

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT																										
NATURE OF CONVEYANCE:	Membership Interest Purchase Agreement																										
CONVEYING PARTY DATA																											
<table border="1"> <thead> <tr> <th>Name</th> <th>Formerly</th> <th>Execution Date</th> <th>Entity Type</th> </tr> </thead> <tbody> <tr> <td>Shevgur, LLC.</td> <td></td> <td>10/24/2013</td> <td>LIMITED LIABILITY COMPANY: CALIFORNIA</td> </tr> </tbody> </table>				Name	Formerly	Execution Date	Entity Type	Shevgur, LLC.		10/24/2013	LIMITED LIABILITY COMPANY: CALIFORNIA																
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CORRESPONDENCE DATA																											
<p>Fax Number: 4084141076  <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i></p> <p>Phone: 408-414-1080        Email: trademarks@hptb-law.com        Correspondent Name: Hickman Palermo Truong Becker, et al. LLP        Address Line 1: 1 Almaden Boulevard - Floor 12        Address Line 4: San Jose, CALIFORNIA 95113</p>																											
ATTORNEY DOCKET NUMBER:	60248-0165																										
NAME OF SUBMITTER:	Anjali Behal																										
Signature:	/AnjaliBehal/																										



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MEMBERSHIP INTEREST PURCHASE AGREEMENT

BY AND AMONG

SHUTTERFLY, INC.,

SHEVGUR, LLC,

THE SELLERS

AND

FORTIS ADVISORS LLC, AS THE SELLERS' AGENT

DATED AS OF OCTOBER 24, 2013

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### Exhibits

- A: Definitions
- B: Form of Spousal Consent
- C: Form of Amended and Restated Company Operating Agreement
- D-1: Form of FIRPTA Certificate: Sellers
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### Schedules

- Schedule A: Sample Company Net Working Capital Calculation
- Schedule B: Key Employees
- Schedule 5.3: Bonuses

## MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement") is made and entered into as of October 24, 2013 (the "Agreement Date"), by and among Shutterfly, Inc., a Delaware corporation ("Purchaser"), Shevgur, LLC., a California limited liability company (the "Company"), Mark Gurevich, Max Shevyakov (together with Mark Gurevich, the "Founders") and Alex Rukhotskiy (collectively, the "Sellers") and Fortis Advisors LLC, a Delaware limited liability company, solely in its capacity as the sellers' agent (the "Sellers' Agent"). Certain other capitalized terms used herein are defined in Exhibit A.

### RECITALS

- A. The Sellers are (1) the sole parties to that certain Operating Agreement of the Company, dated as of September 6, 2008 (the "Company Operating Agreement"), and (2) collectively the legal and beneficial owners of 100% of the membership interest in the Company (any portion of such 100% interest, a "Membership Interest").
- B. Purchaser desires to purchase from the Sellers, and the Sellers desire to sell, transfer and deliver to Purchaser, upon the terms and subject to the conditions set forth herein, 100% of the Membership Interest (the "Purchase").
- C. Concurrently with the execution of this Agreement, and as a condition and inducement to Purchaser's willingness to enter into this Agreement, each Seller who is a married individual has delivered to Purchaser a consent executed by such Seller's spouse in the form attached hereto as Exhibit B (a "Spousal Consent").
- D. Concurrently with the execution of this Agreement, and as a condition and inducement to Purchaser's willingness to enter into this Agreement, (1) each of the Key Employees has executed Purchaser's form of employment offer letter, an employee invention assignment and confidentiality agreement and an arbitration agreement (collectively, the "Employment Offer Documents") and (2) each of the Founders has executed a non-competition/non-solicitation agreement (a "Non-Competition Agreement"), each to become effective upon the Closing.

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

### ARTICLE I THE PURCHASE

#### 1.1 The Purchase.

(a) The Purchase; Purchase Consideration. Upon the terms and subject to the conditions set forth herein, at the Closing, each Seller shall sell, transfer and deliver to Purchaser, and Purchaser shall purchase from such Seller, all of the Membership Interest owned by such Seller as of immediately prior to the Closing, in exchange for (i) such Seller's Pro Rata Share of the Purchase Consideration less such Seller's Pro Rata Share of the Escrow Amount and (ii) the right to receive such Seller's Pro Rata Share of any distributions from the Escrow Fund pursuant to Article VIII. Purchaser is permitted and authorized to rely on the allocation set forth in the Spreadsheet with respect to the payment of the Purchase Consideration and shall have no responsibility or liability with respect to such allocation.



(b) Closing. Upon the terms and subject to the conditions set forth herein, the closing of the Purchase (the "Closing") shall take place at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, or at such other location as Purchaser and the Company agree, at (i) 12:01 a.m. local time on October 24, 2013 or such other date as may be agreed by Purchaser and the Company after all of the conditions set forth in Article V have been satisfied or waived (other than those conditions that, by their terms, are intended to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) or (ii) such other time and date as Purchaser and the Company agree. The date on which the Closing occurs is sometimes referred to herein as the "Closing Date."

