. If, on an Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Shares and the aggregate number of Additional Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Additional Shares to be purchased on such Option Closing Date, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase the Additional Shares to be sold on such Option Closing Date or (ii) purchase not less than the number of Additional Shares that such non-defaulting Underwriters would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason Company shall be unable to perform its obligations under this Agreement, the Company will reimburse or, if this Agreement shall be terminated by the Underwriters, or any of them, pursuant to Section 10(ii), the Company will reimburse, the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all documented out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

12. *Entire Agreement.* (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement between the Company, on the one hand, and the Underwriters, on the other, with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, the conduct of the offering, and the purchase and sale of the Shares.

(b) The Company acknowledges that in connection with the offering of the Shares: (i) the purchase and sale of the Shares pursuant to this Agreement is an arm's length commercial transaction between the Company, on the one hand, and the Underwriters, on the other, and the Underwriters are not agents of, and owe no fiduciary duties to, the Company, (ii) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

13. *Recognition of the U.S. Special Resolution Regimes.* (a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section a "**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). "Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). "**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. "**U.S. Special Resolution Regime**" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

14. *Counterparts.* This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

15. *Applicable Law.* This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law principles thereof.

16. *Currency.* Each reference in this Agreement to U.S. dollars (the “relevant currency”), including by use of the symbol “\$,” is of the essence. To the fullest extent permitted by law, the obligation of the Company in respect of any amount due under this Agreement will, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the party entitled to receive such payment may, in accordance with its normal procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the business day immediately following the day on which such party receives such payment. If the amount in the relevant currency that may be so purchased for any reason falls short of the amount originally due, the Company will, to the fullest extent permitted by applicable law, pay such additional amounts, in the relevant currency, as may be necessary to compensate for the shortfall. Any obligation of the Company not discharged by such payment will, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided herein, will continue in full force and effect.

17. *Waiver of Immunity.* To the extent that the Company has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Company hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement to the fullest extent permitted by applicable law.

18. *Waiver of Jury Trial.* The Company and each of the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

19. *Submission to Jurisdiction.* To the fullest extent permitted by applicable law, (a) any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the “**Specified Courts**”), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to the Agreement in any of the Specified Courts. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) The parties further agree, to the fullest extent permitted by applicable law, that the mailing by certified or registered mail, return receipt requested, of any process required by any Specified Court shall constitute valid and lawful service of process against them, without the necessity for service by any other means provided by law.

20. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

21. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to you at Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, (fax: (212) 902-9316), Attention: Registration Department; J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 (fax: (212) 622-8358), Attention: Equity Syndicate Desk; and Morgan Stanley & Co. LLC, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; and if to the Company shall be delivered, mailed or sent to Arias 3751, 7th Floor, Buenos Aires, C1430CRG, Argentina, Attention: General Counsel, with a copy to Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, Attention: Nicolas Grabar.

Very truly yours,

MERCADOLIBRE, INC.

By: /s/ Pedro Domelles Amt

Name: Pedro Domelles Amt

Title: Chief Financial Officer

Accepted as of the date hereof

GOLDMAN SACHS & CO. LLC
J.P. MORGAN SECURITIES LLC
MORGAN STANLEY & CO. LLC

By: GOLDMAN SACHS & CO. LLC

By: /s/ Santiago Rubin
Name: Santiago Rubin
Title: Managing Director

By: J.P. MORGAN SECURITIES LLC

By: /s/ Alejandra Fernandez
Name: Alejandra Fernandez
Title: Vice President

By: MORGAN STANLEY & CO. LLC

By: /s/ Pawan Passi
Name: Pawan Passi
Title: Managing Director

Underwriter	Number of Firm Shares To Be Purchased
Goldman Sachs & Co. LLC	1,041,668
J.P. Morgan Securities LLC	520,833
Morgan Stanley & Co. LLC	520,833
Total:	2,083,334

Time of Sale Prospectus

1. Preliminary Prospectus issued March 12, 2019
2. The Issuer Free Writing Prospectuses dated March 11, 2019
5. Pricing Information Conveyed by the Underwriters:
 - Firm Shares offered by the Company: 2,083,334
 - Additional Shares offered by the Company: 312,500
 - Price to Public: \$480.00 per share

Subsidiaries

MercadoLibre S.R.L.
DeRemate.com de Argentina S.A.
Meli Log S.R.L.
Kinexo S.A.
Kaitzen S.A.
Machinalis S.R.L.
Ibazar.com Atividades de Internet Ltda. (formerly MercadoPago Representações Ltda. until December 9, 2008)
MercadoLivre.com Atividades de Internet Ltda.
MercadoPago.com Representações Ltda.
eBazar.com.br Ltda.
MercadoEnvios Servicios de Logistica Ltda.
MercadoEnvios Transporte Ltda.
Dabee Brasil Servicios de Intermediacao e Facilitacao de Negócios Ltda.
MercadoLibre Chile Ltda.
MercadoPago S.A.
MercadoLibre Colombia Ltda.
MercadoPago Colombia Ltda.
MercadoLibre Costa Rica S.R.L.
MercadoLibre Ecuador Cia. Ltda.
Meli Participaciones, S.L.
Dabee Technology India Private Ltd.
MercadoLibre, S.deR.L. de C.V.
DeRemate.com de Mexico S.deR.L. de C.V.
PSGAC Prestadora de Servicios Gerenciales, Administrativos y Comerciales S. de R.L. de C.V.
Mercado Lending S.A. de C.V.
Inmobiliaria Web Chile, S de RL de CV
Meli Uruguay S.R.L.
Tech Fund S.R.L. (formerly Tiklral S.A.)
Deremate.com de Uruguay S.R.L.
Hammer.com, LLC
Lista Pop LLC
Servicios Administrativos y Comerciales LLC
SFCS, LLC
MercadoPago, LLC
MercadoPago International, LLC
Autopark, LLC
Autopark Classifieds, LLC
Marketplace Investments, LLC
Meli Technology, Inc.
Classifieds LLC (previously named CMG Classified Media Group Inc.)
Brick.com, LLC
MercadoLibre Peru S.R.L.

[FORM OF LOCK-UP LETTER]

March ___, 2019

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Ladies and Gentlemen:

The undersigned understands that Goldman Sachs & Co. LLC (“**Goldman Sachs**”) and J.P. Morgan Securities LLC (“**J.P. Morgan**”) propose to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with MercadoLibre, Inc., a Delaware corporation (the “**Company**”), providing for the public offering (the “**Public Offering**”) by the several Underwriters, including Goldman Sachs, J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “**Underwriters**”), of [•] shares (the “**Shares**”) of the common stock, \$0.001 par value per share, of the Company (the “**Common Stock**”) to be sold by the Company.

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of Goldman Sachs and J.P. Morgan on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final prospectus (the “**Restricted Period**”) relating to the Public Offering (the “**Prospectus**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), by the undersigned or any other securities so owned convertible into or exercisable or exchangeable for Common Stock or publicly announce the intention to do any of the foregoing or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise.

The foregoing sentence shall not apply to (a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering, *provided* that no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made in connection with subsequent sales of Common Stock or other securities acquired in such open market transactions, (b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift, (c) distributions of shares of Common Stock or any security convertible into Common Stock to limited partners or stockholders of the undersigned, (d) the transfer or sale of Common Stock by operation of law, such as pursuant to a domestic relations order, pursuant to a will or in connection with a divorce settlement, (e) transfers of Common Stock to any immediate family member (for purposes of this letter, "immediate family" means any relationship by blood, marriage or adoption, not more remote than first cousin), trusts for the direct or indirect benefit of the undersigned or the immediate family members of the undersigned or any of their successors upon death; *provided* that in the case of any transfer or distribution pursuant to clause (b), (c), (d) or (e), (i) each donee, distributee or transferee shall sign and deliver a lock-up letter substantially in the form of this letter and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Restricted Period, (f) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that (i) such plan does not provide for the transfer of Common Stock during the Restricted Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Restricted Period, or (g) forfeitures of Common Stock to the Company only to satisfy tax withholding requirements; *provided* that in the case of any transfer or distribution pursuant to clause (g), any filing or announcement relating to such transfer or distribution shall briefly note the applicable circumstances that cause such clause to apply and explain that the filing or announcement relates solely to transfers or distributions falling within the category described in the relevant clause. In addition, the undersigned agrees that, without the prior written consent of Goldman Sachs and J.P. Morgan on behalf of the Underwriters, it will not, during the Restricted Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation among the Company and the Underwriters.

Very truly yours,

(Name)

(Address)

SECURITIES PURCHASE AGREEMENT

by and between

MERCADOLIBRE, INC.

and

PAYPAL, INC.

March 11, 2019

	Page
Securities Purchase Agreement	1
1. Definitions	1
2. Authorization, Purchase and Sale of the Securities.	4
2.1 Authorization, Purchase and Sale.	4
2.2 Closing.	4
3. Representations and Warranties of the Company	5
3.1 Organization and Power.	5
3.2 Authorization	5
3.3 The Subject Shares	5
3.4 Capitalization	5
3.5 No Conflict	5
3.6 Consents	6
3.7 Financial Statements.	6
3.8 Litigation	6
3.9 Title to Properties	6
3.10 Intellectual Property	7
3.11 No Undisclosed Relationships	7
3.12 Permits	7
3.13 No Labor Disputes	7
3.14 Environmental Compliance	8
3.15 Taxes	8
3.16 Insurance	8
3.17 No Unlawful Payments	8
3.18 Compliance with Anti-Money Laundering Laws	9
3.19 No Conflicts with Sanctions Laws	9
3.20 No Integration	9
3.21 No General Solicitation or Directed Selling Efforts	9
3.22 Securities Law Exemptions	9
3.23 Absence of Certain Changes	10
3.24 No Defaults	10
3.25 Brokers	10
3.26 NASDAQ	10
3.27 U.S. Activities	10
3.29 Other Private Placements	10
3.30 No Other Representations and Warranties	11

4.	Representations and Warranties of the Purchaser	11
4.1	Organization	11
4.2	Authorization	11
4.3	No Conflict	11
4.4	Consents	12
4.5	Brokers	12
4.6	Purchase Entirely for Own Account	12
4.7	Investor Status	12
4.8	Information.	12
4.9	Securities Not Registered.	12
4.10	Financing	13
4.11	Non-Reliance	13
5.	Covenants.	13
5.1	Rule 144 Reporting.	13
5.2	Trading of Company Securities.	14
5.3	Lock-Up.	14
5.4	Board Observer	14
5.5	Cooperation	15
6.	Conditions Precedent.	15
6.1	Mutual Conditions of Closing	15
6.2	Conditions to the Obligation of the Purchaser to Consummate the Closing	15
6.3	Conditions to the Obligation of the Company to Consummate the Closing	16
7.	Legends; Securities Act Compliance	16
8.	Termination.	16
8.1	Conditions of Termination	16
8.2	Effect of Termination	16
9.	Miscellaneous Provisions.	17
9.1	Survival	17
9.2	Interpretation	17
9.3	Notices	18
9.4	Severability	18
9.5	Governing Law; Jurisdiction; WAIVER OF JURY TRIAL.	19
9.6	Delays or Omissions; Waiver	19
9.7	Specific Performance	19
9.8	Fees; Expenses.	19
9.9	Assignment	19
9.10	No Third Party Beneficiaries	20
9.11	Counterparts	20
9.12	Entire Agreement; Amendments	20
9.13	No Personal Liability of Directors, Officers, Owners, Etc	20

Securities Purchase Agreement

SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of March 11, 2019, by and between MercadoLibre, Inc., a Delaware corporation (the "Company"), and PayPal, Inc., a Delaware corporation (the "Purchaser").

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company entered into a Securities Purchase Agreement with Dragoner Investment Group, LLC ("Dragoneer") pursuant to which Dragoneer will purchase preferred securities of the Company for aggregate consideration of \$100,000,000 (the "Concurrent Private Placement");

WHEREAS, on the date hereof, the Company will file a Registration Statement on Form S-3ASR and a prospectus supplement thereto with the U.S. Securities and Exchange Commission (the "SEC") registering the sale of shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock") and announcing the Company's intention to complete a sale of shares of the Common Stock, which sale is expected to be completed on or prior to March 15, 2019 (the "Concurrent Public Offering");

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, the Subject Shares (as defined below);

WHEREAS, the Board (as defined below) has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement providing for the transactions contemplated hereby in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), upon the terms and subject to the conditions set forth herein and therein, and (ii) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the DGCL, upon the terms and conditions contained herein and therein; and

WHEREAS, the Purchaser has approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with applicable Law (as defined below), upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person.

"Agreement" shall have the meaning set forth in the preamble.

"Anti-Money Laundering Laws" shall have the meaning set forth in Section 3.18.

"Bankruptcy and Equity Exception" shall have the meaning set forth in Section 3.2.

"Board" shall mean the Board of Directors of the Company.

“Board Documents” shall have the meaning set forth in Section 5.4.

“Business Day” shall mean any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or California or is a day on which banking institutions located in the State of New York or California are authorized or required by Law or other governmental action to close.

“Capital Stock” shall mean, with respect to any Person, any and all shares of stock, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity.

“Common Stock” shall have the meaning set forth in the recitals.

“Closing” shall have the meaning set forth in Section 2.2(a).

“Closing Date” shall have the meaning set forth in Section 2.2(a).

“Company” shall have the meaning set forth in the preamble.

“Concurrent Public Offering” shall have the meaning set forth in the recitals.

“Consent” shall have the meaning set forth in Section 3.5.

“control” (including the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of Equity Securities, by contract or otherwise.

“Delaware Court” shall have the meaning set forth in Section 9.5(b).

“DGCL” shall have the meaning set forth in the recitals.

“Environmental Laws” shall have the meaning set forth in Section 3.10.

“Equity Securities” shall mean, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, and (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

“FCPA” shall have the meaning set forth in Section 3.17.

“GAAP” shall mean U.S. generally accepted accounting principles.

“Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body, including NASDAQ.

“HMT” shall have the meaning set forth in Section 3.19.

“Lock-Up Expiration Date” has the meaning set forth in Section 5.4.

“Law” shall mean any applicable law, statute, code, ordinance, rule, regulation, or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law.

“Lien” shall mean any lien, charge, pledge, security interest, claim or other encumbrance.

“Material Adverse Effect” means any change, event, effect or circumstance (each, an “Effect”) that, individually or taken together with all other Effects that have occurred prior to, and are continuing as of, the date of determination of the occurrence of the Material Adverse Effect, has a material adverse effect on the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its Subsidiaries taken as a whole.

“NASDAQ” shall mean Nasdaq Global Market (or its successor).

“Observer” shall have the meaning set forth in Section 5.4.

“OFAC” shall have the meaning set forth in Section 3.19.

“Organizational Document” shall mean, as applicable, an entity’s agreement or certificate of limited partnership, limited liability company agreement, certificate of formation, certificate or articles of incorporation, bylaws or other similar organizational documents.

“Per Share Purchase Price” shall mean the lesser of (i) \$436.10 and (ii) the public offering price per share of Common Stock in the Concurrent Public Offering.

“Person” shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

“Purchase Price” shall have the meaning set forth in Section 2.1.

“Purchaser” shall have the meaning set forth in the preamble.

“Purchaser Adverse Effect” shall have the meaning set forth in the Section 4.3.

“Representatives” shall mean, with respect to any Person, such Person’s Affiliates and such Person’s and each such Affiliate’s respective directors, officers, employees, managers, trustees, principals, stockholders, members, general or limited partners, agents and other representatives.

“Rule 144” shall have the meaning set forth in Section 4.8(a).

“Sanctioned Country” shall have the meaning set forth in Section 3.19.

“SEC” shall mean have the meaning set forth in the recitals.

“SEC Reports” shall mean (i) the Company’s Form 10-K for the fiscal year ended December 31, 2018 and (ii) the portions of the Company’s Definitive Proxy Statement on Schedule 14A that are incorporated by reference into the Company’s Form 10-K for the fiscal year ended December 31, 2018.

“Securities Act” shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“Subject Shares” shall mean a number of shares of Common Stock equal to (i) \$750,000,000 divided by (ii) the Per Share Purchase Price (rounded up to the nearest whole share).

“Subsidiary” means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

“Taxes” shall mean any and all taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) imposed by any Governmental Entity, including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and any ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers’ compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs or duties.

“UNSC” shall have the meaning set forth in Section 3.19.

2. Authorization, Purchase and Sale of the Securities.

2.1 Authorization, Purchase and Sale.

(a) Subject to and upon the terms and conditions of this Agreement, the Company will issue and sell to the Purchaser, and the Purchaser will purchase from the Company, at the Closing, the Subject Shares for an aggregate purchase price equal to the product of (i) the number of Subject Shares and (ii) the Per Share Purchase Price (such amount, the “Purchase Price”).