(c) Company Operating Agreement. Effective and contingent upon the Closing, the Company Operating Agreement shall be amended and restated in its entirety to be in the form attached hereto as Exhibit C (the "Amended and Restated Company Operating Agreement").

(d) Rights Not Transferable. The rights of the Sellers under this Agreement are personal to each such Seller and shall not be transferable for any reason other than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (other than as permitted by the immediately preceding sentence) shall be null and void.

(e) No Interest. Notwithstanding anything to the contrary contained herein, no interest shall accumulate on any cash payable in connection with the consummation of the Purchase.

#### 1.2 Closing Deliveries.

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

(i) a certificate, dated as of the Closing Date, executed on behalf of Purchaser by a duly authorized officer of Purchaser to the effect that each of the conditions set forth in Section 6.1(a) has been satisfied;

(ii) the Amended and Restated Company Operating Agreement, executed by Purchaser;

(iii) the Escrow Agreement, executed by Purchaser and the Escrow Agent;  
and

(iv) the Purchaser RSU Agreements, executed by Purchaser.

(b) Company Deliveries. The Company shall deliver to Purchaser, at or prior to the Closing:

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by the Founders, to the effect that each of the conditions set forth in Section 6.2(a) and Section 6.2(d) has been satisfied;

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by the Founders, certifying (A) the articles of organization of the Company (the "Articles of Organization") in effect as of the Closing and (B) the operating agreement of the Company in effect as of the Closing;

(iii) the Amended and Restated Company Operating Agreement, executed by each Seller;

(iv) a written acknowledgment from Needham & Company, LLC (“Needham”) acknowledging the total amount of Transaction Expenses that is payable to Needham in connection with this Agreement and the Purchase or otherwise;

(v) the Escrow Agreement, executed by the Sellers’ Agent;

(vi) a Purchaser RSU Agreement executed by each Founder;

(vii) a certificate from each of the Secretary of State of the State of California and the Commonwealth of Massachusetts, dated as of a recent date prior to the Closing Date, certifying that the Company is in good standing in California and Massachusetts, respectively;

(viii) the Spreadsheet completed to include all of the information specified in Section 5.4 in a form reasonably acceptable to Purchaser and a certificate executed by the Founders on behalf of the Company, dated as of the Closing Date, certifying that the Spreadsheet is true, correct and complete;

(ix) the Company Closing Financial Certificate;

(x) FIRPTA documentation, consisting of certificates of non-foreign status in accordance with the requirements of Treasury Regulation Section 1.1445-2(b)(2), in substantially the form attached hereto as (A) Exhibit D-1, dated as of the Closing Date and executed by the Sellers and (B) Exhibit D-2, dated as of the Closing Date and executed by the Company;

(xi) the 338(h)(10) Forms, duly executed by each Seller, electing, pursuant to Section 338(h)(10) of the Code, to treat the Purchase as a purchase of assets for U.S. federal income tax purposes; and

(xii) payoff letters or similar instruments in form and substance reasonably satisfactory to Purchaser with respect to all Company Debt, which letters provide for the release of all Liens relating to the Company Debt following satisfaction of the terms contained in such payoff letters (including any premiums above the principal amount of such Company Debt or any fees payable in connection with such Company Debt) and executed UCC-2 or UCC-3 termination statements (or any other applicable termination statement) by each Person holding a Lien (other than Permitted Liens) in any assets of the Company as of the Closing in respect of such Company Debt or a grant of authority permitting the Company or Purchaser to file such termination statements.

Receipt by Purchaser of any of the agreements, instruments, certificates or documents delivered pursuant to this Section 1.2(b) shall not be deemed to be an agreement by Purchaser that the information or statements contained therein are true, correct or complete, and shall not diminish Purchaser’s remedies hereunder if any of the foregoing agreements, instruments, certificates or documents are not true, correct or complete.

### 1.3 Company Net Working Capital Adjustment.

(a) As soon as reasonably practicable following the Closing, and in any event within

90 days after the Closing, Purchaser shall cause to be prepared and delivered to the Sellers' Agent a statement (the "Closing Statement") setting forth Purchaser's calculation of Company Net Working Capital. After the delivery of the Closing Statement in accordance with this Section 1.3(a), at the Sellers' Agent's request, Purchaser shall provide (including by electronic means, to the extent available) to the Sellers' Agent and its Representatives such information as they may reasonably request for the purpose of reviewing the Closing Statement.

(b) Unless the Sellers' Agent notifies Purchaser in writing within 45 days after Purchaser's delivery of the Closing Statement in accordance with Section 1.3(a) of any objection to the computations set forth in the Closing Statement (the "Notice of Objection"), together with, to the extent available to the Sellers' Agent, reasonable supporting detail with respect to the basis of such objection, the Closing Statement and Purchaser's calculations of Company Net Working Capital shall be final and binding for all purposes hereunder. Any Notice of Objection shall specify in reasonable detail the basis for the objections set forth therein and shall include the Sellers' Agent's calculation of any amounts that are disputed by such Notice of Objection (the "Disputed Amounts") to the extent that such detail is available and such amounts may be determined.