2.2 Closing.

(a) The closing of the purchase and sale of the Subject Shares (the “Closing”) shall take place at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, on the date on which all of the conditions set forth in Section 6 have been satisfied or duly waived, or at such other place or such other date as mutually agreed to by the parties hereto (the date on which the Closing occurs, the “Closing Date”).

(b) At the Closing:

(i) the Company shall deliver to the Purchaser evidence that the Subject Shares have been issued in book-entry form;
and

(ii) the Purchaser shall deliver, or cause to be delivered, to the Company the Purchase Price by wire transfer of immediately available funds to an account or accounts that the Company shall designate at least two (2) Business Days prior to the Closing Date.

3. Representations and Warranties of the Company. The Company hereby represents and warrants, as of the date hereof and as of the Closing Date, to the Purchaser as follows:

3.1 Organization and Power. The Company and each of its Subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 Authorization. The Company has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the due and proper authorization of the consummation by it of the transactions contemplated thereby has been duly and validly taken and, assuming due execution and delivery by the Purchaser, constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception"). This Agreement has been duly authorized, executed and delivered by the Company.

3.3 The Subject Shares. The Subject Shares have been duly authorized and, when issued in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of the Subject Shares will not be subject to any preemptive or similar rights.

3.4 Capitalization. The Company has the following authorized capitalization: 110,000,000 shares of Common Stock and 40,000,000 shares of preferred stock, par value \$0.001 per share; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its Subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options, except as disclosed in the SEC Reports; and all the outstanding shares of capital stock or other equity interests of each subsidiary owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

3.5 No Conflict. The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws (including *estatutos sociales* and *estatutos sociais*) or similar constitutive or organizational documents of the Company or any of its Subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority.

3.6 Consents. No consent, approval, authorization, order, registration or qualification of or with (any of the foregoing being a “Consent”), any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement, the sale of the Subject Shares and the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations, orders and registrations or qualifications as may have been obtained under the Securities Act and such as may be required under applicable state securities laws in connection with the issuance of Subject Shares.

3.7 SEC Documents: Financial Statements.

(a) Each of the documents filed by the Company with the SEC (the “SEC Documents”) since January 1, 2018, as of its respective filing date, complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Document, and, except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document filed and publicly available prior to the date of this Agreement (including the Preliminary Prospectus Supplement to be filed pursuant to Rule 424(b) on the date hereof), none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements and the related notes thereto of the Company and its consolidated Subsidiaries included or incorporated by reference in the SEC Reports present fairly the financial position of the Company and its consolidated Subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified. Such consolidated financial statements have been prepared in conformity with U.S. GAAP applied on a consistent basis throughout the periods covered thereby; and the other financial information included or incorporated by reference in the SEC Reports has been derived from the accounting records of the Company and its consolidated Subsidiaries and presents fairly the information shown thereby.

3.8 Litigation. There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its Subsidiaries is or may be a party or to which any property of the Company or any of its Subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its Subsidiaries, could reasonably be expected to have a Material Adverse Effect. No such investigations, actions, suits or proceedings are, to the knowledge of the Company, threatened or contemplated by any governmental or regulatory authority or threatened by others.

3.9 Title to Properties. The Company and its Subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.10 Intellectual Property. Except as disclosed in the SEC Reports: (i) the Company and its Subsidiaries own or possess adequate rights to use all material uniform resource locators (URLs), patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) material for the conduct of their respective businesses as they are currently conducted (collectively, "Intellectual Property"); (ii) there are no third parties who have established or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the SEC Reports disclose is licensed to the Company; (iii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iv) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's or its Subsidiaries' rights in or to any Intellectual Property, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others that the Company or any of its Subsidiaries infringes, misappropriates or otherwise violates any patent, trademark, trade name, service mark, copyright, trade secret or other proprietary rights of others, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vii) to the best of the Company's knowledge, the Company and its Subsidiaries have complied in all material respects with the terms of any agreement pursuant to which Intellectual Property has been licensed to the Company or any of its Subsidiaries, and all such agreements that are material for the conduct of their respective businesses as they are currently conducted are in full force and effect; and (viii) to the best of the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.11 No Undisclosed Relationships. To the Company's knowledge, no relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its Subsidiaries, on the other, that is required by the Securities Act to be described in a registration statement to be filed with the SEC and that is not so described in the SEC Reports.

3.12 Permits. The Company and its Subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

3.13 No Labor Disputes. Neither the Company nor any of its Subsidiaries is engaged in any illegal labor practice, except as would not, individually or in the aggregate, have a Material Adverse Effect. No labor disturbance by or dispute with employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its Subsidiaries' principal suppliers, contractors or customers, except as would not, individually or in the aggregate, have a Material Adverse Effect.

3.14 Environmental Compliance. (i) The Company and its Subsidiaries (x) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “Environmental Laws”), (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, and (z) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its Subsidiaries, except in the case of each of (x) and (y) above, for any such failure to comply, or failure to receive required permits, licenses or approvals, or cost or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

3.15 Taxes. The Company and its subsidiaries have paid all material federal, state, local and non-U.S. Taxes and filed all material Tax returns required to be paid or filed through the date hereof except for any Taxes (i) for which an extension has been obtained or (ii) which are being contested in good faith and by appropriate proceedings (provided adequate reserves have been provided for such Taxes); and there is no material Tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets.

3.16 Insurance. The Company and its Subsidiaries have insurance against such losses and risks as the Company reasonably believes is prudent for companies engaged in similar business in similar industries; all policies of insurance insuring the Company or any of its Subsidiaries or their respective businesses, assets, directors and officers and employees are in full force and effect; the Company and its Subsidiaries are in compliance with the terms of such policies and instruments; there are no claims by the Company or any of its Subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.17 No Unlawful Payments. Neither the Company nor any of its Subsidiaries, nor any director, officer or employee of the Company or any of its Subsidiaries nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (“FCPA”) or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company and its Subsidiaries have instituted, maintain and enforce, policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws. Neither the Company nor its Subsidiaries will use, directly or indirectly, the proceeds of the offering of the Shares hereunder in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

3.18 Compliance with Anti-Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its Subsidiaries conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Anti-Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

3.19 No Conflicts with Sanctions Laws. Neither the Company nor any of its Subsidiaries, directors, officers or employees, nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or any of its Subsidiaries located, organized or resident in a country or territory that is the subject or target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea and Syria (each, a “Sanctioned Country”) provided however, notwithstanding the above, the Company maintains Subsidiaries in Venezuela; and the Company will not directly or indirectly use the proceeds of the offering of the Subject Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person of Sanctions. For the past five years, the Company and its Subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

3.20 No Integration. Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Subject Shares in a manner that would require registration of the Subject Shares under the Securities Act.

3.21 No General Solicitation or Directed Selling Efforts. None of the Company or any of its affiliates or any other person acting on its or their behalf has solicited offers for, or offered or sold, the Subject Shares by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

3.22 Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Purchaser, it is not necessary, in connection with the issuance and sale of the Subject Shares to the Purchaser, to register the Subject Shares under the Securities Act.

3.23 Absence of Certain Changes. Since December 31, 2018, (i) there has not been any material change in the capital stock, long-term debt, notes payable or current portion of long-term debt of the Company or any of its Subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its Subsidiaries has entered into any transaction or agreement that is material to the Company and its Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its Subsidiaries taken as a whole.

3.24 No Defaults. Neither the Company nor any of its Subsidiaries is: (i) in violation of its charter or by-laws (including *estatutos sociales* and *estatutos sociales*) or similar constitutive or organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

3.25 Brokers. The Company has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Purchaser could be required to pay.

3.26 NASDAQ. Shares of the Common Stock are registered pursuant to Section 12(b) of the Exchange Act and are listed on NASDAQ, and there is no action pending by the Company or any other Person to terminate the registration of the Common Stock under the Exchange Act or to delist the Common Stock from NASDAQ, nor has the Company received any notification that the SEC or NASDAQ is currently contemplating terminating such registration or listing. The issuance and sale of the Subject Shares does not and will not contravene NASDAQ rules or regulations.

3.27 U.S. Activities. The fair market value of the assets of the Company and its Subsidiaries located in the United States do not exceed \$90,000,000 in the aggregate. During the year ended December 31, 2018, the aggregate sales by the Company and its Subsidiaries in, or into, the United States did not exceed \$90,000,000 in the aggregate.

3.28 Other Private Placements. The terms of the Concurrent Private Placement have not been amended or modified. The terms of any private placement for Common Stock entered into on or prior to the Closing Date, including the securities issued pursuant thereto, are no more favorable than the terms provided to the Purchaser under this Agreement and the Common Stock received pursuant hereto.

3.29 IT Systems. The Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "IT Systems") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, to the best of the Company's knowledge. The Company and its Subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data")) used in connection with their businesses, and to the best of the Company's knowledge, there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its Subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

3.30 No Other Representations and Warranties. Except for the representations and warranties contained in Section 3 and any schedules or certificates delivered in connection herewith, the Company makes no other representation or warranty, express or implied, written or oral, and hereby, to the maximum extent permitted by applicable Law, disclaims any such representation or warranty, whether by the Company or any other Person, with respect to the Company or with respect to any other information (including, without limitation, pro forma financial information, financial projections or other forward-looking statements) provided to or made available to the Purchaser or any of their respective Representatives in connection with the transactions contemplated hereby.

4. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants, as of the date hereof and as of the Closing Date, to the Company as follows:

4.1 Organization. The Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization.

4.2 Authorization. The Purchaser has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the due and proper authorization of the consummation by it of the transactions contemplated thereby has been duly and validly taken and, assuming due execution and delivery by the Company, constitutes a valid and binding agreement of such Purchaser enforceable against such Purchase in accordance with its terms, subject to the Bankruptcy and Equity Exception.

4.3 No Conflict. The execution, delivery and performance of this Agreement by the Purchaser, the issuance of the Subject Shares in accordance with this Agreement, and the consummation of the other transactions contemplated hereby and thereby do not and will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Purchaser or any of its Subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Purchaser or any of its Subsidiaries is a party or by which the Purchaser or any of its Subsidiaries is bound or to which any of the property or assets of the Purchaser or any of its Subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar constitutive or organizational documents of the Purchaser or any of its Subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (i) and (iii), as would not, individually or in the aggregate, reasonably be expected to materially delay or hinder the ability of the Purchaser to perform its obligations under this Agreement (a "Purchaser Adverse Effect").

4.4 Consents. No Consent of any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Purchaser in connection with (i) the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated hereby or (ii) the issuance of the Subject Shares in accordance with this Agreement, except for such consents, approvals, authorizations, orders and registrations or qualifications as may have been obtained under the Securities Act and such as may be required under applicable state securities laws in connection with the issuance of the Subject Shares and such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Purchaser Adverse Effect.

4.5 Brokers. The Purchaser has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Company could be required to pay.

4.6 Purchase Entirely for Own Account. The Purchaser is acquiring the Subject Shares for its own account solely for the purpose of investment, not as nominee or agent, and not with a view to, or for sale in connection with, any distribution of the Subject Shares in violation of the Securities Act, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, in violation of the Securities Act. The Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the Subject Shares.

4.7 Investor Status. The Purchaser certifies and represents to the Company that it is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act.

4.8 Information. The Purchaser and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Subject Shares that have been requested by it. The Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Purchaser or its advisors, if any, or its representatives shall modify, amend or affect the Purchaser’s right to rely on the Company’s representations and warranties contained herein. The Purchaser understands that its investment in the Subject Shares involves a high degree of risk. The Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Subject Shares.

4.9 Securities Not Registered.

(a) The Purchaser understands that none of the Subject Shares have been approved or disapproved by the SEC or by any state securities commission nor have the Subject Shares been registered under the Securities Act, by reason of their issuance by the Company in a transaction exempt from the registration requirements of the Securities Act, and that the Subject Shares being acquired by the Purchaser are “restricted securities” under applicable federal securities laws and must continue to be held by the Purchaser unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration. Such Purchaser agrees: (A) that the Purchaser will not sell, assign, pledge, give, transfer or otherwise dispose of the Subject Shares or any interest therein, or make any offer or attempt to do any of the foregoing, except pursuant to a registration of the Subject Shares under the Securities Act and all applicable state or local securities laws, or in a transaction that is exempt from the registration provisions of the Securities Act and all applicable state or local securities laws, (B) that any certificates representing the Subject Shares will bear a legend making reference to the foregoing restrictions and (C) that the Company shall not be required to give effect to any purported transfer of the Subject Shares except upon compliance with the foregoing restrictions.

(b) The Purchaser understands that the Subject Shares shall be subject to the restrictions contained herein.

(c) The Purchaser understands that the Subject Shares, and any securities issued in respect thereof or in exchange therefor, will bear the following legends:

“THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 OR REGULATIONS UNDER THE SECURITIES ACT (IF AVAILABLE), (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (III) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.”

4.10 Financing. The Purchaser has, or by the Closing will have, an amount of cash sufficient to enable it to consummate the transactions contemplated hereunder on the terms and conditions set forth in this Agreement.

4.11 Non-Reliance. Neither the Purchaser nor any of its Representatives has relied or is relying on any representation or warranty, express or implied, written or oral, made by the Company or any of its Representatives, except those representations and warranties expressly set forth in Section 3 or in any schedule or certificate delivered in connection herewith. Neither the Company nor any of its Representatives will have or be subject to any liability or indemnification obligation to the Purchaser or any other Person resulting from any other express or implied representation or warranty with respect to the Company, unless any such information is expressly included in a representation or warranty contained in Section 3 or in any schedule or certificate delivered in connection herewith.

5. Covenants.

5.1 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of the Subject Shares to the public without registration, the Company agrees to use its reasonable best efforts to:

(a) make and keep public information regarding the Company available, as those terms are understood and defined in Rule 144 under the Securities Act (or any similar provision then in effect), at all times from and after the Closing Date;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at all times from and after the Closing Date; and

(c) furnish (i) to the extent accurate, forthwith upon request, a written statement of the Company that it has complied with the reporting requirements of Rule 144 under the Securities Act (or any similar provision then in effect) and (ii) unless otherwise available via the SEC's EDGAR filing system, to the Purchaser forthwith upon request a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as the Purchaser may reasonably request in availing itself of any rule or regulation of the SEC allowing the Purchaser to sell any such securities without registration.

5.2 Trading of Company Securities. During the periods between the date hereof and the Closing, neither the Purchaser nor any of its Affiliates shall sell short any securities of the Company or derivatives thereof.

5.3 Lock-Up. Until the date that is 180 days after the Closing Date (the "Lock-Up Expiration Date"), the Purchaser agrees that it shall not, without the Company's written consent, (A) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale relating to, or otherwise transfer or dispose of, directly or indirectly, any of the Subject Shares, or publicly disclose the intention to make any offer, sale, pledge or disposition, or (B) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Subject Shares, whether any such transaction described in clauses (A) and (B) is to be settled by delivery of shares of Common Stock, any other security, in cash or otherwise. Notwithstanding anything contained in this Section 5.3 to the contrary, the Purchaser shall be permitted to sell, transfer or dispose of Subject Shares prior to the Lock-Up Expiration Date to maintain the Purchaser's percentage ownership in the Common Stock at 5.00% or less. Prior to the Lock-Up Expiration Date, the Company shall not enter into, or agree to enter into, any agreement relating to a strategic investment by a third-party (including issuance or sale of any securities other than Common Stock) on terms more favorable than the terms provided to the Purchaser under this Agreement and the Common Stock received pursuant hereto; provided, however, that it shall not be a violation of this provision to issue Common Stock to a strategic investor at a price per share of Common Stock less than the Per Share Purchase Price as long as the price per share of Common Stock is at least 97% of the closing trading price of the Common Stock on the trading day immediately prior to such investment.

5.4 Board Observer. Following the Closing, and no later than 10 Business Days following the entry into a commercial agreement pursuant to the terms of Section 5.5 hereof, the Company shall use its reasonable best efforts to (1) identify, together with the Purchaser, one authorized representative of the Purchaser who shall be acceptable to both the Company and the Purchaser, and (2) use its good faith efforts to seek the approval of the Board to designate such representative as an observer to the Board (the "Observer"), who shall be, subject to the exceptions set forth below, invited to attend all meetings of the Board and in connection therewith shall be entitled to receive copies of all notices, minutes, consents, and other materials that the Company provides to its directors on the same terms and in the same manner as provided to the other members of the Board (the "Board Documents"). The Observer may participate in discussions of matters brought before the Board, but shall in all other respects be a nonvoting observer. The Company shall have the right at its sole discretion to exclude the Observer from any portion or all of any meeting of the Board, or withhold a portion of the Board Documents, on a case-by-case basis, if required by law or if the Board or any officer of the Company determines that exclusion of the Observer is reasonably necessary (i) to preserve the attorney-client privilege between the Company and its counsel, (ii) to prevent disclosure of trade secrets to the Observer, or (iii) to prevent disclosure of any other information to the Observer, which information the Board or any officer of the Company reasonably believes would result in disclosure the Company is not prepared to disclose to any third party at such time. The Company and the Purchaser agree that upon the appointment of any such Observer, the Company and the Purchaser shall negotiate, and shall use good faith efforts to cause the Observer to enter into, a confidentiality agreement and any other agreements reasonably deemed necessary by the Company to approve the appointment of the Observer. Upon the resignation of any Observer, the Company and the Purchaser shall use their good faith efforts to appoint a replacement representative as Observer in accordance with the procedures set forth above, in each case within 30 calendar days of any such Observer resignation. Purchaser shall maintain the right to designate one Observer pursuant to this Section 5.4 only so long as it continues to hold at least fifty percent (50%) of the shares of Common Stock purchased at the Closing and any Observer shall lose all rights set forth above upon the sale by Purchaser of fifty percent (50%) or more of the shares of Common Stock purchased at the Closing.