(c) If the Sellers' Agent provides the Notice of Objection to Purchaser in accordance with Section 1.3(b), then Purchaser and the Sellers' Agent shall confer in good faith for a period of up to 15 Business Days, or such longer period as Seller's Agent and Purchaser may mutually agree, following Purchaser's receipt of the Notice of Objection in an attempt to resolve any Disputed Amounts set forth in the Notice of Objection, and any resolution by them shall be in writing and shall be final and binding on the parties hereto and the Sellers. If, after the 15-Business Day period set forth in this Section 1.3(c), or such longer period as Seller's Agent and Purchaser may mutually agree, Purchaser and the Sellers' Agent cannot resolve any matter set forth in the Notice of Objection, then Purchaser and the Sellers' Agent shall engage an independent accounting firm not affiliated with either Purchaser or the Company (the "Accounting Firm") to review only the Disputed Amounts that are still disputed by Purchaser and the Sellers' Agent. After such review and a review of the Company's relevant books and records, the Accounting Firm shall promptly (and in any case within 30 days after its engagement) determine the resolution of the Disputed Amounts. The Accounting Firm shall only resolve the Disputed Amounts by choosing the amounts submitted by either Purchaser or the Sellers' Agent or amounts in between. The Company and the Sellers' Agent shall each furnish to the Accounting Firm such work papers and other documents and information relating to the Disputed Amounts as the Accounting Firm may request. The resolution of the Disputed Amounts by the Accounting Firm shall be final and binding on the parties hereto and the Sellers, and the determination of the Accounting Firm shall constitute an arbitral award that is final, binding and unappealable and upon which a judgment may be entered by a court having jurisdiction thereover. The date on which Company Net Working Capital is finally determined in accordance with Section 1.3(b) or this Section 1.3(c) is hereinafter referred to as the "Determination Date."

(d) "Adjustment Amount" (positive or negative) means (i) the sum of (A) the lesser of (x) the Company Net Working Capital as finally determined pursuant to Section 1.3(b) or Section 1.3(c) and (y) the Company Net Working Capital Threshold plus (B) the Company Net Working Capital Shortfall (if any, expressed as a positive), minus (ii) the Company Net Working Capital Threshold. If the Adjustment Amount is a positive number, then Purchaser shall pay to the Sellers in accordance with his Pro Rata Share an aggregate amount in cash equal to the Adjustment Amount, as an adjustment to the Purchase Consideration, by wire transfer of immediately available within three Business Days following the Determination Date. If the Adjustment Amount is a negative number, then each of the Sellers shall pay to Purchaser his Pro Rata Share of the absolute value of the Adjustment Amount or, at Purchaser's election, Purchaser and the Sellers' Agent shall instruct the Escrow Agent to pay to Purchaser an amount in cash equal to the absolute value of the Adjustment Amount out of the Escrow Fund, in each case as an

adjustment to the Purchase Consideration and by wire transfer of immediately available funds to an account specified by Purchaser within three Business Days following the Determination Date.

(e) Purchaser and the Sellers' Agent (on behalf of the Sellers) shall each pay their own costs and expenses incurred in connection with the resolution of the Disputed Amounts; provided that the fees, costs and expenses of the Accounting Firm shall be allocated (i) to Purchaser in the event that the difference between the Accounting Firm's Determination and Purchaser's Determination is greater than the difference between the Accounting Firm's Determination and the Sellers' Agent's Determination, (ii) to the Sellers in the event that the difference between the Accounting Firm's Determination and the Sellers' Agent's Determination is greater than the difference between the Accounting Firm's Determination and the Purchaser's Determination and (iii) equally by Purchaser and the Sellers if such differences are equal. "Accounting Firm's Determination" means the Accounting Firm's determination of the Disputed Amounts reviewed by the Accounting Firm, "Purchaser's Determination" means the calculation of such Disputed Amounts submitted to the Accounting Firm by Purchaser and the "Sellers' Agent's Determination" means the calculation of such Disputed Amounts submitted to the Accounting Firm by the Sellers' Agent.

1.4 Tax Consequences. Purchaser makes no representations or warranties to the Company or to any Seller regarding the Tax treatment of the Purchase, or any of the Tax consequences to the Company or any Seller of this Agreement, the Purchase or the other agreements or actions contemplated by this Agreement. The Company and the Sellers acknowledge that the Company and the Sellers are relying solely on their own Tax advisors in connection with this Agreement, the Purchase and the other agreements or actions contemplated by this Agreement.

1.5 Certain Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be paid 50% by Purchaser, on the one hand, and 50% by the Company or the applicable Seller, on the other hand, when due.

1.6 Withholding Rights. Purchaser shall be entitled to deduct and withhold from any payments of cash pursuant to this Agreement to any Person such amounts in cash as Purchaser or the Company is required to deduct and withhold with respect to any such payments under the Code or any provision of state, local, provincial or foreign Tax law. To the extent that amounts are so withheld and remitted to the applicable Governmental Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made.

1.7 Taking of Necessary Action; Further Action. If, at any time after the Closing, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest Purchaser with full right, title and interest in, to and under, and/or possession of, 100% of the Membership Interest and all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of Purchaser are fully authorized, in the name and on behalf of the Sellers or otherwise, to take all lawful action necessary or desirable to accomplish such purpose or acts, so long as such action is not inconsistent with this Agreement.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Subject to the disclosures set forth in the disclosure letter of the Company delivered to Purchaser concurrently with the execution of this Agreement (the "Company Disclosure Schedule") (each of which disclosures, in order to be effective, shall clearly indicate the Section and, if applicable, the Subsection of

this Article II to which it relates, unless and only to the extent that the relevance to other representations and warranties in this Article II is reasonably apparent from the face of the disclosures without any reference to extrinsic documentation or any independent knowledge on the part of the reader regarding the matter disclosed), the Company represents and warrants to Purchaser, as follows:

2.1 Organization, Standing, Power and Subsidiaries. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. The Company is not in violation of any of the provisions of its Articles of Organization or the Company Operating Agreement. The Company has the power to own, operate and lease its properties and to conduct the Business and is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified or in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to have a Material Adverse Effect. The Company has and, since its inception has had, no Subsidiaries or any Equity Interests, whether direct or indirect, in any company, corporation, limited liability company, partnership, joint venture or other business entity. The Company does not have, and since its inception has not had, any operations or business in any jurisdiction outside of the United States.

2.2 Capital Structure.

(a) Schedule 2.2(a) of the Company Disclosure Schedule sets forth a true, correct and complete list of the beneficial and record owners of any Membership Interest. None of the Membership Interest is subject to any Liens, outstanding subscriptions, preemptive rights or “put” or “call” rights created by Applicable Law, the Company Operating Agreement or any Contract to which the Company is a party or by which the Company or any of its assets is bound. The Company is not under any obligation to register under the Securities Act or any other Applicable Law any Membership Interest. All of the Membership Interest was issued in compliance with Applicable Law and all requirements set forth in the Company Operating Agreement and any applicable Contracts to which the Company is a party or by which the Company or any of its assets is bound.

(b) There are no authorized, issued or outstanding Equity Interests in the Company other than the Membership Interest allocated as set forth on Schedule 2.2(a) of the Company Disclosure Schedule, and no Person other than the Sellers has any Equity Interests in the Company, stock appreciation rights, stock units, share schemes, calls or rights, or is party to any Contract (other than this Agreement) of any character to which the Company or a Seller is a party or by which it or its assets is bound, obligating the Company or such Seller to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any Equity Interests in the Company or other rights to purchase or otherwise acquire any Equity Interests in the Company, whether vested or unvested. Other than the Company Operating Agreement and this Agreement, there are no Contracts relating to voting, purchase, sale or transfer of any Membership Interest between or among the Company and/or any of the Sellers.

(c) The Spreadsheet will accurately set forth, as of the Closing, the information required by Section 5.4. The Membership Interest set forth in the Spreadsheet as being owned by a Seller will constitute the entire interest of such Seller in any Equity Interests in the Company.

(d) The Sellers’ Membership Interest is evidenced solely by the Company Operating Agreement and there are no certificates or other instruments representing any Membership Interest.

2.3 Authority; Non-contravention.

(a) The Company has all requisite power and authority to enter into this Agreement

and to consummate the Purchase. The execution and delivery of this Agreement and the consummation of the Purchase have been duly authorized by all necessary action on the part of the Company. This Agreement has been duly executed and delivered by the Company and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by the Company does not, and the consummation of the Purchase and the performance by the Company of its agreements and obligations hereunder will not, (i) result in the creation of any Lien on any of the material assets of the Company or any Membership Interest or (ii) conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (A) any provision of the Articles of Organization, as amended to date, (B) any Material Contract or (C) any Applicable Law, other than, in the case of clauses (B) and (C), as would not be material to the Company.

(c) No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity or any other Person is required by or with respect to the Company in connection with the execution and delivery of this Agreement or the consummation of the Purchase, except for such consents, approvals, Orders, authorizations, registrations, declarations, filings and notices that, if not obtained or made, would not adversely affect, and would not reasonably be expected to adversely affect, the Company's ability to perform or comply with the covenants, agreements or obligations of the Company herein or to consummate the Purchase in accordance with this Agreement and Applicable Law.

#### 2.4 Financial Statements: Absence of Changes.

(a) The Company has delivered to Purchaser its audited financial statements for the fiscal years ended December 31, 2011 and December 31, 2012 (including, in each case, balance sheets, income statements and statements of cash flows), and its unaudited financial statements for the eight-month period ended August 31, 2013 (including a balance sheet and income statement) (the "Interim Financial Statements") (collectively, the "Financial Statements"), which are included as Schedule 2.4(a) of the Company Disclosure Schedule. The Financial Statements (i) are derived from and consistent with the books and records of the Company, (ii) complied as to form in all material respects with applicable accounting requirements with respect thereto as of their respective dates, (iii) fairly and accurately present the financial condition of the Company at the dates therein indicated and, as applicable, the results of operations and cash flows of the Company for the periods therein specified and (iv) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of Interim Financial Statements, to normal year-end audit adjustments and the absence of footnotes.