5.5 Cooperation. Following the Closing, each of the Company and the Purchaser shall use their respective reasonable best efforts to cooperate with one another to enter into a commercial agreement, within ninety (90) days of the Closing Date, that establishes complementary initiatives to strengthen the respective companies' networks.

6. Conditions Precedent.

6.1 Mutual Conditions of Closing. The obligations of the Company and the Purchaser to consummate the transactions to be consummated at the Closing is subject to the satisfaction, or mutual written waiver, of the following conditions precedent:

(a) There shall not be any Law or Governmental Order in effect that enjoins, prohibits or materially alters the terms of the transactions contemplated by this Agreement, and no action, suit, investigation or proceeding pending by a Governmental Authority of competent jurisdiction that seeks such a Governmental Order; and

(b) The issue and sale of the Subject Shares shall be exempt from the requirement to file a prospectus or registration statement and there shall be no requirement to deliver an offering memorandum under applicable securities Law relating to the sale of the Subject Shares.

6.2 Conditions to the Obligation of the Purchaser to Consummate the Closing. The obligation of the Purchaser to consummate the transactions to be consummated at the Closing, and to purchase and pay for the Subject Shares pursuant to this Agreement, is subject to the satisfaction, or due waiver in writing by the Purchaser, of the following conditions precedent:

(a) the Company shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date;

(b) the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.22 and 3.25, which shall be true and correct in all respects) as of the Closing Date (except in the case of representations and warranties that are made as of a specified date, which shall be true and correct in all respects as of such specified date);

(c) the Company shall have consummated the Concurrent Public Offering resulting in gross proceeds to the Company of at least \$500,000,000;

(d) the Subject Shares shall represent 5.00% or less of the outstanding Common Stock of the Company;

(e) the Company shall have delivered to the Purchaser a certificate, dated the Closing Date and executed by a duly authorized officer, to the effect that the conditions set forth in Sections 6.2(a), (b), (c) and (d) have been satisfied; and

(f) the Purchaser shall have received an opinion from Cleary Gottlieb Steen & Hamilton LLP, counsel to the Company, dated the Closing Date and satisfactory in form and substance to counsel for the Purchaser.

6.3 Conditions to the Obligation of the Company to Consummate the Closing. The obligation of the Company to consummate the transactions to be consummated at the Closing, and to issue and sell to the Purchaser the Subject Shares pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

(a) the Purchaser shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Dates; and

(b) the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties contained in Sections 4.1, 4.2 and 4.5 which shall be true and correct in all respects) as of the Closing Date (except in the case of representations and warranties that are made as of a specified date, which shall be true and correct in all respects as of such specified date); and

(c) the Purchaser shall have delivered to the Company a certificate, dated the Closing Date and executed by a duly authorized officer, to the effect that the conditions set forth in Sections 6.3(a) and (b) have been satisfied.

7. Legends; Securities Act Compliance. The Subject Shares or the notice sent to any holder of the Subject Shares in book-entry form will bear a legend conspicuously thereon as provided in Section 4.8.

8. Termination.

8.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated: (a) at any time before the Closing by either the Company, on the one hand, or the Purchaser, on the other hand, if any of the conditions to Closing to which such party is entitled to the benefit of shall have become permanently incapable of fulfillment and shall not have been waived in writing (to the extent permitted by applicable Law); or (b) at any time after the date that is 30 days after the date of this Agreement by either the Company, on the one hand, or the Purchaser, on the other hand, if the Closing shall not have occurred on or before such date; provided, however, that the right to terminate this Agreement pursuant to the preceding clause (a) or clause (b) shall not be available to a party if the inability to satisfy any of the conditions to Closing was due primarily to the failure of such party to perform any of its obligations under this Agreement.

8.2 Effect of Termination. In the event of any termination pursuant to Section 8.1, this Agreement shall become null and void and have no further effect, with no liability on the part of the Company or the Purchaser, or their respective Affiliates or Representatives, with respect to this Agreement, except (a) for the terms of this Section 8.2 and Section 9, which shall survive the termination of this Agreement, and (b) that nothing in this Section 8.2 shall relieve any party hereto from liability or damages incurred or suffered by any other party resulting from any intentional (x) breach of any representation or warranty of such first party or (y) failure of such first party to perform a covenant thereof. As used in the foregoing sentence, "intentional" shall mean an act or omission by such party which such party actually knew, or reasonably should have known, would constitute a breach of this Agreement by such party.

9. Miscellaneous Provisions.

9.1 Survival. The representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 4.1, 4.2 and 4.3 shall survive the execution and delivery of this Agreement and the Closing indefinitely and the other representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing for a period of 18 months following the Closing Date, regardless of any investigation made by or on behalf of the Company or the Purchaser. The covenants made in this Agreement shall survive the Closing indefinitely until fully performed in accordance with their terms and remain operative and in full force and effect in accordance with their terms regardless of acceptance of any of the Subject Shares and payment therefor and repayment, conversion or repurchase thereof.

9.2 Interpretation. The term “or” when used in this Agreement is not exclusive. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and subsection references are to this Agreement unless otherwise specified. The headings in this Agreement are included for convenience of reference only and will not limit or otherwise affect the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The phrases “the date of this Agreement,” “the date hereof” and terms of similar import, unless the context otherwise requires, will be deemed to refer to the date set forth in the first paragraph of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All matters to be agreed to by any party hereto must be agreed to in writing by such party unless otherwise indicated herein. Except as otherwise specified herein, references to agreements, policies, standards, guidelines or instruments, or to statutes or regulations, are to such agreements, policies, standards, guidelines or instruments, or statutes or regulations, as amended or supplemented from time to time (or to successors thereto). All references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person, unless otherwise indicated or the context otherwise requires. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9.3 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (a) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (b) one Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery or (c) on the date of delivery if delivered personally or via e-mail, in each case to the intended recipient as set forth below:

- (a) if to the Company, addressed as follows:

MercadoLibre, Inc.
Arias 3751, 7th Floor
Buenos Aires, C1430CRG
Attention: Jacobo Cohen Imach
Gabriela Colombo
Email: jcimach@mercadolibre.com
gabriela.colombo@mercadolibre.com

with copies (which shall not constitute notice) to:

Cleary Gottlieb Steen and Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Nicolas Grabar
Andrea Basham
Email: ngrabar@cgsh.com
abasham@cgsh.com

- (b) if to the Purchaser, to:

with copies (which shall not constitute notice) to:

PayPal, Inc.
2211 North First Street
San Jose, CA 95131
Facsimile: (408) 967-9990
Attention: General Counsel

with copies (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Attention: Michael Mies
Email: michael.mies@skadden.com

Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section 9.3.

9.4 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.5 Governing Law; Jurisdiction; WAIVER OF JURY TRIAL.

(a) This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by and enforced and construed in accordance with the Laws of the State of Delaware (including its statute of limitations), regardless of the Laws that might otherwise govern under applicable principles of conflicts of law thereof.

(b) Each of the parties hereto irrevocably (i) agrees that any legal suit, action or proceeding brought by any party hereto arising out of or based upon this Agreement shall be instituted in the Court of Chancery of the State of Delaware (provided, that if jurisdiction is not then available in such court, then any such legal suit, action or proceeding shall be brought in any federal court located in the State of Delaware or in any other Delaware state court) (any of the foregoing Delaware courts, a "Delaware Court"); (ii) waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding; and (iii) submits to the non-exclusive jurisdiction of a Delaware Court in any such suit, action or proceeding.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

9.6 Delays or Omissions; Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default of another party under this Agreement shall impair any such right, power, or remedy of such 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. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Any agreement on the part of a party or parties hereto to any waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties, as applicable. Any delay in exercising any right under this Agreement shall not constitute a waiver of such right.

9.7 Specific Performance. The parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that irreparable damages for which money damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. The parties hereto acknowledge and agree that the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity; and the parties hereto further agree to waive any requirement for the securing or posting of any bond or other security in connection with the obtaining of any such injunctive or other equitable relief. Each of the parties hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) any party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity.

9.8 Fees; Expenses. All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby and thereby shall be paid by the party incurring them, whether or not the transactions contemplated hereby and thereby are consummated.

9.9 Assignment. (i) The Purchaser may not assign its rights or obligations under this Agreement without the prior written consent of the Company and (ii) the Company may not assign its rights or obligations under this Agreement without the prior written consent of the Purchaser. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and permitted assigns. Any purported assignment other than in compliance with the terms hereof shall be void *ab initio*.

9.10 No Third Party Beneficiaries. This Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto nor create or establish any third party beneficiary hereto. Without limiting the foregoing, the representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

9.11 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute a single instrument.

9.12 Entire Agreement; Amendments. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Exhibit hereto, constitute the entire agreement between the parties hereto respecting the subject matter hereof and supersede all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral. No modification, alteration or change in any of the terms of this Agreement shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company and the Purchaser.

9.13 No Personal Liability of Directors, Officers, Owners, Etc. No director, officer, employee, incorporator, equityholder, managing member, member, general partner, limited partner, principal or other agent of the Purchaser or the Company shall have any liability for any obligations of the Purchaser or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Purchaser or the Company, as applicable, under this Agreement. Each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

[Remainder of the Page Intentionally Left Blank]

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

COMPANY:

MERCADOLIBRE, INC.

By: /s/ Pedro Arnt

Name: Pedro Arnt

Title: Chief Financial Officer

PURCHASER:

PAYPAL, INC.

By: /s/ Jeremy Jonkers

Name: Jeremy Jonkers

Title: Vice President, Corporate Development and Ventures

SECURITIES PURCHASE AGREEMENT

by and between

MERCADOLIBRE, INC.

and

MERLIN DF HOLDINGS, LP

March 11, 2019

Securities Purchase Agreement

SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of March 11, 2019, by and between MercadoLibre, Inc., a Delaware corporation (the "Company"), and Merlin DF Holdings, LP, a Delaware limited partnership and an affiliate of Dragoneer Investment Group, LLC (the "Purchaser").

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company entered into a Securities Purchase Agreement with PayPal, Inc. ("PayPal") pursuant to which PayPal will purchase shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock") (the "Concurrent Private Placement");

WHEREAS, on the date hereof, the Company will file a Registration Statement on Form S-3ASR and a prospectus supplement thereto with the U.S. Securities and Exchange Commission (the "SEC") registering the sale of Common Stock and announcing the Company's intention to complete a sale of shares of the Common Stock, which sale is expected to be completed on or prior to March 15, 2019 (the "Concurrent Public Offering");

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, an aggregate of 100,000 shares of Series A Preferred Stock, par value \$0.001 per share, of the Company (the "Series A Preferred Stock"), the rights, preferences and privileges of which are to be set forth in a Certificate of Designation, in the form attached hereto as Exhibit A (the "Certificate of Designation"), which shares of Series A Preferred Stock shall be convertible in certain circumstances into authorized shares of Common Stock;

WHEREAS, the Board (as defined below) has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement and the Certificate of Designation providing for the transactions contemplated hereby and thereby in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), upon the terms and subject to the conditions set forth herein and therein, and (ii) approved the execution, delivery and performance of this Agreement and the Certificate of Designation consummation of the transactions contemplated hereby and thereby in accordance with the DGCL, upon the terms and conditions contained herein and therein; and

WHEREAS, the Purchaser has approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with applicable Law (as defined below), upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person.

"Agreement" shall have the meaning set forth in the preamble.

"Anti-Money Laundering Laws" shall have the meaning set forth in Section 3.19.

“Bankruptcy and Equity Exception” shall have the meaning set forth in Section 3.2.

“Board” shall mean the Board of Directors of the Company.

“Business Day” shall mean any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or California or is a day on which banking institutions located in the State of New York or California are authorized or required by Law or other governmental action to close.

“Certificate of Designation” has the meaning set forth in the recitals.

“Capital Stock” shall mean, with respect to any Person, any and all shares of stock, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity.

“Common Stock” shall have the meaning set forth in the recitals.

“Closing” shall have the meaning set forth in Section 2.2(a).

“Closing Date” shall have the meaning set forth in Section 2.2(a).

“Company” shall have the meaning set forth in the preamble.

“Concurrent Public Offering” shall have the meaning set forth in the recitals.

“Consent” shall have the meaning set forth in Section 3.6.

“control” (including the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of Equity Securities, by contract or otherwise.

“Conversion Shares” shall mean the shares of Common Stock issuable upon conversion of the Series A Preferred Stock as provided for in this Agreement and the Certificate of Designation.

“DGCL” shall have the meaning set forth in the recitals.

“Environmental Laws” shall have the meaning set forth in Section 3.15.

“Equity Securities” shall mean, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, and (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

“FCPA” shall have the meaning set forth in [Section 3.18](#).

“GAAP” shall mean U.S. generally accepted accounting principles.

“Governmental Entity” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body, including NASDAQ.

“HMT” shall have the meaning set forth in [Section 3.20](#).

“Intellectual Property” shall have the meaning set forth in [Section 3.10](#).

“IT Systems” shall have the meaning set forth in [Section 3.11](#).

“Law” shall mean any applicable law, statute, code, ordinance, rule, regulation, or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law.

“Lien” shall mean any lien, charge, pledge, security interest, claim or other encumbrance.

“Material Adverse Effect” means any change, event, effect or circumstance (each, an “Effect”) that, individually or taken together with all other Effects that have occurred prior to, and are continuing as of, the date of determination of the occurrence of the Material Adverse Effect, has a material adverse effect on the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its Subsidiaries taken as a whole.

“NASDAQ” shall mean Nasdaq Global Market (or its successor).

“OFAC” shall have the meaning set forth in [Section 3.20](#).

“Organizational Document” shall mean, as applicable, an entity’s agreement or certificate of limited partnership, limited liability company agreement, certificate of formation, certificate or articles of incorporation, bylaws or other similar organizational documents.

“Person” shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

“Personal Data” shall have the meaning set forth in [Section 3.11](#).

“Purchase Price” shall have the meaning set forth in [Section 2.1](#).

“Purchaser” shall have the meaning set forth in the preamble.

“Purchaser Adverse Effect” shall have the meaning set forth in the [Section 4.3](#).

“Representatives” shall mean, with respect to any Person, such Person’s Affiliates and such Person’s and each such Affiliate’s respective directors, officers, employees, managers, trustees, principals, stockholders, members, general or limited partners, agents and other representatives.

“Rule 144” shall have the meaning set forth in [Section 4.9\(a\)](#).

“Sanctioned Country” shall have the meaning set forth in Section 3.20.

“SEC” shall mean have the meaning set forth in the recitals.

“SEC Documents” shall have the meaning set forth in Section 3.7.

“SEC Reports” shall mean (i) the Company’s Form 10-K for the fiscal year ended December 31, 2018 and (ii) the portions of the Company’s Definitive Proxy Statement on Schedule 14A that are incorporated by reference into the Company’s Form 10-K for the fiscal year ended December 31, 2018.

“Securities Act” shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“Series A Preferred Stock” has the meaning set forth in the recitals.

“Subject Shares” shall have the meaning set forth in Section 2.1.

“Subsidiary” means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

“Taxes” shall mean any and all taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) imposed by any Governmental Entity, including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and any ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding (including that collected as a withholding agent), employment, social security, workers’ compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs or duties.

“Transfer” shall mean, with respect to any security, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition of such security or any interest therein, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law.

“UNSC” shall have the meaning set forth in Section 3.20.

2. Authorization, Purchase and Sale of the Securities.

2.1 Authorization, Purchase and Sale.

(a) Subject to and upon the terms and conditions of this Agreement, the Company will issue and sell to the Purchaser, and the Purchaser will purchase from the Company, at the Closing, 100,000 shares of Series A Preferred Stock (such shares, the “Subject Shares”) for an aggregate purchase price of \$100,000,000 (the “Purchase Price”).

2.2 Closing.

(a) Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the purchase and sale of the Subject Shares (the “Closing”) shall take place at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, on the tenth (10th) Business Day after the satisfaction or waiver of the latest to occur of the conditions set forth in Section 6 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction), or at such other place or such other date as mutually agreed to by the parties hereto (the date on which the Closing occurs, the “Closing Date”).

(b) Subject to the satisfaction or waiver on or prior to the Closing Date, of the conditions set forth in Section 6, the Closing:

(i) the Company shall deliver to the Purchaser evidence, reasonably acceptable to the Purchaser, that the Subject Shares have been issued in book-entry form; and

(ii) the Purchaser shall deliver, or cause to be delivered, to the Company the Purchase Price by wire transfer of immediately available funds to an account or accounts that the Company shall designate at least two (2) Business Days prior to the Closing Date.

3. Representations and Warranties of the Company. The Company hereby represents and warrants, as of the date hereof and as of the Closing Date, to the Purchaser as follows:

3.1 Organization and Power. The Company and each of its Subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 Authorization. The Company has full right, power and authority to execute and deliver this Agreement and the Certificate of Designation, and to perform its obligations hereunder and thereunder, and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the Certificate of Designation and the due and proper authorization of the consummation by it of the transactions contemplated hereby and thereby has been duly and validly taken. This Agreement has been duly authorized, executed and delivered by the Company and, assuming due execution and delivery by the Purchaser, this Agreement constitutes, and (as of the Closing) the Certificate of Designation will constitute, a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception").

3.3 The Subject Shares. The Subject Shares have been duly authorized and, when issued in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of the Subject Shares will not be subject to any preemptive or similar rights. Upon any conversion of the Subject Shares into shares of Common Stock pursuant to the Certificate of Designation, the shares of Common Stock issued upon such conversion will be validly issued, fully paid and non-assessable, and will not be subject to any preemptive or similar rights. The shares of Common Stock to be issued upon any conversion of the Subject Shares into shares of Common Stock have been duly reserved for such issuance.

3.4 Capitalization. The Company has the following authorized capitalization: 110,000,000 shares of Common Stock and 40,000,000 shares of preferred stock, par value \$0.001 per share; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its Subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options, except as disclosed in the SEC Reports; and all the outstanding shares of capital stock or other equity interests of each subsidiary owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

3.5 No Conflict. The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws (including *estatutos sociales* and *estatutos socias*) or similar constitutive or organizational documents of the Company or any of its Subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority.

3.6 Consents. No consent, approval, authorization, order, registration or qualification of or with (any of the foregoing being a “Consent”), any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement, the sale of the Subject Shares and the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations, orders and registrations or qualifications as may have been obtained under the Securities Act and such as may be required under applicable state securities laws in connection with the issuance of Subject Shares.

3.7 SEC Documents; Financial Statements.

(a) Each of the documents filed by the Company with the SEC (the “SEC Documents”) since January 1, 2018, as of its respective filing date, complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Document, and, except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document filed and publicly available prior to the date of this Agreement (including the Preliminary Prospectus Supplement to be filed pursuant to Rule 424(b) on the date hereof), none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements and the related notes thereto of the Company and its consolidated Subsidiaries included or incorporated by reference in the SEC Reports present fairly the financial position of the Company and its consolidated Subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified. Such consolidated financial statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby; and the other financial information included or incorporated by reference in the SEC Reports has been derived from the accounting records of the Company and its consolidated Subsidiaries and presents fairly the information shown thereby.

3.8 Litigation. There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its Subsidiaries is or may be a party or to which any property of the Company or any of its Subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its Subsidiaries, could reasonably be expected to have a Material Adverse Effect. No such investigations, actions, suits or proceedings are, to the knowledge of the Company, threatened or contemplated by any governmental or regulatory authority or threatened by others.

3.9 Title to Properties. The Company and its Subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.10 Intellectual Property. Except as disclosed in the SEC Reports: (i) the Company and its Subsidiaries own or possess adequate rights to use all material uniform resource locators (URLs), patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) material for the conduct of their respective businesses as they are currently conducted (collectively, "Intellectual Property"); (ii) there are no third parties who have established or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the SEC Reports disclose is licensed to the Company; (iii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iv) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's or its Subsidiaries' rights in or to any Intellectual Property, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others that the Company or any of its Subsidiaries infringes, misappropriates or otherwise violates any patent, trademark, trade name, service mark, copyright, trade secret or other proprietary rights of others, and the Company or any of its Subsidiaries is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vii) to the best of the Company's knowledge, the Company and its Subsidiaries have complied in all material respects with the terms of any agreement pursuant to which Intellectual Property has been licensed to the Company or any of its Subsidiaries, and all such agreements that are material for the conduct of their respective businesses as they are currently conducted are in full force and effect; and (viii) to the best of the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.11 Information Technology. The Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "IT Systems") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, to the best of the Company's knowledge. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data")) used in connection with their businesses, and to the best of the Company's knowledge, there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

3.12 No Undisclosed Relationships. To the Company's knowledge, no relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its Subsidiaries, on the other, that is required by the Securities Act to be described in a registration statement to be filed with the SEC and that is not so described in the SEC Reports.

3.13 Permits. The Company and its Subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

3.14 No Labor Disputes. Neither the Company nor any of its Subsidiaries is engaged in any illegal labor practice, except as would not, individually or in the aggregate, have a Material Adverse Effect. No labor disturbance by or dispute with employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is contemplated or threatened and the Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of its or its Subsidiaries' principal suppliers, contractors or customers, except as would not, individually or in the aggregate, have a Material Adverse Effect.

3.15 Environmental Compliance. (i) The Company and its Subsidiaries (x) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"), (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, and (z) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and (ii) there are no costs or liabilities associated with Environmental Laws of or relating to the Company or its Subsidiaries, except in the case of each of (x) and (y) above, for any such failure to comply, or failure to receive required permits, licenses or approvals, or cost or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

3.16 Taxes. The Company and its Subsidiaries have paid all material federal, state, local and non-U.S. Taxes and filed all material Tax returns required to be paid or filed through the date hereof except for any Taxes (i) for which an extension has been obtained or (ii) which are being contested in good faith and by appropriate proceedings (provided adequate reserves have been provided for such Taxes). There is no material Tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its Subsidiaries or any of their respective properties or assets.

3.17 Insurance. The Company and its Subsidiaries have insurance against such losses and risks as the Company reasonably believes is prudent for companies engaged in similar business in similar industries; all policies of insurance insuring the Company or any of its Subsidiaries or their respective businesses, assets, directors and officers and employees are in full force and effect; the Company and its Subsidiaries are in compliance with the terms of such policies and instruments; there are no claims by the Company or any of its Subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business except, in each case, as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.18 No Unlawful Payments. Neither the Company nor any of its Subsidiaries, nor any director, officer or employee of the Company or any of its Subsidiaries nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended ("FCPA") or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company and its Subsidiaries have instituted, maintain and enforce, policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws. Neither the Company nor its Subsidiaries will use, directly or indirectly, the proceeds of the offering of the Shares hereunder in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

3.19 Compliance with Anti-Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions where the Company or any of its Subsidiaries conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

3.20 No Conflicts with Sanctions Laws. Neither the Company nor any of its Subsidiaries, directors, officers or employees, nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its Subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or any of its Subsidiaries located, organized or resident in a country or territory that is the subject or target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea and Syria (each, a “Sanctioned Country”) provided, however, notwithstanding the above, the Company maintains Subsidiaries in Venezuela; and the Company will not directly or indirectly use the proceeds of the offering of the Subject Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person of Sanctions. For the past five years, the Company and its Subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

3.21 No Integration. Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Subject Shares in a manner that would require registration of the Subject Shares under the Securities Act.

3.22 No General Solicitation or Directed Selling Efforts. None of the Company or any of its affiliates or any other person acting on its or their behalf has solicited offers for, or offered or sold, the Subject Shares by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

3.23 Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Purchaser, it the issuance and sale of the Subject Shares to the Purchaser is exempt from the registration and prospectus delivery requirement of the Securities Act and the rules and regulations promulgated thereunder.

3.24 Absence of Certain Changes. Since December 31, 2018, (i) there has not been any material change in the capital stock, long-term debt, notes payable or current portion of long-term debt of the Company or any of its Subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its Subsidiaries taken as a whole and (ii) neither the Company nor any of its Subsidiaries has entered into any transaction or agreement that is material to the Company and its Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its Subsidiaries taken as a whole.

3.25 No Defaults. Neither the Company nor any of its Subsidiaries is: (i) in violation of its charter or by-laws (including *estatutos sociales* and *estatutos sociales*) or similar constitutive or organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

3.26 Brokers. The Company has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Purchaser could be required to pay.

3.27 NASDAQ. Shares of the Common Stock are registered pursuant to Section 12(b) of the Exchange Act and are listed on NASDAQ, and there is no action pending by the Company or any other Person to terminate the registration of the Common Stock under the Exchange Act or to delist the Common Stock from NASDAQ, nor has the Company received any notification that the SEC or NASDAQ is currently contemplating terminating such registration or listing. The issuance and sale of the Subject Shares does not and will not contravene NASDAQ rules or regulations.

3.28 US Activities. The fair market value of the assets of the Company and its Subsidiaries located in the United States do not exceed \$90,000,000 in the aggregate. During the year ended December 31, 2018, the aggregate sales by the Company and its Subsidiaries in, or into, the United States did not exceed \$90,000,000 in the aggregate.

3.29 Other Private Placement. The terms of the Concurrent Private Placement have not been amended or modified. The terms of any private placement for any series of common stock and other class of capital stock or series of preferred stock of the Company entered into on or prior to the Closing Date are no more favorable than the terms provided to the Purchaser under this Agreement and the Series A Preferred Stock received pursuant hereto.

3.30 No Other Representations and Warranties. Except for the representations and warranties contained in Section 3 and any schedules or certificates delivered in connection herewith, the Company makes no other representation or warranty, express or implied, written or oral, and hereby, to the maximum extent permitted by applicable Law, disclaims any such representation or warranty, whether by the Company or any other Person, with respect to the Company or with respect to any other information (including, without limitation, pro forma financial information, financial projections or other forward-looking statements) provided to or made available to the Purchaser or any of its Representatives in connection with the transactions contemplated hereby. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Purchaser and its Affiliates to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement or in any certificate delivered pursuant hereto, nor will anything in this Agreement operate to limit any claim by the Purchaser or any of its Affiliates for fraud.

4. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants, as of the date hereof and as of the Closing Date, to the Company as follows:

4.1 Organization. The Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization.

4.2 Authorization. The Purchaser has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the due and proper authorization of the consummation by it of the transactions contemplated thereby has been duly and validly taken and, assuming due execution and delivery by the Company, constitutes a valid and binding agreement of such Purchaser enforceable against such Purchase in accordance with its terms, subject to the Bankruptcy and Equity Exception.

4.3 No Conflict. The execution, delivery and performance of this Agreement by the Purchaser, and the consummation of the transactions contemplated hereby do not and will not (i) result in any violation of the provisions of the charter or by-laws or similar constitutive or organizational documents of the Purchaser or (ii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to materially delay or hinder the ability of the Purchaser to perform its obligations under this Agreement (a “Purchaser Adverse Effect”).

4.4 Consents. No Consent of any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Purchaser in connection with (i) the execution, delivery or performance of this Agreement and (ii) the consummation of the transactions contemplated hereby, except for such consents, approvals, authorizations, orders and registrations or qualifications as may have been obtained under the Securities Act and such as may be required under applicable state securities laws in connection with the issuance of the Subject Shares and such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Purchaser Adverse Effect.

4.5 Brokers. The Purchaser has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Company could be required to pay.

4.6 Purchase Entirely for Own Account. The Purchaser is acquiring the Subject Shares for its own account solely for the purpose of investment, not as nominee or agent, and not with a view to, or for sale in connection with, any distribution of the Subject Shares in violation of the Securities Act, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, in violation of the Securities Act without prejudice, however, to such Purchaser’s right at all times to sell or otherwise dispose of all or an part of the Subject Shares subject to applicable federal and state securities laws and to the restrictions set forth herein. The Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the Subject Shares.

4.7 Investor Status. The Purchaser certifies and represents to the Company that it is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act.

4.8 Information. The Purchaser and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Subject Shares that have been requested by it. The Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Purchaser or its advisors, if any, or its representatives shall modify, amend or affect the Purchaser’s right to rely on the Company’s representations and warranties contained herein. The Purchaser understands that its investment in the Subject Shares involves a high degree of risk. The Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Subject Shares.

4.9 Securities Not Registered.

(a) The Purchaser understands that none of the Subject Shares have been approved or disapproved by the SEC or by any state securities commission nor have the Subject Shares been registered under the Securities Act, by reason of their issuance by the Company in a transaction exempt from the registration requirements of the Securities Act, and that the Subject Shares being acquired by the Purchaser are “restricted securities” under applicable federal securities laws and must continue to be held by the Purchaser unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration. Such Purchaser agrees: (A) that the Purchaser will not sell, assign, pledge, give, transfer or otherwise dispose of the Subject Shares or any interest therein, or make any offer or attempt to do any of the foregoing, except pursuant to a registration of the Subject Shares under the Securities Act and all applicable state or local securities laws, or in a transaction that is exempt from the registration provisions of the Securities Act and all applicable state or local securities laws, (B) that any certificates representing the Subject Shares will bear a legend making reference to the foregoing restrictions and (C) that the Company shall not be required to give effect to any purported transfer of the Subject Shares except upon compliance with the foregoing restrictions.

(b) The Purchaser understands that the Subject Shares shall be subject to the restrictions contained herein.

(c) The Purchaser understands that the Subject Shares, and any securities issued in respect thereof or in exchange therefor, will bear one or all of the legends set forth in the Certificate of Designation.

4.10 Financing. The Purchaser has, or by the Closing will have, an amount of cash sufficient to enable it to consummate the transactions contemplated hereunder on the terms and conditions set forth in this Agreement.

4.11 Non-Reliance. Neither the Purchaser nor any of its Representatives has relied or is relying on any representation or warranty, express or implied, written or oral, made by the Company or any of its Representatives, except those representations and warranties expressly set forth in Section 3 or in any schedule or certificate delivered in connection herewith. Neither the Company nor any of its Representatives will have or be subject to any liability or indemnification obligation to the Purchaser or any other Person resulting from any other express or implied representation or warranty with respect to the Company, unless any such information is expressly included in a representation or warranty contained in Section 3 or in any schedule or certificate delivered in connection herewith.

5. Covenants.

5.1 Shares of Common Stock Issuable Upon Conversion. From and after the Closing, the Company shall at all times have authorized and available for issuance such number of shares of Common Stock as shall be from time to time sufficient to satisfy the conversion requirements in full of all the outstanding Subject Shares into Conversion Shares, including as may be adjusted for share splits, combinations or other similar transactions as of any date of determination. All shares of Common Stock delivered upon conversion of the Subject Shares shall be newly issued shares or shares held in treasury by the Company, shall have been duly and validly authorized and issued and fully paid and non-assessable and shall not be subject to any pre-emptive or similar rights.

5.2 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of the Subject Shares to the public without registration, the Company agrees to use its reasonable best efforts to:

(a) make and keep public information regarding the Company available, as those terms are understood and defined in Rule 144 under the Securities Act (or any similar provision then in effect), at all times from and after the Closing Date;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at all times from and after the Closing Date; and

(c) furnish (i) to the extent accurate, forthwith upon request, a written statement of the Company that it has complied with the reporting requirements of Rule 144 under the Securities Act (or any similar provision then in effect) and (ii) unless otherwise available via the SEC's EDGAR filing system, to the Purchaser forthwith upon request a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as the Purchaser may reasonably request in availing itself of any rule or regulation of the SEC allowing the Purchaser to sell any such securities without registration.

5.3 Trading of Company Securities. During the periods between the date hereof and the Closing, neither the Purchaser nor any of its Affiliates shall sell short any securities of the Company or derivatives thereof.

5.4 Lock-Up.

(a) Without the prior written consent of the Company, the Purchaser agrees that it shall not Transfer any of the Subject Shares prior to the date that is one year after the Closing Date.

(b) Notwithstanding anything to the contrary contained in this Section 5.4, the Purchaser may, at any time, transfer any or all of the Subject Shares to one or more of its Affiliates.

(c) Without the prior written consent of the Company, the Purchaser agrees that it shall not, prior to the date that is one year after the Closing Date, directly or indirectly engage in any short sales or other derivative or hedging transactions with respect to the shares of Series A Preferred Stock or Common Stock that are designed to, or that might reasonably be expected to, result in the transfer to another Person, in whole or in part, any of the economic consequences of ownership of any shares of Series A Preferred Stock.

(d) Notwithstanding anything to the contrary contained in this Section 5.4:

(i) The Purchaser shall not knowingly Transfer, in any single Transfer or a series of related Transfers, its shares of Series A Preferred Stock to a Person or group of Persons if such Transfer would result in such Person or group (including any Affiliates of such Person or Persons) having aggregate beneficial ownership of five percent (5%) or more of the outstanding Common Stock of the Company, except in connection with a broad underwritten offering;

(ii) The Purchaser may make a bona fide pledge of any or all of its Series A Preferred Stock in connection with a bona fide loan or other extension of credit, and any foreclosure by any pledgee under such loan or extension of credit on any such pledged Series A Preferred Stock or Common Stock (or any sale thereof) shall not be considered a violation or breach of this Section 5.4, and the transfer of the Series A Preferred Stock by a pledgee who has foreclosed on such loan or extension of credit shall not be considered a violation or breach of this Section 5.4.