(b) The Company has no Liabilities of any nature other than (i) those set forth on or adequately provided for in the balance sheet included in the Financial Statements as of August 31, 2013 (the "Company Balance Sheet"), (ii) those incurred in the conduct of the Business since August 31, 2013 (the "Company Balance Sheet Date") in the ordinary course of business consistent with past practice, (iii) those incurred by the Company in connection with the execution of this Agreement or (iv) liabilities under Material Contracts arising since the Company Balance Sheet Date in the ordinary course of business consistent with past practice. Except for Liabilities reflected in the Financial Statements, the Company has no off-balance sheet Liability of any nature to, or any financial interest in, any third parties or entities, the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the

recording of expenses incurred by the Company. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with GAAP consistently applied. Without limiting the generality of the foregoing, the Company has not guaranteed any debt or other obligation of any other Person.

(c) Schedule 2.4(c) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Company Debt. Each agreement governing such Company Debt has been provided to Purchaser.

(d) The Company has provided to Purchaser the names and locations of all banks and other financial institutions at which the Company maintains accounts and the names of all Persons authorized to make withdrawals therefrom.

(e) The accounts receivable of the Company (the "Accounts Receivable") as reflected in the Company Closing Financial Certificate arose in the ordinary course of business consistent with past practice and represent *bona fide* claims against debtors for sales and other charges. Allowances for doubtful accounts and warranty returns in the Financial Statements have been prepared in accordance with GAAP consistently applied and in accordance with the Company's past practice and to the Company's knowledge are sufficient to provide for any losses that may be sustained on realization of the applicable Accounts Receivable.

(f) The Company's ordinary course operating procedures are such that (i) transactions, receipts and expenditures of the Company are timely recorded in the Company's books and records, (ii) unauthorized or improper acquisition, use or disposition of assets of the Company are prevented or timely detected and (iii) the amounts recorded for assets on the books and records of the Company are accurate in all material respects. None of the Company, the Company's independent auditors and, to the knowledge of the Company, any current or former employee or consultant of the Company, has identified or been made aware of any fraud, whether or not material, that involves the Company's management or other current or former employees or consultants of the Company who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company, or any claim or allegation regarding any of the foregoing. There are no significant deficiencies or material weaknesses in the design or operation of the Company's internal controls that could adversely affect the Company's ability to record, process, summarize and report financial data. There has been no change in the Company accounting policies since the Company's inception, except as described in the Financial Statements.

(g) Since the Company Balance Sheet Date, (x) the Business has been conducted in the ordinary course of business consistent with past practice in all material respects, (y) there has not occurred a Material Adverse Effect and (z) none of the following has occurred:

(i) any payment, discharge, satisfaction or settlement of any material Proceeding against the Company, or commencement of any Proceeding by or against any third party against or by the Company, in each case except in the ordinary course of business consistent with past practice;

(ii) any split, combination, reclassification, recapitalization or issuance of any Equity Interest in the Company, or any authorization thereof;

(iii) any declaration, setting aside or payment of any dividend or other distribution (other than monthly distributions in the ordinary course of business consistent with past practice and distributions to cover Taxes) with respect to any Membership Interest or any

direct or indirect redemption, purchase or other acquisition of any such Membership Interest;

(iv) any sale, assignment, pledge, encumbrance, transfer or other disposition of any material asset of the Company (excluding in all events sales of assets no longer useful in the operation of the business and sales of inventory to customers), or any sale, assignment, transfer, license or other disposition of any material Intellectual Property or any other material intangible assets of the Company;

(v) any creation of any Lien on any material property of the Company, except for Permitted Liens;

(vi) any write-down of the value of any asset of the Company or any write-off as uncollectible of any accounts or notes receivable of the Company or any portion thereof, other than write-downs or write-offs that are reserved for on the Company Balance Sheet or that do not exceed \$15,000 individually or \$30,000 in the aggregate;

(vii) any cancellation of any material debts or claims or any amendment, termination or waiver of any rights of material value to the Company;

(viii) any capital expenditures or commitments or additions to property, plant or equipment of the Company in excess of \$15,000 individually or \$50,000 in the aggregate other than the purchase of equipment in the ordinary course of business consistent with past practice;

(ix) (A) any deferral of payments of any accounts payable or other Liabilities of the Company beyond the earlier of the stated due date thereof and the date on which such payment would be made in the ordinary course of business consistent with past practice, or (B) any acceleration or inducement of the collection of any Accounts Receivable (including by giving any discount, accommodation or other concession), other than in the ordinary course of business consistent with past practice;

(x) any change in the independent public accountants of the Company or any material change in the accounting methods, keeping of books of account, cash management or accounting practices followed by the Company, including with respect to Taxes, or any material change in depreciation or amortization policies or rates, or any change in election with respect to Taxes;

(xi) any (A) grant or payment of, or entry in any Contract providing for the granting of, any severance, retention or termination pay, or the acceleration of vesting or other benefits, to any employee or independent contractor of the Company or (B) since September 18, 2013, increase in the salary of any employee of the Company or fees payable to any independent contractors of the Company; or

(xii) any agreement, whether in writing or otherwise, to take any of the actions specified in the foregoing items (i) through (xi), subject to any dollar thresholds set forth in items (i) through (xi) above.