(iii) In no way does this Section 5.4 prohibit or restrict (i) changes in the composition of the Purchaser or its direct or indirect partners, members or other equityholders, so long as such changes in composition only relate to changes in direct or indirect ownership of the Purchaser among the Purchaser, its Affiliates and the partners, members or other equityholders that indirectly own the Purchaser or (ii) any Transfer or change of ownership of interests of or in any Person whose primary assets are not direct or indirect beneficial ownership interests in the Series A Preferred Stock.

5.5 Negative Covenants. From the date hereof until the Closing Date, the Company and its Subsidiaries shall use their reasonable best efforts to operate their businesses in the ordinary course, and, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), shall not, other than with respect to the Concurrent Private Placement and the Concurrent Public Offering effect any transaction that would have resulted in an adjustment to the Conversion Price (as defined in the Certificate of Designation) pursuant to Section 6 of the Certificate of Designation if the Subject Shares had been issued since the date hereof.

5.6 Cooperation. Following the date hereof, the Company and the Purchaser will use reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary under applicable laws so as to permit consummation of the transactions contemplated hereby as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall cooperate reasonably with the other party hereto to that end, including in relation to the satisfaction of the conditions to Closing and cooperating in seeking to obtain any consent required from Governmental Entities. The Company shall execute and deliver both before and after the Closing such further certificates, agreements and other documents and take such other actions as the Purchaser may reasonably request to consummate or implement such transactions or to evidence such events or matters.

6. Conditions Precedent.

6.1 Mutual Conditions of Closing. The obligations of the Company and the Purchaser to consummate the transactions to be consummated at the Closing is subject to the satisfaction, or mutual written waiver, of the following conditions precedent:

(a) There shall not be any Law or Governmental Order in effect that enjoins, prohibits or materially alters the terms of the transactions contemplated by this Agreement, and no action, suit, investigation or proceeding pending by a Governmental Authority of competent jurisdiction that seeks such a Governmental Order; provided, that the party claiming a failure of this condition shall have used its reasonable best effort to prevent the entry of any Governmental Order on which it is basing such claim and to appeal as promptly as possible any such Governmental Order that may be entered.

6.2 Conditions to the Obligation of the Purchaser to Consummate the Closing. The obligation of the Purchaser to consummate the transactions to be consummated at the Closing, and to purchase and pay for the Subject Shares pursuant to this Agreement, is subject to the satisfaction, or written waiver in writing by the Purchaser, of the following conditions precedent:

- (a) The Company shall have adopted and filed the Certificate of Designation with the Secretary of State of Delaware, and the Certificate of Designation shall be in full force and effect;
- (b) the Company shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date;
- (c) the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties contained in Sections 3.1, 3.2, 3.3, 3.23 and 3.26, which shall be true and correct in all respects) as of the Closing Date (except in the case of representations and warranties that are made as of a specified date, which shall be true and correct in all respects as of such specified date);
- (d) the Company shall have consummated the Concurrent Public Offering resulting in gross proceeds to the Company of at least \$500,000,000;
- (e) the Company shall have consummated the Concurrent Private Placement;
- (f) the Company shall have delivered to the Purchaser a certificate, dated the Closing Date and executed by a duly authorized officer, to the effect that the conditions set forth in Sections 6.2(b), (c), (d) and (e) have been satisfied; and
- (g) the Purchaser shall have received an opinion from Cleary Gottlieb Steen & Hamilton LLP, counsel to the Company, dated the Closing Date and satisfactory in form and substance to counsel for the Purchaser.

6.3 Conditions to the Obligation of the Company to Consummate the Closing. The obligation of the Company to consummate the transactions to be consummated at the Closing, and to issue and sell to the Purchaser the Subject Shares pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

- (a) the Purchaser shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Dates; and
- (b) the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties contained in Sections 4.1, 4.2 and 4.5 which shall be true and correct in all respects) as of the Closing Date (except in the case of representations and warranties that are made as of a specified date, which shall be true and correct in all respects as of such specified date); and
- (c) the Purchaser shall have delivered to the Company a certificate, dated the Closing Date and executed by a duly authorized officer, to the effect that the conditions set forth in Sections 6.3(a) and (b) have been satisfied.

7. Legends; Securities Act Compliance. The Subject Shares or the notice sent to any holder of the Subject Shares in book-entry form will bear a legend conspicuously thereon as provided in the Certificate of Designation.

8. Termination.

8.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated: (a) at any time before the Closing by either the Company, on the one hand, or the Purchaser, on the other hand, if any of the conditions to Closing to which such party is entitled to the benefit of shall have become permanently incapable of fulfillment and shall not have been waived in writing (to the extent permitted by applicable Law); or (b) at any time after the date that is 30 days after the date of this Agreement by either the Company, on the one hand, or the Purchaser, on the other hand, if the Closing shall not have occurred on or before such date; provided, however, that the right to terminate this Agreement pursuant to the preceding clause (a) or clause (b) shall not be available to a party if the inability to satisfy any of the conditions to Closing was due primarily to the failure of such party to perform any of its obligations under this Agreement.

8.2 Effect of Termination. In the event of any termination pursuant to Section 8.1, this Agreement shall become null and void and have no further effect, with no liability on the part of the Company or the Purchaser, or their respective Affiliates or Representatives, with respect to this Agreement, except (a) for the terms of this Section 8.2 and Section 9, which shall survive the termination of this Agreement, and (b) that nothing in this Section 8.2 shall relieve any party hereto from liability or damages incurred or suffered by any other party resulting from any intentional (x) breach of any representation or warranty of such first party or (y) failure of such first party to perform a covenant thereof. As used in the foregoing sentence, “intentional” shall mean an act or omission by such party which such party actually knew, or reasonably should have known, would constitute a breach of this Agreement by such party.

9. Miscellaneous Provisions.

9.1 Survival. The representations and warranties set forth in Sections 3.1, 3.2, 3.5, 3.6, 4.1, 4.2 and 4.3 shall survive the execution and delivery of this Agreement and the Closing indefinitely and the other representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing for a period of 18 months following the Closing Date, regardless of any investigation made by or on behalf of the Company or the Purchaser. The covenants made in this Agreement and the Certificate of Designation shall survive the Closing indefinitely until fully performed in accordance with their terms and remain operative and in full force and effect in accordance with their terms regardless of acceptance of any of the Subject Shares and payment therefor and repayment, conversion or repurchase thereof.

9.2 Interpretation. The term “or” when used in this Agreement is not exclusive. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and subsection references are to this Agreement unless otherwise specified. The headings in this Agreement are included for convenience of reference only and will not limit or otherwise affect the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The phrases “the date of this Agreement,” “the date hereof” and terms of similar import, unless the context otherwise requires, will be deemed to refer to the date set forth in the first paragraph of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All matters to be agreed to by any party hereto must be agreed to in writing by such party unless otherwise indicated herein. Except as otherwise specified herein, references to agreements, policies, standards, guidelines or instruments, or to statutes or regulations, are to such agreements, policies, standards, guidelines or instruments, or statutes or regulations, as amended or supplemented from time to time (or to successors thereto). All references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person, unless otherwise indicated or the context otherwise requires. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and the Certificate of Designation, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9.3 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (a) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (b) one Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery or (c) on the date of delivery if delivered personally or via e-mail, in each case to the intended recipient as set forth below:

if to the Company, addressed as follows:

- (a) MercadoLibre, Inc.
Arias 3751, 7th Floor
Buenos Aires, C1430CRG
Attention: Jacobo Cohen Imach
Gabriela Colombo
Email: jcimach@mercadolibre.com
gabriela.colombo@mercadolibre.com

with copies (which shall not constitute notice) to:

Cleary Gottlieb Steen and Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Nicolas Grabar
Andrea Basham
Email: ngrabar@cgsh.com
abasham@cgsh.com

- (b) if to the Purchaser, to:

Merlin DF Holdings, LP
1 Letterman Drive, Building D, Suite M500
San Francisco, CA 94129
Attention: Pat Robertson
Email: pat@dragoneer.com

with copies (which shall not constitute notice) to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attention: Gregory P. Rodgers
Email: grodgers@lw.com

Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section 9.3.

9.4 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.5 Governing Law; Jurisdiction; WAIVER OF JURY TRIAL.

(a) This Agreement will be governed by and construed in accordance with the laws of the State of New York (except to the extent that mandatory provisions of Delaware law are applicable). The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction state and federal courts located in the Borough of Manhattan, State of New York for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby. Process in any such action, suit or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 9.3 shall be deemed effective service of process on such party

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

9.6 Delays or Omissions; Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default of another party under this Agreement shall impair any such right, power, or remedy of such 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. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Any agreement on the part of a party or parties hereto to any waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties, as applicable. Any delay in exercising any right under this Agreement shall not constitute a waiver of such right.

9.7 Specific Performance. The parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that irreparable damages for which money damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. The parties hereto acknowledge and agree that the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity; and the parties hereto further agree to waive any requirement for the securing or posting of any bond or other security in connection with the obtaining of any such injunctive or other equitable relief. Each of the parties hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) any party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity.

9.8 Fees; Expenses. All fees and expenses incurred in connection with this Agreement and the Certificate of Designation and the transactions contemplated hereby and thereby shall be paid by the party incurring them, whether or not the transactions contemplated hereby and thereby are consummated.

9.9 Assignment. (i) The Purchaser may not assign its rights or obligations under this Agreement without the prior written consent of the Company and (ii) the Company may not assign its rights or obligations under this Agreement without the prior written consent of the Purchaser. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and permitted assigns. Any purported assignment other than in compliance with the terms hereof shall be void *ab initio*.

9.10 No Third Party Beneficiaries. This Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto nor create or establish any third party beneficiary hereto. Without limiting the foregoing, the representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

9.11 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute a single instrument.

9.12 Entire Agreement; Amendments. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Exhibit hereto, constitute the entire agreement between the parties hereto respecting the subject matter hereof and supersede all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral. No modification, alteration or change in any of the terms of this Agreement shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company and the Purchaser.

9.13 No Personal Liability of Directors, Officers, Owners, Etc. No director, officer, employee, incorporator, equityholder, managing member, member, general partner, limited partner, principal or other agent of the Purchaser or the Company shall have any liability for any obligations of the Purchaser or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Purchaser or the Company, as applicable, under this Agreement. Each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

[Remainder of the Page Intentionally Left Blank]

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

COMPANY:

MERCADOLIBRE, INC.

By: /s/ Pedro Amt

Name: Pedro Amt

Title: Chief Financial Officer

PURCHASER:

MERLIN DF HOLDINGS, LP

By: /s/ Pat Robertson

Name: Pat Robertson

Title: Authorized Signatory

[Signature Page]

Exhibit A

Certificate of Designation

MERCADOLIBRE, INC.
CERTIFICATE OF DESIGNATION
OF
SERIES A PERPETUAL PREFERRED STOCK

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

MercadoLibre, Inc., a Delaware corporation (the “**Company**”), does hereby certify that, pursuant to Section 151 of the General Corporation Law of the State of Delaware, the following resolution was duly adopted by the Board of Directors of the Company (the “**Board of Directors**”):

RESOLVED, that pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Fourth Amended and Restated Certificate of Incorporation of the Company, the Board of Directors does hereby create and designate a series of preferred stock of the Company, par value \$0.001 per share, and the Board of Directors does hereby fix the relative rights and preferences of the shares of such series as follows:

SECTION 1. *Designation and Amount; Ranking.*

(a) The shares of such series of preferred stock shall be designated as the “Series A Perpetual Preferred Stock” (the “**Series A Preferred Stock**”) and the number of shares constituting the authorized Series A Preferred Stock shall be 100,000. Shares of the Series A Preferred Stock that are redeemed, purchased or otherwise acquired by the Company, or converted into shares of Common Stock, shall be retired, shall revert to authorized but unissued shares of preferred stock.

(b) The Series A Preferred Stock, with respect to dividend rights and rights upon the voluntary or involuntary liquidation, winding-up or dissolution of the Company, ranks: (i) senior in all respects to all Junior Stock; (ii) on a parity in all respects with all Parity Stock; and (iii) junior in all respects to all Senior Stock, in each case as provided more fully herein (and, for the avoidance of doubt, subject to Section 4(a)(i)(C)).

SECTION 2. *Definitions.*

As used herein, the following terms shall have the following meanings:

“**Accrued Dividends**” shall mean, with respect to any share of Series A Preferred Stock, as of any date, the accrued and unpaid dividends on such share, whether or not declared, from, and including, the immediately preceding Dividend Payment Date (or from, and including, the Issue Date, if there is no preceding Dividend Payment Date) to, but not including, such date, and including, for the sake of clarity, any then accrued and unpaid dividends on such share of Series A Preferred Stock from any prior Dividend Periods.

“**Accumulated Dividends**” shall mean, with respect to any share of Series A Preferred Stock, as of any date, the aggregate amount of accrued and unpaid dividends added to the Liquidation Preference in accordance with Section 3(c) or 3(d).

“**Affiliate**” shall have the meaning ascribed to it, on the Issue Date, in Rule 405 under the Securities Act.

“**Average VWAP**” per share over a certain period shall mean the arithmetic average of the VWAP per share for each Trading Day in such period.

“**Board of Directors**” shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

“**Business Day**” shall mean Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America, Argentina or the State of New York shall not be regarded as a Business Day.

“**Cash Dividends**” shall have the meaning set forth in Section 3(a).

“**Certificate of Incorporation**” shall mean the Fourth Amended and Restated Certificate of Incorporation of the Company, as modified by this Certificate of Designation, as further amended or restated in accordance with applicable law and this Certificate of Designation.

“**Certificated Series A Preferred Stock**” shall have the meaning set forth in Section 10(b)(i).

“**Change of Control**” shall mean the occurrence of any of the following:

(i) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of a merger or consolidation, which is covered by subsection (iii) below), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any Person or a group of related Persons;

(ii) any recapitalization or change of the Common Stock as a result of which the Common Stock would be converted into stock, other securities, other property or assets or any share exchange, or any consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets unless the holders of the common equity immediately prior to any such transaction own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving company following such transaction in substantially the same proportions vis-à-vis each other as immediately before such transaction; or

(iii) the consummation of any transaction (including, without limitation, pursuant to a merger or consolidation), the result of which is that any person or group (as such terms are defined in Section 13(d) and Section 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the voting power of the Company; provided, however, that solely for purposes of this subsection (iii), a “person” or “group” shall include, in connection with a direct merger of any entity with a class of securities traded on a national or regional securities exchange with the Company, the shareholders of such publicly traded entity with whom the Company merges or that become shareholders of the Company in connection with a merger transaction involving the Company or any of its wholly owned Subsidiaries and another entity with a class of securities traded on a national or regional securities exchange.

“**Change of Control Redemption Price**” shall have the following meaning with respect to a Change of Control: (i) if such Change of Control occurs before the date that is seven years after the Issue Date, a cash amount per share of Series A Preferred Stock equal to the sum of (x) 175% of the Liquidation Preference of such share; and (y) the present value, as of the applicable Change of Control Repurchase Date, of the scheduled remaining Cash Dividends that would have been paid on such share after such Change of Control Repurchase Date and prior to the date that is seven years after the Issue Date (such present value to be calculated assuming that all such Cash Dividends are paid in full and using a discount rate equal to the Treasury Rate, as of the effective date of such Change of Control, plus 50 basis points); (ii) if such Change of Control occurs on or after the date that is seven years after the Issue Date and before the date that is eight years after the Issue Date, a cash amount per share of Series A Preferred Stock equal to 175% of the Liquidation Preference of such share; and (iii) in all other cases, a cash amount per share of Series A Preferred Stock equal to 105% of the Liquidation Preference of such share.

“**Change of Control Repurchase Date**” shall have the meaning set forth in Section 7(b).

“**close of business**” shall mean 5:00 p.m. (New York City time).

“**Common Stock**” shall mean the shares of Common Stock, par value \$0.001 per share, of the Company or any other capital stock of the Company into which such Common Stock shall be reclassified or changed.

“**Closing Sale Price**” of the Common Stock shall mean, as of any date, the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not listed on a U.S. national or regional securities exchange, in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be an amount determined by the Board of Directors in good faith to be the fair market value of a share of Common Stock.

“**Company**” shall mean MercadoLibre, Inc., a Delaware corporation.

“**Company Redemption Date**” shall have the meaning set forth in Section 8(a)(ii).

“**Company Redemption Value**” shall mean 105% of the Liquidation Preference per share. Each share of Common Stock used to pay any portion of the Company Redemption Value in lieu of cash shall be valued at the Redemption Stock Price *multiplied by* 0.95.

“**Conversion Date**” shall mean the Optional Conversion Date or the Forced Conversion Date, as applicable.

“**Conversion Price**” shall mean \$479.71, subject to adjustment in accordance with the provisions of this Certificate of Designation.

“**Dividend Amount**” shall have the meaning set forth in Section 3(a).

“**Dividend Payment Date**” shall mean March 15, June 15, September 15 and December 15 and of each year, commencing on June 15, 2019.

“**Dividend Period**” means the period from, and including a Dividend Payment Date (or, in the case of the first Dividend Period, the Issuer Date) to, but excluding, the next Dividend Payment Date.

“**Dividend Rate**” shall mean, as of the date of the determination, the rate per annum of 4.00%.

“**Dividend Record Date**” shall mean the January 1, April 1, July 1 or November 1, as applicable, immediately preceding the applicable Dividend Payment Date.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Ex-Date**” shall mean when used with respect to any issuance of or distribution in respect of, the Common Stock or any other securities, the first date on which the Common Stock or such other securities trade without the right to receive such issuance or distribution.

“**Floor Price**” shall mean 60% of the Reference Price.

“**Forced Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Forced Conversion Notice**” shall have the meaning set forth in Section 6(b).

“**Forced Conversion Notice Date**” shall have the meaning set forth in Section 6(b).

“**Holder**” and, unless the context requires otherwise, “**holder**” shall each mean a holder of record of a share of Series A Preferred Stock.

“**Investor Redemption Date**” shall mean each of March 15, 2026, September 15, 2026 and March 15, 2027.

“**Investor Redemption Value**” shall mean (i) if the Redemption Stock Price is equal to or greater than the Floor Price, 105% of the Liquidation Preference per share or (ii) if the Redemption Stock Price is less than the Floor Price, 105% of the Liquidation Preference per share multiplied by the number, expressed as a percentage, that is (x) 100 less (y) (A) 60 less (B) the product of (1) 100 and (2) the quotient resulting from dividing the Redemption Stock Price by the Reference Price. Each share of Common Stock used to pay any portion of the Investor Redemption Value in lieu of cash shall be valued at the Redemption Stock Price *multiplied by 0.95*; provided, however, that in no event will the Investor Redemption Value of all shares of Series A Preferred Stock to be redeemed exceed 5% of the product of the number of shares of Common Stock outstanding as of the related Investor Redemption Date and the Redemption Stock Price.

“**Issue Date**” shall mean the original date of issuance of the Series A Preferred Stock, which shall be the date that this Certificate of Designation is filed with the Secretary of State of the State of Delaware.

“**Junior Stock**” shall mean the Common Stock and all other classes of the Company’s common stock and each other class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on a parity with the Series A Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“**Liquidation Preference**” shall mean, with respect to each share of Series A Preferred Stock, \$1,000, as adjusted pursuant to Sections 3(c) or 3(d), plus, without duplication, any Accrued Dividends on such share of Series A Preferred Stock that are added to the Liquidation Preference in accordance with the terms hereof and any Accumulated Dividends on such share of Series A Preferred Stock, in each case to the date of payment of the Liquidation Preference, the Conversion Date, the Change of Control Repurchase Date, Company Redemption Date or Investor Redemption Date, as applicable.

“**Liquidity Conditions**” means, with respect to any share of Common Stock, that (i) the such share (a) will be issued in book-entry form through the facilities of the Depository Trust Company under an “unrestricted” CUSIP number; and (b) is either (x) freely transferrable, in the hands of the Holder to whom such share is to be issued, pursuant to Rule 144, without limitations as to volume, manner-of-sale, notice or the availability of public information; or (y) covered by a resale shelf registration statement that is effective under the Securities Act and that names such Holder as selling stockholders; and (ii) the resale of such share by such Holder during the next 30 calendar days is not restricted by any blackout or similar period under any policy of the Company that is applicable to such Holder.

“**Market Value**” shall mean the Average VWAP during the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately prior to the date of determination.

“**Measurement Period**” shall have the meaning set forth in Section 6(b).

“**NASDAQ**” shall mean Nasdaq Global Market (or its successor).

“**Officer**” shall mean the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary, any Assistant Secretary or any Assistant Treasurer of the Company.

“**opening of business**” shall mean 9:00 a.m. (New York City time).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Notice**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Notice Date**” shall have the meaning set forth in Section 6(a).

“**Ownership Notice**” shall mean the notice of ownership of capital stock of the Company containing the information required to be set forth or stated on certificates pursuant to the Delaware General Corporation Law and, in the case of an issuance of capital stock by the Company, in substantially the form attached hereto as Exhibit B.

“**Parity Stock**” shall mean any class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on a parity with the Series A Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“**Person**” shall mean any individual, corporation (including not-for-profit), general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

“**Series A Preferred Stock**” shall have the meaning set forth in Section 1(a).

“**Pro Rata Repurchases**” shall mean any purchase of shares of Common Stock by the Company or any Affiliate thereof pursuant to (i) any tender offer or exchange offer directed to all of the holders of Common Stock subject to Section 13(e) or 14(e) of the Exchange Act or Regulation 14E promulgated thereunder or (ii) any other tender or exchange offer or other purchase available to substantially all holders of Common Stock, in the case of both (i) and (ii), whether for cash, shares of capital stock of the Company, other securities of the Company, evidences of indebtedness of the Company or any other Person or any other property (including shares of capital stock, other securities or evidences of indebtedness of a subsidiary), or any combination thereof, effected while the Series A Preferred Stock is outstanding.

“**Redemption Stock Price**” shall mean the Market Value determined on the Investor Redemption Date or Company Redemption Date, as applicable.

“**Reference Price**” shall mean \$436.10 per share; provided, however, that the Reference Price will be adjusted in the same manner, and at the same time, as the Conversion Price is adjusted pursuant to Section 6(f).

“**Reference Property**” shall have the meaning set forth in Section 6(m).

“**Reference Property Unit**” shall have the meaning set forth in Section 6(m).

“**Reorganization Event**” shall have the meaning set forth in Section 6(m).

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Senior Stock**” shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Series A Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“**Subsidiary**” shall mean, as to any Person, any corporation or other entity of which: (i) such Person or a Subsidiary of such Person is a general partner or, in the case of a limited liability company, the managing member or manager thereof; or (ii) at least a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries.

“**Trading Day**” shall mean, if the Common Stock is listed on NASDAQ, a day during which trading in securities generally occurs on NASDAQ or, if the Common Stock is not listed on NASDAQ, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, “Trading Day” shall mean a Business Day.

“**Transfer**” shall mean, with respect to any security, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition of such security or any interest therein, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law.

“**Transfer Agent**” shall mean Computershare Trust Company, N.A., acting as the Company’s duly appointed transfer agent, registrar, conversion agent and dividend disbursing agent for the Series A Preferred Stock, and its successors and assigns, or any other person appointed to serve as transfer agent, registrar, conversion agent and dividend disbursing agent by the Company.

“**Transfer Restricted Securities**” shall mean each share of Common Stock received upon conversion of a share of Series A Preferred Stock until such shares of Common Stock shall be freely tradable pursuant to an exemption from registration under the Securities Act under Rule 144 thereunder.

“**Treasury Rate**” means, as of the date of any Change of Control, the yield to maturity, as of such date, of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days before such date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the seventh anniversary of the Issue Date; provided, however, that if such period is less than one year, then the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“**Trigger Event**” shall have the meaning set forth in Section 6(f)(vi).

“VWAP” per share of Common Stock on any Trading Day shall mean the per share volume-weighted average price as displayed on Bloomberg page “MELI<Equity>AQR” (or its equivalent successor if such page is not available) in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, “VWAP” shall mean the market value per share of Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose.

SECTION 3. *Dividends.*

(a) From and including the Issue Date, Holders shall be entitled to receive, prior to any distributions made in respect of any Junior Stock and prior to or contemporaneously with any distributions made in respect of any Parity Stock, in each case in respect of the same fiscal quarter, cumulative cash dividends on each outstanding Series A Preferred Share at the Dividend Rate, out of funds legally available for payment thereof (such dividends, “Cash Dividends”) on the Liquidation Preference in effect immediately after the immediately preceding Dividend Payment Date (or if there has been no prior Dividend Payment Date, the Issue Date), computed on the basis of a 360-day year consisting of twelve 30-day months and compounded quarterly beginning on the Issue Date (each such amount, a “Dividend Amount”).

(b) Cash Dividends shall be payable in arrears on each Dividend Payment Date, to the Holders as they appear on the Company’s stock register at the close of business on the relevant Dividend Record Date. Dividends on the Series A Preferred Stock shall accumulate and become Accrued Dividends on a day-to-day basis from, but not including, the immediately preceding Dividend Payment Date, or if there has been no prior Dividend Payment Date, from, and including, the Issue Date, until Cash Dividends are paid pursuant to this Section 3(a) in respect of such accumulated amounts or the Liquidation Preference is increased in respect of such accumulated amounts pursuant to Section 3(c) or Section 3(d). If a Dividend Payment Date is not a Business Day, then any Cash Dividend in respect of such Dividend Payment Date shall be due and payable on the first Business Day following such Dividend Payment Date.

(c) If the Company fails to pay or declare a Cash Dividend in respect of any Dividend Payment Date, then the amount of the Accrued Dividends with respect to such shares of Series A Preferred Stock shall be deemed to be Accumulated Dividends and be added, effective as of such Dividend Payment Date, to the Liquidation Preference until such time, if any, as such Cash Dividend is actually paid in cash.

(d) Notwithstanding anything to the contrary herein, if any shares of Series A Preferred Stock are converted into Common Stock in accordance with this Certificate of Designation, or are repurchased or redeemed by the Company in accordance with Section 7 or Section 8, then the amount of the Accrued Dividends with respect to such shares of Series A Preferred Stock through, and including, the related Conversion Date, Change of Control Repurchase Date, Company Redemption Date or Investor Redemption Date, as applicable, shall be deemed to be Accumulated Dividends and be added to the Liquidation Preference for purposes of such conversion, repurchase or redemption, as applicable. Notwithstanding anything to the contrary in the preceding sentence, if such Conversion Date, Change of Control Repurchase Date, Company Redemption Date or Investor Redemption Date, as applicable, occurs during the period after a Dividend Record Date for a Cash Dividend that has been declared and on or prior to the corresponding Dividend Payment Date, then such Cash Dividend will, at the Company’s option, either (x) be paid in cash on or prior to such Dividend Payment Date (and the amount of such Cash Dividend will not be added to the Liquidation Preference pursuant to the preceding sentence) or (y) not be paid in cash, be deemed to be Accumulated Dividends and be added to the Liquidation Preference for purposes of such conversion, repurchase or redemption, as applicable. For the avoidance of doubt, such Accrued Dividends described in the second immediately preceding sentence shall include, without limitation, dividends accruing from, and including, the immediately preceding Dividend Payment Date (or, if there is no preceding Dividend Payment Date, from, and including, the Issuer Date) to, but not including, the applicable Conversion Date, Change of Control Repurchase Date, Company Redemption Date or Investor Redemption Date, as applicable.

(e) So long as any share of the Series A Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on, and no redemption or repurchase shall be agreed to or consummated of, Parity Stock, Common Stock or any other shares of Junior Stock, unless all accumulated and unpaid dividends for all preceding Dividend Periods (including the Dividend Period in which such accumulated and unpaid dividends first arose) of the Company have been declared and paid and no such dividend or distribution or redemption or repurchase shall be paid or payable in cash for any period unless the Series A Preferred Stock has been paid full Cash Dividends in respect of the same period (*i.e.*, that are not Accumulated Dividends); provided, however, that the foregoing limitation shall not apply to (i) a dividend payable on Common Stock or other Junior Stock in shares of Common Stock or other Junior Stock, (ii) the acquisition of shares of Common Stock or other Junior Stock in exchange for shares of Common Stock or other Junior Stock and the payment of cash in lieu of fractional shares of Common Stock or other Junior Stock; (iii) purchases of fractional interests in shares of Common Stock or other Junior Stock pursuant to the conversion or exchange provisions of shares of other Junior Stock or any securities exchangeable for or convertible into such shares of Common Stock or other Junior Stock; (iv) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business, including, without limitation, the forfeiture of unvested shares of restricted stock or share withholdings upon exercise, delivery or vesting of equity awards granted to officers, directors and employees and the payment of cash in lieu of fractional shares of Common Stock or other Junior Stock; (v) any dividends or distributions of rights in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock and the payment of cash in lieu of fractional shares of other Junior Stock. Notwithstanding the preceding, if full dividends have not been paid on the Series A Preferred Stock and any Parity Stock, dividends may be declared and paid on the Series A Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that amounts of dividends declared per share on the Series A Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the shares of Series A Preferred Stock and such other Parity Stock bear to each other.

(f) For the avoidance of doubt, Holders of Series A Preferred Stock shall not be entitled to any dividend paid on any Common Stock or other Junior Stock, any dividend paid on any Parity Stock or any dividend paid on any Senior Stock.

SECTION 4. *Voting Rights; Special Rights.*

(a) (i) So long as any shares of Series A Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by the Delaware General Corporation Law or the Certificate of Incorporation, the affirmative vote or consent of the holders of at least 50% of the outstanding shares of Series A Preferred Stock, voting together as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating (directly or indirectly, including by way of amendment to the Certificate of Incorporation or this Certificate of Designation, merger, consolidation, reclassification or otherwise):

(A) any exchange, reclassification or cancellation of all or portion of, or increase in the authorized amount of, the Series A Preferred Stock;

(B) any change to the rights, preferences or privileges of the Series A Preferred Stock (including, without limitation, as to convertibility by the Holders and any addition or removal of such rights); and

(C) any issuance, authorization or creation of, or any increase by the Company in the issued or authorized amount of, any class or series of Senior Stock or any obligation or security convertible into, exchangeable for or evidencing the right to purchase any shares of Senior Stock.

(b) Notwithstanding the foregoing, none of the following actions shall be restricted or limited by or require any approval of the Holders of Series A Preferred Stock: (i) the issuance of securities, capital contributions or incurrence of intercompany indebtedness among the Company or any of its Subsidiaries or (ii) the issuance of securities, capital contributions or incurrence of intercompany indebtedness among the Company and any joint ventures, partnerships or other minority owned entities in which the Company or its Subsidiaries have an equity or other interest. Notwithstanding anything to the contrary herein, without the consent of the Holders, but without limiting Section 4(a), the Company, acting in good faith, may amend, alter, supplement or repeal any terms of the Series A Preferred Stock by amending or supplementing the Certificate of Incorporation, this Certificate of Designation or any stock certificate representing shares of the Series A Preferred Stock:

(i) to cure any ambiguity, omission, inconsistency or mistake in any such instrument in a manner that is not inconsistent with the provisions of this Certificate of Designation and that does not affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock or any Holder in its capacity as such;

(ii) to make any provision with respect to matters or questions relating to the Series A Preferred Stock that is not inconsistent with the provisions of this Certificate of Designation and that does not affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock or any Holder in its capacity as such; or

(iii) to make any other change that does not affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock or any Holder in its capacity as such (other than with respect to any Holder that consents to such change).

(c) In exercising the voting rights set forth in Section 4(a), each share of Series A Preferred Stock shall be entitled to one vote.

(d) The rules and procedures for calling and conducting any meeting of the Holders (including the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other procedural aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Amended and Restated Bylaws of the Company and applicable law.

(e) In addition to the other voting rights set forth in this Section 4 or as may be required under the Delaware General Corporation Law, the holders of the Series A Preferred Stock will be entitled to vote, on an as converted basis and together as a single class with the holders of Common Stock, on all matters submitted to the vote or consent of the holders of the Common Stock. For these purposes, the Holder of each share of Series A Preferred Stock will have a number of votes equal to the whole number of shares of Common Stock into which such share of Series A Preferred Stock is convertible as of the record date fixed for the determination of shareholders entitled to vote or consent on the applicable matter or, if no such Record Date is established, at the date such vote or consent is taken or any written consent of shareholders is first executed. Holders will be entitled to notice of all shareholders' meetings (or of any proposed action by written consent) in accordance with the Certificate of Incorporation and the Amended and Restated Bylaws of the Company and applicable law as if the Holders of Series A Preferred Stock were holders of Common Stock.

SECTION 5. *Liquidation Rights.*

(a) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, other than a Change of Control, each Holder shall be entitled, in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, to receive, in respect of each share of Series A Preferred Stock of such Holder, and to be paid out of the assets of the Company available for distribution to its stockholders, an amount equal to the greater of (i) the Liquidation Preference thereon plus (without duplication) any accrued and unpaid dividends and (ii) the amount such Holder would have been entitled to receive had such Holder converted such Holder's Series A Preferred Stock into shares of Common Stock at the Conversion Price in effect immediately prior to such liquidation, winding-up or distribution of the Company.