2.5 Litigation. There is no Proceeding pending before any Governmental Entity, or, to the knowledge of the Company, threatened against the Company or any of its assets or any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). There is no Order against the Company, any of its assets or, to the knowledge of the Company, any of its directors, officers or employees (in their capacities as such or relating to their



employment, services or relationship with the Company). The Company has no Proceedings pending against any other Person.

2.6 Restrictions on Business Activities. There is no Contract or Order to which the Company is a party that restricts, prohibits or limits the conduct of the Business or the freedom of the Company to (i) engage or participate, or compete with any other Person, in any line of business, market or geographic area with respect to the Company Products, (ii) make available the Company Products to customers or (iii) purchase or otherwise obtain any products or services.

2.7 Compliance with Laws: Company Authorizations.

(a) The Company has complied in all material respects with, and has not received any written notice or, to the knowledge of the Company, any other communication of violation with respect to, Applicable Law.

(b) The Company has obtained each material federal, state, county, local or foreign governmental consent, license, permit, grant or other authorization of a Governmental Entity (i) pursuant to which the Company currently operates or holds any interest in any of its assets or properties or (ii) that is required for the conduct of the Business or the holding of any such interest (all of the foregoing consents, licenses, permits, grants and other authorizations, collectively, the “Company Authorizations”), and all of the Company Authorizations are in full force and effect. The Company has not received any written notice or, to the knowledge of the Company, any other communication from any Governmental Entity regarding (i) any actual or possible violation of any Company Authorization or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Company Authorization, and to the knowledge of the Company, no such written notice or, to the knowledge of the Company, any other communication is forthcoming. The Company has materially complied with all of the terms of the Company Authorizations and to the knowledge of the Company, none of the Company Authorizations will be terminated, in whole or in part, or will become terminable, in whole or in part, as a result of the consummation of the Purchase.

2.8 Title to Assets. The Company has good title to, or valid leasehold interest in all of its properties, and interests in properties and assets, real and personal, reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice), or, with respect to leased properties and assets, valid leasehold interests in such properties and assets that afford the Company valid leasehold possession of the properties and assets that are the subject of such leases, in each case, free and clear of all Liens, except Permitted Liens (it being understood that the foregoing representations shall not apply to any Company IP Rights). Schedule 2.8(a) of the Company Disclosure Schedule identifies each parcel of real property leased by the Company. The Company has provided to Purchase true, correct and complete copies of all leases, subleases and other agreements under which the Company uses or occupies or has the right to use or occupy, now or in the future, any real property or facility, including all modifications, amendments and supplements thereto. The Company does not own any real property.

2.9 Intellectual Property.

(a) The Company has not (i) transferred ownership of any Intellectual Property that is or was Company-Owned IP Rights, to any third party, or (ii) knowingly permitted the Company’s rights in any Intellectual Property that are or were Company-Owned IP Rights to enter the public domain or, with respect to any Intellectual Property for which the Company has submitted an application to or obtained a registration from a Governmental Entity, lapse (other than through the expiration of registered

Intellectual Property at the end of its maximum statutory term or the cancellation of claims in the ordinary course of prosecution before the United States Patent and Trademark Office and analogous and/or supranational offices in jurisdictions outside of the United States), in each case, in a manner that would reasonably be expected to interfere with the conduct of the Business.

(b) The Company owns and has good and exclusive title to each item of Company-Owned IP Rights, free and clear of any Liens (other than Permitted Liens).

(c) Neither the execution or delivery of this Agreement nor the performance of the Company's obligations under this Agreement will conflict with or impair the Company's rights in or to any Company-Owned IP Rights or otherwise trigger any additional payments to any third party with respect thereto (other than any impairment or payments that would have occurred in the absence of this Agreement).

(d) Schedule 2.9(d) of the Company Disclosure Schedule lists all Company Registered Intellectual Property, and the jurisdictions in which such Company Registered Intellectual Property has been issued or registered or in which any application for such issuance and registration has been filed, and all filings and fees that are required to be taken by the Company within 90 days of the Agreement Date in order to avoid prejudice to, impairment or abandonment of such Company Registered Intellectual Property. To the knowledge of the Company, each item of Company Registered Intellectual Property is valid (excluding any pending applications included in the Company Registered Intellectual Property) and subsisting, all necessary registration, maintenance and renewal fees currently due in connection with such Company Registered Intellectual Property have been paid and all documents, recordations and certificates in connection with such Company Registered Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company Registered Intellectual Property and recording the Company's ownership interests therein, except where (i) the failure to do so would not, individually or in the aggregate, reasonably be expected to result in the impairment or abandonment of such Company Registered Intellectual Property or the Company's ownership interests therein, or (ii) where the Company has made a reasonable business decision to abandon a trademark or Internet domain name.