(b) After the payment in full to the Holders of the amounts provided for in this Section 5, the Holders of shares of Series A Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company in respect of their ownership of such Series A Preferred Stock.

(c) In the event the assets of the Company available for distribution to the Holders upon any such liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such Holders are entitled pursuant to Section 5(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Series A Preferred Stock, equally and ratably, in proportion to the full distributable amounts for which Holders of all Series A Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

SECTION 6. *Conversion.*

(a) Each Holder shall have the right to convert its shares of Series A Preferred Stock, in whole or in part, into that number of whole, fully-paid and non-assessable shares of Common Stock for each share of Series A Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price in effect on the related Conversion Date, with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 9 To convert shares of Series A Preferred Stock into shares of Common Stock pursuant to this Section 6(a), such Holder shall give written notice (the “**Optional Conversion Notice**” and the date of such notice, the “**Optional Conversion Notice Date**”) to the Company stating that such Holder elects to so convert shares of Series A Preferred Stock and shall state therein: (A) the number of shares of Series A Preferred Stock to be converted, (B) the name or names in which such Holder wishes the shares of Common Stock to be issued, (C) the Holder’s computation of the number of shares of Common Stock to be received by such Holder and (D) the Conversion Price on the Optional Conversion Notice Date. If a Holder validly delivers an Optional Conversion Notice in accordance with this Section 6(a), the Company shall issue the shares of Common Stock as soon as reasonably practicable, but not later than five Business Days thereafter (the date of issuance of such shares, the “**Optional Conversion Date**”).

(b) On or after the date that is four years after the Issue Date, if the Holders have not elected to convert all of their shares of Series A Preferred Stock pursuant to Section 6(a), the Company shall have the right to cause the outstanding shares of Series A Preferred Stock to be converted, in whole or in part, into that number of whole, fully-paid and non-assessable shares of Common Stock for each share of Series A Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price in effect on the related Forced Conversion Date, with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 9; provided, however, that in order for the Company to exercise such right, the Closing Sale Price of the Common Stock during the 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Forced Conversion Notice Date (the “**Measurement Period**”) shall, for at least 20 Trading Days during such 30 consecutive Trading Day period, be greater than or equal to 150% of the Conversion Price then in effect on each such Trading Day. To convert shares of Series A Preferred Stock into shares of Common Stock pursuant to this Section 6(b), the Company shall give written notice (the “**Forced Conversion Notice**” and the date of such notice, the “**Forced Conversion Notice Date**”) to each Holder stating that the Company elects to force conversion of such shares of Series A Preferred Stock pursuant to this Section 6(b) and shall state therein (A) number of shares of Series A Preferred Stock to be converted, (B) the Conversion Price on the Forced Conversion Date and (C) the Company’s computation of the number of shares of Common Stock to be received by the Holder. If the Company validly delivers a Forced Conversion Notice in accordance with this Section 6(b), the Company shall issue the shares of Common Stock as soon as reasonably practicable, but not later than two Business Days thereafter (the date of such Forced Conversion Notice Date, the “**Forced Conversion Date**”). The Company shall not issue any fractional shares in connection with a conversion and any fractional shares to which a Holder would otherwise be entitled will be settled in cash in accordance with Section 9. Notwithstanding anything to the contrary, the Company may not exercise its right to cause the outstanding shares of Series A Preferred Stock to be converted pursuant to Section 6(b) unless (i) the Liquidity Conditions are satisfied with respect to each share of Common Stock to be issued in such conversion; and (ii) the Company is not in possession of material non-public information as of the Forced Conversion Notice Date or the date the forced conversion is settled.

(c) If the Company exercises its right to cause the outstanding shares of Series A Preferred Stock to be converted, in whole or in part, pursuant to Section 6(b) prior to the date that is seven years after the Issue Date, the Company will pay to each Holder of shares of Series A Preferred Stock that will be converted pursuant to such exercise, in cash, the present value, as of the applicable Forced Conversion Date, of the scheduled remaining Cash Dividends that would have been paid on such shares of Series A Preferred Stock after the Forced Conversion Date and prior to the date that is seven years after the Issue Date (such present value to be calculated assuming that all such Cash Dividends are paid in full and using a discount rate equal to the Treasury Rate, as of the date of the Change of Control, plus 50 basis points).

(d) Upon conversion, each Holder shall surrender to the Company the certificates representing any shares held in certificated form to be converted during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent maintained by it, accompanied by (i) (if so required by the Company or its duly appointed Transfer Agent) a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the Holder or its duly authorized legal representative and (ii) transfer tax stamps or funds therefor, if required pursuant to Section 6(j).

(e) Immediately prior to the close of business on the Optional Conversion Date or the Forced Conversion Date, as applicable, with respect to a conversion, a Holder shall be deemed to be the holder of record of Common Stock issuable upon conversion of such Holder's shares of Series A Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates or book-entry notations representing such Common Stock shall not then be actually delivered to such Holder. Except to the extent that the Company defaults on its obligation to settle any conversion, dividends shall cease to accrue on the shares of Series A Preferred Stock so converted and all other rights with respect to the shares of Series A Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of Holders thereof to receive the number of whole, fully-paid and non-assessable shares of Common Stock into which such shares of Series A Preferred Stock have been converted (with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 9). As promptly as practicable after the conversion of any shares of Series A Preferred Stock into Common Stock, the Company shall deliver to the applicable Holder an Ownership Notice identifying the number of full shares of Common Stock to which such Holder is entitled, and a cash payment in respect of fractional shares in accordance with Section 9.

(f) The Conversion Price shall be subject to the following adjustments (except as provided in Section 6(g)):

(i) If the Company pays a dividend (or other distribution) in shares of Common Stock to all or substantially all holders of the Common Stock, in their capacity as holders of Common Stock, or if the Company effects a share split or share combination, then the Conversion Price in effect immediately following the record date for such dividend (or distribution), split or combination shall be divided by the following fraction:

$$\frac{OS1}{OS0}$$

where

- OS0 = the number of shares of Common Stock outstanding immediately prior to giving effect to such dividend, distribution, share split or combination, as the case may be; and
- OS1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

(ii) If the Company issues to all or substantially all holders of shares of the Common Stock, in their capacity as holders of Common Stock, rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of Common Stock at less than the Market Value determined on the Ex-Date for such issuance, then the Conversion Price in effect immediately following the close of business on the Ex-Date for such issuance shall be divided by the following fraction:

$$\frac{OS0 + X}{OS0 + Y}$$

where

- OS0 = the number of shares of Common Stock outstanding immediately prior to the opening of business on such Ex-Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the Market Value.

To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, options or warrants upon the exercise of such rights, option or warrants, the Conversion Price shall be readjusted to the Conversion Price that would have then been in effect had the adjustment made upon the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Price shall not be adjusted pursuant to this Section 6(f)(ii) until such triggering events occur. If such rights, options or warrants are not so issued, the Conversion Price shall be decreased to the Conversion Price that would then be in effect if such Ex-Date for such issuance had not occurred. In determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received for such rights, options or warrants and the value of such consideration (if other than cash, to be determined by the Board of Directors).

(iii) (A) If the Company distributes to all or substantially all holders of shares of Common Stock evidences of indebtedness, shares of capital stock (other than Common Stock) or other assets (including cash or securities, but excluding any dividend or distribution referred to in clause (i) above; any rights or warrants referred to in clause (ii) above; any consideration payable in connection with a tender or exchange offer made by the Company or any of its Affiliates referred to in clause (iv) below; and any dividend of shares of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit in the case of a spin-off to which the following clause (iii)(B) applies), then the Conversion Price in effect immediately following the close of business on the record date for such distribution shall be divided by the following fraction:

$$\frac{SP0}{SP0 - FMV}$$

where

SP0 = the Market Value of the Common Stock on the Ex-Date for such distribution; and
FMV = the fair market value of the portion of the distribution applicable to one share of Common Stock on the Trading Day immediately preceding the Ex-Date as determined by the Board of Directors.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing adjustment to the Conversion Price, each holder of Series A Preferred Stock shall receive, for each share of Series A Preferred Stock, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of such distributed assets that such holder would have received as if such holder owned the number of shares of Common Stock that such share of Series A Preferred Stock would have been convertible into at the Conversion Price in effect on the record date for such distribution.

(B) In a spin-off, where the Company makes a distribution to all or substantially all holders of shares of Common Stock consisting of capital stock of any class or series, or similar equity interests of, or relating to, a subsidiary or other business unit where such capital stock or similar equity interests are, or will be when issued, listed or admitted for trading on a national securities exchange, the Conversion Price shall be adjusted at the close of business on the tenth Trading Day after, and including, the Ex-Date of the distribution by dividing such Conversion Price in effect immediately prior to the close of business on such tenth Trading Day by the following fraction:

$$\frac{MPO + MPS}{MPO}$$

where

- MPO = the average of the Closing Sale Price of the Common Stock over each of the first 10 Trading Days commencing on and including such Ex-Date; and
- MPS = the average of the closing sale price of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock over each of the first 10 Trading Days commencing on and including such Ex-Date. Such closing sale prices for the Trading Days in such 10 Trading Day period shall be determined in like manner to the definition of "Closing Sale Price."

For purposes of determining the Conversion Price in respect of any Conversion Date that occurs during the 10 Trading Days following, and including, the Ex-Date of any such spin-off, references within the previous sentence to 10 Trading Days or the 10th Trading Day shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, such Ex-Date and such Conversion Date.

In the event that such distribution described in this clause (iii) is not so made, the Conversion Price shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to the Conversion Price that would then be in effect if such dividend distribution had not been declared.

(iv) In the case the Company effects a Pro Rata Repurchase of Common Stock, then the Conversion Price shall be adjusted to the price determined by multiplying the Conversion Price in effect immediately prior to the effective date of such Pro Rata Repurchase by a fraction of which the numerator shall be (i) the product of (x) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase and (y) the Closing Sale Price per share of Common Stock on the Trading Day immediately after the expiration of such Pro Rata Repurchase, and of which the denominator shall be the sum of (1) the product of (x) the number of shares of Common Stock outstanding immediately prior to such Pro Rata Repurchase minus the number of shares of Common Stock so repurchased and (y) such Closing Sale Price per share of Common Stock and (2) the aggregate purchase price of the Pro Rata Repurchase; provided, however, that in no event will the Conversion Price be increased pursuant to this Section 6(f)(iv).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 6(f) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1.0% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the earlier of (i) the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1.0% of the Conversion Price and (ii) the close of business on the Business Day preceding each Conversion Date.

(vi) Notwithstanding any other provisions of this Section 6(f), rights or warrants distributed by the Company to holders of Common Stock, in their capacity as holders of Common Stock, entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (A) are deemed to be transferred with such shares of Common Stock; (B) are not exercisable; and (C) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 6(f) (and no adjustment to the Conversion Price under this Section 6(f) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under Section 6(f)(ii) or (iii). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 6(f) was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise thereof, the Conversion Price on any then-outstanding share of Series A Preferred Stock not previously converted shall be readjusted as if such expired or terminated rights and warrants had not been issued. To the extent that the Company has a rights plan or agreement in effect upon conversion of the Series A Preferred Stock, which rights plan provides for rights or warrants of the type described in this clause, then upon conversion of Series A Preferred Stock the Holder will receive, in addition to the Common Stock to which he is entitled, a corresponding number of rights in accordance with the rights plan, unless a Trigger Event has occurred and the adjustments to the Conversion Price with respect thereto have been made in accordance with the foregoing first sentence of this Section 6(f)(vi). In lieu of any such adjustment pursuant to the first sentence of this Section 6(f)(vi) in respect of a Trigger Event, the Company may amend such applicable stockholder rights plan or agreement to provide that there shall be the distributed, and cause to be distributed, immediately prior to the occurrence of such Trigger Event, to all Holders of Series A Preferred Stock the rights that would have attached to such number of shares of Common Stock as are issuable upon conversion of such Series A Preferred Stock immediately prior to the occurrence of such Trigger Event, without having to convert their shares of Series A Preferred Stock.

(vii) The Company reserves the right to make such reductions in the Conversion Price in addition to those required in the foregoing provisions as it considers advisable in order that any event treated for federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. In the event the Company elects to make such a reduction in the Conversion Price, the Company shall comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder if and to the extent that such laws and regulations are applicable in connection with the reduction of the Conversion Price.

(g) Notwithstanding anything to the contrary in Section 6(f), no adjustment to the Conversion Price shall be made with respect to any distribution if the Holders are entitled to participate in such distribution as if they held a number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock immediately prior to the record date for such event, without having to convert their shares of Series A Preferred Stock.

(h) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.

(i) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each Holder a certificate signed by an Officer, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased the Conversion Price then in effect following such adjustment.

(j) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Series A Preferred Stock and the issuance or delivery of any Ownership Notice, whether at the request of a Holder or upon the conversion of shares of Series A Preferred Stock, shall each be made without charge to the Holder or recipient of shares of Series A Preferred Stock for such certificates or Ownership Notice or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby or such Ownership Notice or the securities identified therein, and such certificates or Ownership Notice shall be issued or delivered in the respective names of, or in such names as may be directed by, the applicable Holder; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the Holder of the shares of the relevant Series A Preferred Stock and the Company shall not be required to issue or deliver any such certificate or Ownership Notice unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

(k) Any shares of Common Stock delivered pursuant to this Section 6 shall be validly issued, fully paid and nonassessable (except as such nonassessability may be affected by matters of any state or federal law), free and clear of any liens, claims, rights or encumbrances other than those arising under the Delaware General Corporation Law or this Certificate of Designation or created by the holders thereof.

(l) The Company shall at all times reserve and keep available for issuance upon the conversion of the Series A Preferred Stock such number of its authorized but unissued and otherwise unreserved shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Series A Preferred Stock pursuant any applicable provision of this Certificate of Designation, and shall take all action required to be taken by it (including promptly calling and holding one or more special meetings of the Board of Directors and the stockholders of the Company until such increase is approved in accordance with applicable law and amending the Certificate of Incorporation) to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued and otherwise unreserved shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Series A Preferred Stock or the payment or partial payment of dividends (if any) declared on Series A Preferred Stock that are payable in Common Stock. Each Purchaser agrees (and any transferee of Series A Preferred Stock shall be caused to agree), while it holds Series A Preferred Stock, to vote such Series A Preferred Stock in favor of any such necessary increase (i) to permit such conversion or payment or (ii) to reserve shares for issuance under any Company equity incentive or similar plan, in each case, at any annual or special meeting of the Company. Notwithstanding anything herein to the contrary, and without limiting any other remedies that may be available to any Holder, unless otherwise agreed by the affirmative vote of the Holders of at least 75% of the shares of Series A Preferred Stock at the time outstanding and entitled to vote thereon, if the Company defaults on delivering any shares of Common Stock due upon conversion of any shares of Series A Preferred Stock, dividends will continue to accrue on such shares of Series A Preferred Stock.

(m) In the case of:

(i) any recapitalization, reclassification or change of the Series A Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger or combination involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety, or

(iv) any statutory share exchange,

in each case as a result of which the Series A Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such transaction or event, a “**Reorganization Event**”; such stock, other securities, other property or assets, the “**Reference Property**”; and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Reorganization Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “**Reference Property Unit**”), then, at and after the effective time of such Reorganization Event, consideration due upon conversion of any Series A Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in Certificate of Designation were instead a reference to the same number of Reference Property Units; provided, however, if the holders of shares of Common Stock have the opportunity to elect the form of consideration to be received in such Reorganization Event, the Holders shall be afforded the same opportunity to elect such form and proportion of consideration as if they had converted into shares of Common Stock, and will be subject to any limitations to which all holders of shares of Common Stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Reorganization Event. The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 6(m). None of the foregoing provisions shall affect the right of a Holder of Series A Preferred Stock to convert its Series A Preferred Stock into shares of Common Stock as set forth in Section 6 prior to the effective time of such Reorganization Event. Notwithstanding Section 6(f), no adjustment to the Conversion Price shall be made for any Reorganization Event to the extent stock, securities or other property or assets become the Reference Property receivable upon conversion of Series A Preferred Stock.

The Company shall provide, by amendment hereto effective upon any such Reorganization Event, for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Section 6. The provisions of this Section 6 shall apply to successive Reorganization Events.

SECTION 7. *Change of Control.*

(a) Promptly upon entry into a definitive agreement that provides for a Change of Control, the Company shall provide written notice thereof to the Holders.

(b) If a Change of Control occurs, each Holder shall have the right to cause the Company to repurchase each of such Holder’s Series A Preferred Stock into cash in an amount equal to the Change of Control Redemption Price by providing written notice of the exercise of such right to the Company. The Company will settle any such exercise no later than the later of (x) the effective date of such Change of Control; and (y) the tenth Business Day after delivery of such written notice (the date of any such settlement, the “**Change of Control Repurchase Date**.”