(e) No Contract governing any Company IP Rights to which the Company is a party ("Company IP Rights Agreement") includes a grant by the Company to any third party of any exclusive rights to or under any Company-Owned IP Rights.

(f) There are no royalties, honoraria, fees or other payments payable by the Company to any Person (other than salaries and commissions payable to employees in the course of their employment with the Company, fees and commissions payable to consultants and independent contractors for work performed for the Company, and customary fees charged by third parties pursuant to Material Contracts listed in Section 2.15) as a result of the ownership of any Company-Owned IP Rights by the Company.

(g) To the knowledge of the Company, there is no unauthorized use, unauthorized disclosure, infringement or misappropriation of any material Company-Owned IP Rights, by any third party, including any employee or former employee of the Company. Except as set forth on Schedule 2.9(g) of the Company Disclosure Schedule, the Company has not brought any Proceeding for infringement or misappropriation of any Intellectual Property or breach of any Company IP Rights Agreement.

(h) Except as set forth on Schedule 2.9(h) of the Company Disclosure Schedule,

there have been no Proceedings, and as of the Agreement Date, there are no Proceedings pending or to the knowledge of the Company, threatened in writing that involve a claim of infringement or misappropriation of any Third-Party Intellectual Property Rights or that contests the validity, ownership or right of the Company to exercise any Company-Owned IP Rights. The Company has not received any written communication that involves an offer to license or grant any other rights or immunities under any Third-Party Intellectual Property Rights that could reasonably be interpreted as alleging infringement or misappropriation of such Third-Party Intellectual Property Rights.

(i) To the knowledge of the Company, the conduct of the Business does not infringe or misappropriate any valid, subsisting and enforceable Third-Party Intellectual Property Rights. The Company has not received any written opinion from its legal counsel that any Company Product or the conduct of the Business infringes or misappropriates any Third-Party Intellectual Property Rights.

(j) Except as set forth on Schedule 2.9(j) of the Company Disclosure Schedule, none of the Company-Owned IP Rights, the Company Products or the Company is subject to any Order to which the Company is a party (i) restricting the use, transfer or licensing by the Company of any Company-Owned IP Right or any Company Product, (ii) adversely affecting the validity, use or enforceability of any such Company-Owned IP Right or Company Product or (iii) restricting the conduct of the Business in order to accommodate Third-Party Intellectual Property Rights.

(k) No (i) government funding or (ii) facilities of a university, college, or other educational institution was used in the development of the Company-Owned IP Rights.

(l) The Company has taken commercially reasonable steps to protect and preserve the confidentiality of all material confidential or non-public information of the Company (including trade secrets). Without limiting the foregoing, the Company has a policy requiring its employees to sign a confidentiality and non-disclosure agreement (the “Employee NDA”), which agreement includes provisions regarding the confidentiality of all confidential or non-public information: (i) of the Company (including trade secrets) or (ii) provided by any third party to the Company under an obligation to maintain the confidentiality of the information and included in the Company IP Rights. A copy of the current form of Employee NDA has been made available to Purchaser prior to the date hereof.

(m) To the knowledge of the Company, no current or former employee, consultant, advisor or independent contractor of the Company is in material violation of any Contract with the Company relating to employment, invention disclosure, invention assignment, or non-disclosure.

(n) The employment of any employee of the Company or the use by the Company of the services of any consultant does not subject the Company to any Liability to any third party for improperly soliciting such employee or consultant to work for the Company based on contractual obligations of the Company to such third party.

(o) The Company has obtained from all employees, consultants and independent contractors who have developed technology or work product for the Company, written assignments of any Intellectual Property in such technology or work product. No employee has ever excluded any Intellectual Property from any written assignment of Intellectual Property executed by such Person in connection with work performed for or on behalf of the Company. No current or former founder, employee, consultant or independent contractor of the Company has any right, license or claim to any Company-Owned IP Rights (other than any limited licenses to perform services for or on behalf of the Company).

(p) The Company has not delivered or licensed or provided to any Person or agreed

or obligated itself to deliver or license or provide to any Person any Company Source Code, other than disclosures to employees, independent contractors, and consultants involved in the development, maintenance, and provision of other services with respect to Company Products or Company IP Rights. No event has occurred that entitles, and no circumstance or condition exists that is reasonably likely to entitle, with or without notice or lapse of time, or both, any Person (other than the Company or its employees, independent contractors and consultants involved in the development, maintenance, and provision of other services with respect to Company Products or Company IP Rights) to receive any Company Source Code. The foregoing representation shall not apply to Company's use of Open Source Materials, which is addressed in Section 2.9(r).