SECTION 8. *Redemption.*

(a) *Redemption at the Option of the Company:*

- (i) On or after the date that is seven years after the Issue Date, in addition to the Company's right to cause all of the outstanding shares of Series A Preferred Stock to be converted to shares of Common Stock pursuant to Section 6(b), if Holders have not elected to convert all of their Shares pursuant to Section 6(a), the Company shall have the right to redeem any or all the outstanding shares of Series A Preferred Stock for the Company Redemption Value. The Company Redemption Value may be paid in either cash or shares of Common Stock or a combination of cash and shares of Common Stock at the exclusive election of the Company; provided, the Company may not elect to pay any portion of the Company Redemption Value in shares of Common Stock unless (i) the Liquidity Conditions have been satisfied with respect to such shares of Common Stock; and (ii) the Company is not in possession of material non-public information as of the date the Company provides the notice of redemption pursuant to Section 8(a)(ii).
- (ii) Notice of a redemption of shares of the Series A Preferred Stock by the Company shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company. Such mailing shall be at least 30 days and not more than 60 days before the date fixed by the Company for redemption (such date, the "**Company Redemption Date**"). Any notice mailed as provided in this subsection (ii) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of the Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of the Series A Preferred Stock. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of the Series A Preferred Stock to be redeemed; (3) (i) the number of shares of Series A Preferred Stock to be redeemed for cash and the corresponding Company Redemption Value to be paid in cash and (ii) the number of shares of Series A Preferred Stock to be redeemed for Common Shares and the corresponding Company Redemption Value to be paid in shares of Common Stock; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.
- (iii) Notwithstanding anything to the contrary herein, prior to any redemption by the Company, a Holder may elect to convert its Series A Preferred Shares pursuant to Section 6(a).

(b) *Redemption at the Option of the Holder:*

- (i) On each Investor Redemption Date, a Holder shall have a right to cause the Company to redeem any or all of its Series A Preferred Shares for the Investor Redemption Value. The Investor Redemption Value may be paid in either cash, shares of Common Stock or a combination of cash and shares of Common Stock at the election of the Company; provided, however, that the Company may not elect to pay any portion of the Investor Redemption Value in shares of Common Stock unless the Liquidity Conditions have been satisfied with respect to such shares of Common Stock.
- (ii) To exercise the right described in Section 8(b)(i) above, a Holder must deliver notice to the Company on or before the second Business Day preceding the Investor Redemption Date. Such notice shall be given by first class mail, postage prepaid, addressed to the Company. Any notice mailed as provided in this subsection (ii) shall be conclusively presumed to have been duly given, whether or not the Company receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof. Each notice of redemption given to the Company shall state: (1) the number of shares of the Series A Preferred Stock to be redeemed; and (2) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.
- (iii) Within two business days of receipt of such notice from a Holder, the Company shall deliver notice to the Investor stating the portion of the Investor Redemption Value that will be settled in cash and portion of the Investor Redemption Value that will be settled in Common Stock.

SECTION 9. *No Fractional Shares.*

No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be issued upon conversion, whether voluntary or mandatory, or in respect of dividend payments made in Common Stock on the Series A Preferred Stock. Instead, the Company may elect to either make a cash payment to each Holder that would otherwise be entitled to a fractional share (based on the Closing Sale Price of such fractional share determined as of the Trading Day immediately prior to the payment thereof) or, in lieu of such cash payment, round up to the next whole share the number of shares of Common Stock to be issued to any particular Holder upon conversion.

SECTION 10. *Uncertificated Shares; Certificated Shares.*

(a) *Uncertificated Shares.*

- (i) Form. Notwithstanding anything to the contrary herein, unless requested in writing by a Holder to the Company, the shares of Series A Preferred Stock and any shares of Common Stock issued upon conversion thereof shall be in uncertificated, book entry form as permitted by the bylaws of the Company and the Delaware General Corporation Law. Within a reasonable time after the issuance or transfer of uncertificated shares, the Company shall, or shall cause the Transfer Agent to, send to the registered owner thereof an Ownership Notice.
- (ii) Transfer. Transfers of Series A Preferred Stock or Common Stock issued upon conversion thereof held in uncertificated, book-entry form shall be made only upon the transfer books of the Company kept at an office of the Transfer Agent upon receipt of proper transfer instructions from the registered owner of such uncertificated shares, or from a duly authorized attorney or from an individual presenting proper evidence of succession, assignment or authority to transfer the stock. The Company may refuse any requested transfer until furnished evidence satisfactory to it that such transfer is proper.
- (iii) Legends. Each Ownership Notice issued with respect to a share of Series A Preferred Stock or any Common Stock issued upon the conversion of Series A Preferred Stock shall bear a legend in substantially the following form:

“THE SECURITIES IDENTIFIED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW OWNERSHIP NOTICE PROVIDED WITH RESPECT TO THE SECURITIES IDENTIFIED HEREIN UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF MERCADOLIBRE, INC. (THE “**COMPANY**”), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE “**CHARTER**”), THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS NOTICE BY REFERENCE.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.”

In addition, each Ownership Notice issued with respect to a share of Series A Preferred Stock shall bear a legend in substantially the following form:

“BY ACCEPTANCE HEREOF, THE HOLDER SHALL BE DEEMED TO HAVE AGREED WITH THE SHORT SALE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION.”

(b) Certificated Shares.

- (i) Form and Dating. When Series A Preferred Stock is in certificated form (“**Certificated Series A Preferred Stock**”), the Series A Preferred Stock certificate and the Transfer Agent’s certificate of authentication shall be substantially in the form set forth in Exhibit A, which is hereby incorporated in and expressly made a part of this Certificate of Designation. The Series A Preferred Stock certificate may have notations, legends or endorsements required by applicable law, stock exchange rules, agreements to which the Company is subject, if any, or usage; provided, that any such notation, legend or endorsement is in a form acceptable to the Company. Each Series A Preferred Stock certificate shall be dated the date of its authentication.
- (ii) Execution and Authentication. Two Officers shall sign each Series A Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Series A Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Series A Preferred Stock certificate, the Series A Preferred Stock certificate shall be valid nevertheless.

A Series A Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Series A Preferred Stock certificate. The signature shall be conclusive evidence that the Series A Preferred Stock certificate has been authenticated under this Certificate of Designation.

The Transfer Agent shall authenticate and deliver certificates for shares of Series A Preferred Stock for original issue upon a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company. Such order shall specify the number of shares of Series A Preferred Stock to be authenticated and the date on which the original issue of the Series A Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for the Series A Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for the Series A Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Designation to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

- (iii) Transfer and Exchange. When Certificated Series A Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Series A Preferred Stock or to exchange such Certificated Series A Preferred Stock for an equal number of shares of Certificated Series A Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Series A Preferred Stock surrendered for transfer or exchange:
- (A) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing; and
 - (B) is being transferred or exchanged pursuant to subclause (1) or (2) below, and is accompanied by the following additional information and documents, as applicable:
 - 1. if such Certificated Series A Preferred Stock is being delivered to the Transfer Agent by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect in substantially the form of Exhibit C hereto; or
 - 2. if such Certificated Series A Preferred Stock is being transferred to the Company or to a “qualified institutional buyer” in accordance with Rule 144A under the Securities Act or pursuant to another exemption from registration under the Securities Act, (i) a certification to that effect (in substantially the form of Exhibit C hereto) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 10(b)(iv).
- (iv) Legends.
- (A) Each certificate evidencing Certificated Series A Preferred Stock or any Common Stock issued upon the conversion of Series A Preferred Stock shall bear a legend in substantially the following form:

“THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW CERTIFICATE PROVIDED WITH RESPECT TO THESE SECURITIES UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF MERCADOLIBRE, INC. (THE “**COMPANY**”), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE “**CHARTER**”), THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS CERTIFICATE BY REFERENCE.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.”

- (B) Upon any sale or transfer of a Transfer Restricted Security held in certificated form pursuant to Rule 144 under the Securities Act or another exemption from registration under the Securities Act or an effective registration statement under the Securities Act, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Series A Preferred Stock or certificated Common Stock that does not bear a restrictive legend and rescind any restriction on the transfer of such Transfer Restricted Security.
- (v) Replacement Certificates. If any of the Series A Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated Series A Preferred Stock certificate, or in lieu of and substitution for the Series A Preferred Stock certificate lost, stolen or destroyed, a new Series A Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Series A Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series A Preferred Stock certificate and indemnity, if requested, satisfactory to the Company and the Transfer Agent.
- (vi) Cancellation. In the event the Company shall purchase or otherwise acquire Certificated Series A Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation. The Transfer Agent and no one else shall cancel and destroy all Series A Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Series A Preferred Stock certificates to the Company. The Company may not issue new Series A Preferred Stock certificates to replace Series A Preferred Stock certificates to the extent they evidence Series A Preferred Stock which the Company has purchased or otherwise acquired.

(c) *Certain Obligations with Respect to Transfers and Exchanges of Series A Preferred Stock.*

- (i) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Series A Preferred Stock as required pursuant to the provisions of this Section 10.
- (ii) All shares of Series A Preferred Stock, whether or not Certificated Series A Preferred Stock, issued upon any registration of transfer or exchange of such shares of Series A Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designation as the shares of Series A Preferred Stock surrendered upon such registration of transfer or exchange.
- (iii) Prior to due presentment for registration of transfer of any shares of Series A Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Series A Preferred Stock are registered as the absolute owner of such Series A Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.
- (iv) No service charge shall be made to a Holder for any registration of transfer or exchange of any Series A Preferred Stock or Common Stock issued upon the conversion thereof on the transfer books of the Company or the Transfer Agent or upon surrender of any Series A Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Series A Preferred Stock or Common Stock if the Person receiving shares in connection with such transfer or exchange is not the holder thereof.

(d) *No Obligation of the Transfer Agent.* The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designation or under applicable law with respect to any transfer of any interest in any Series A Preferred Stock other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designation, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 11. *Other Provisions.*

(a) With respect to any notice to a Holder required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any vote upon any such action (assuming due and proper notice to such other Holders). Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

(b) Shares of Series A Preferred Stock that have been issued and reacquired by the Company in any manner, including shares of Series A Preferred Stock purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of Delaware) upon such reacquisition be automatically cancelled by the Company and shall not be reissued.

(c) The shares of Series A Preferred Stock shall be issuable only in whole shares.

(d) All notice periods referred to herein shall commence: (i) when made, if made by hand delivery, and upon confirmation of receipt, if made by facsimile; (ii) one Business Day after being deposited with a nationally recognized next-day courier, postage prepaid; or (iii) three Business Days after being by first-class mail, postage prepaid. Notice to any Holder shall be given to the registered address set forth in the Company's records for such Holder.

(e) Any payments required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day without interest or additional payment for such delay. All payments required hereunder shall be made by wire transfer of immediately available funds in United States Dollars to the Holders in accordance with the payment instructions as such Holders may deliver by written notice to the Company from time to time.

(f) Notwithstanding anything to the contrary herein, whenever the Board of Directors is permitted or required to determine fair market value, such determination shall be made in good faith.

(g) The Holders shall have no preemptive or preferential rights to purchase or subscribe to any stock, obligations, warrants or other securities of the Company of any class.

(h) The Company shall distribute to the Holders copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of the Common Stock, at such times and by such method as documents are distributed to such holders of such Common Stock.

[Signature page follows.]

IN WITNESS WHEREOF, the Company has caused this certificate to be signed and attested this [•] day of March, 2019

MERCADOLIBRE, INC.

By: /s/ [•]

Name: [•]

Title: [•]

SIGNATURE PAGE TO CERTIFICATE OF DESIGNATION

FORM OF PREFERRED STOCK

FACE OF SECURITY

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW CERTIFICATE PROVIDED WITH RESPECT TO THESE SECURITIES UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF MERCADOLIBRE, INC. (THE “**COMPANY**”), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE “**CHARTER**”), THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS CERTIFICATE BY REFERENCE.

BY ACCEPTANCE HEREOF, THE HOLDER SHALL BE DEEMED TO HAVE AGREED WITH THE SHORT SALE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

Certificate Number
[]

[] Shares of
Series A Cumulative Perpetual Convertible
Series A Preferred Stock

**Series A Cumulative Perpetual Convertible Series A Preferred Stock
of
MERCADOLIBRE, INC.**

MERCADOLIBRE, INC., a Delaware corporation (the “**Company**”), hereby certifies that [] (the “**Holder**”) is the registered owner of [] fully paid and non-assessable shares of preferred stock, par value \$0.001 per share, of the Company designated as the Series A Cumulative Perpetual Convertible Series A Preferred Stock (the “**Series A Preferred Stock**”). The shares of Series A Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Series A Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designation dated [], 2019, as the same may be amended from time to time (the “**Certificate of Designation**”). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designation. The Company will provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to select provisions of the Series A Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designation and is entitled to the benefits thereunder.

Unless the Transfer Agent’s Certificate of Authentication hereon has been properly executed, these shares of Series A Preferred Stock shall not be entitled to any benefit under the Certificate of Designation or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this day of , 2019.

MERCADOLIBRE, INC.

By:
Name:
Title:

By:
Name:
Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of the Series A Preferred Stock referred to in the within-mentioned Certificate of Designation.

Dated:

COMPUTERSHARE TRUST COMPANY, N.A.,
as Transfer Agent,

By:

Authorized Signatory

Exhibit A-3

REVERSE OF SECURITY

Dividends on each share of Series A Preferred Stock shall be payable, when, as and if declared by the Company's Board of Directors out of legally available funds as provided in the Certificate of Designation.

The shares of Series A Preferred Stock shall be convertible into the Company's Common Stock upon the satisfaction of the conditions and in the manner and according to the terms set forth in the Certificate of Designation.

The shares of Series A Preferred Stock may be redeemed by the Company upon the satisfaction of the conditions and in the manner and according to the terms set forth in the Certificate of Designation.

The Company will furnish without charge to each holder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Series A Preferred Stock evidenced hereby to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

agent to transfer the shares of Series A Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date:

Signature:

(Sign exactly as your name appears on the other side of this Series A Preferred Stock Certificate)

Signature Guarantee: _____

- 1 Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

OWNERSHIP NOTICE

THE SECURITIES IDENTIFIED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW OWNERSHIP NOTICE PROVIDED WITH RESPECT TO THE SECURITIES IDENTIFIED HEREIN UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF MERCADOLIBRE, INC. (THE “**COMPANY**”), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE “**CHARTER**”), THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS NOTICE BY REFERENCE.

IF THE SECURITIES IDENTIFIED HEREIN ARE SERIES A CUMULATIVE PERPETUAL CONVERTIBLE PREFERRED STOCK OF THE COMPANY, THEN BY ACCEPTANCE HEREOF, THE HOLDER SHALL BE DEEMED TO HAVE AGREED WITH THE COMPANY THAT, FOR SO LONG AS THE HOLDER HOLDS THIS SECURITY, THE HOLDER SHALL NOT, AND SHALL CAUSE ITS AFFILIATES NOT TO, DIRECTLY OR INDIRECTLY ENGAGE IN ANY SHORT SALE OF THE COMMON STOCK OF THE COMPANY.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

This letter confirms and acknowledges that you are the registered owner of the number and the class or series of shares of capital stock of the Company listed on Schedule A to this letter.

In addition, please be advised that the Company will furnish without charge to each stockholder of the Company who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock, or series thereof, of the Company and the qualifications, limitations or restrictions of such preferences and/or rights, which are fixed by the Charter. Any such request should be directed to the Secretary of the Company.

The shares of capital stock of the Company have been not been registered under the Securities Act and, accordingly, may not be offered, sold, pledged or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an effective registration statement under the Act or an exemption from the registration requirements of the Act.

Dated:

COMPUTERSHARE TRUST COMPANY, N.A.,
as Transfer Agent,

By:

Authorized Signatory

Exhibit B-2

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF PREFERRED STOCK

Re: Series A Cumulative Perpetual Convertible Series A Preferred Stock (the “**Series A Preferred Stock**”) of MercadoLibre, Inc. (the “**Company**”)

This Certificate relates to shares of Series A Preferred Stock held by (the “**Transferor**”) in*/:

[1 book entry form; or

[1 definitive form.

The Transferor has requested the Transfer Agent by written order to exchange or register the transfer of Series A Preferred Stock.

In connection with such request and in respect of such Series A Preferred Stock, the Transferor does hereby certify that the Transferor is familiar with the Certificate of Designation relating to the above-captioned Series A Preferred Stock and that the transfer of this Series A Preferred Stock does not require registration under the Securities Act of 1933 (the “**Securities Act**”) because */:

[1 such Series A Preferred Stock is being acquired for the Transferor’s own account without transfer;

[1 such Series A Preferred Stock is being transferred to the Company;

[1 such Series A Preferred Stock is being transferred to a qualified institutional buyer (as defined in Rule 144A under the Securities Act), in reliance on Rule 144A; or

[1 such Series A Preferred Stock is being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act (and based on an Opinion of Counsel if the Company so requests).

[INSERT NAME OF TRANSFEROR]

By: _____

Date:

*/ Please check applicable box.

[Signature Page—Observer Confidentiality Agreement]