(q) None of the Contracts to which the Company is a party and by which any of its material Company IP Rights are bound will, solely as a direct result of the Company's execution, delivery and performance of this Agreement, or the consummation of the Purchase: (i) grant to any third party any right to material Intellectual Property owned by Purchaser (other than pre-existing rights and licenses to Company IP Rights); or (ii) require the payment of any royalties to a third party with respect to Intellectual Property owned by Purchaser (other than pre-existing royalties payable in connection with Company IP Rights).

(r) Set forth on Schedule 2.9(r) of the Company Disclosure Schedule is a list of software and other materials that are licensed to the Company pursuant to the terms of an Open Source License ("Open Source Materials") and incorporated by Company in any Company Products and IT Systems developed by or on behalf of the Company and, as applicable, describes the manner in which such Open Source Materials have been used by the Company. The Company is not in breach of any of the terms of any Open Source Licenses applicable to its use of Open Source Materials. Except as set forth on Schedule 2.9(r) of the Company Disclosure Schedule, to the knowledge of the Company, no Company owned software constituting any Company Product has been combined with, used with or distributed with any Open Source Materials by Company in such a manner that obligates the Company to distribute such Company owned software in source code form, make such software available on a royalty free basis, authorize reverse engineering of such software, or allow for the creation of derivative works of such software. As used herein "Open Source License" means any software license agreement that requires that the software licensed thereunder and any software combined or distributed with or derived from such licensed software: (i) be licensed under terms that authorize reverse engineering except as may be required under Applicable Law, (ii) be made available or distributed in source code form, (iii) be licensed for the purpose of making derivative works or (iv) be redistributed at no charge.

(s) The Company has complied in all material respects with Applicable Law and with the Company's published privacy policies and internal guidelines and procedures, each as in effect from time to time, relating to privacy and data security, including with respect to the collection, use, disclosure and transfer (including cross-border transfers) of Personal Data collected, used or held by the Company. The Company has not received any complaint regarding the Company's collection, use or disclosure of Personal Data.

(t) To the Company's knowledge, the software constituting the IT Systems (i) is substantially free of any material defects, bugs and errors in accordance with generally-accepted industry standards and (ii) does not contain any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that permit or cause unauthorized access to or disruption, impairment, disablement, or destruction of other software, data or the IT Systems, that in the case of (i) or (ii) could not be remedied by the Company using generally-accepted industry standard measures (collectively, "Contaminants"). The Company has taken commercially reasonable steps and implemented commercially reasonable safeguards intended to protect the material information technology systems (including hardware and software) used to rent photographic and video equipment or distribution of third

parties' e-books to customers in connection with the conduct of the Business (collectively, the "IT Systems") from Contaminants. The Company has in place commercially reasonable disaster recovery plans, procedures and facilities for the IT Systems and has taken commercially reasonable steps to safeguard the security of the IT Systems. To the knowledge of the Company, as of the Agreement Date, there has been no unauthorized intrusions or breaches of the security of the IT Systems that required the Company to notify customers or employees of such breach or intrusion pursuant to Applicable Law.

#### 2.10 Taxes.

(a) The Company has properly completed and timely filed all material Tax Returns required to be filed by it prior to the Closing Date, has timely paid all material Taxes required to be paid by it (whether or not shown on any Tax Return), and has no material Liability for Taxes in excess of the amounts so paid. There is no claim for Taxes that has resulted in a Lien against any of the assets of the Company (other than a Permitted Lien).

(b) The Company has delivered to Purchaser true, correct and complete copies of all Tax Returns in respect of the Company since the 2010 taxable year, and examination reports and statements of deficiencies, adjustments, and proposed deficiencies and adjustments in respect of the Company since the 2010 taxable year.

(c) The Company Balance Sheet reflects all material Liabilities for unpaid Taxes of the Company for periods (or portions of periods) through the Company Balance Sheet Date. The Company does not have any material Liability for unpaid Taxes accruing after the Company Balance Sheet Date except for Taxes arising in the ordinary course of business consistent with past practice subsequent to the Company Balance Sheet Date. The Company does not have any material Liability for Taxes (whether outstanding, accrued for, contingent or otherwise) that is not included in the calculation of Company Net Working Capital.

(d) There is (i) no audit or pending audit of, or Tax controversy associated with, any Tax Return of the Company currently being conducted by a Tax Authority, (ii) no other procedure, proceeding or contest of any refund or deficiency in respect of Taxes pending or on appeal with any Governmental Entity, (iii) no extension of any statute of limitations on the assessment of any Taxes granted by the Company currently in effect and (iv) no agreement to any extension of time for filing any Tax Return that has not been filed. No claim has ever been made by any Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(e) The Company has neither been nor will be required to include any adjustment in Taxable income for any Tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state, local or foreign Tax laws as a result of transactions, events or accounting methods employed prior to the Purchase.

(f) The Company is not a party to, or bound by, any Tax sharing, Tax indemnity or Tax allocation agreement, and the Company has no any Liability or potential Liability to another party under any such agreement.

(g) The Company has disclosed on its Tax Returns any Tax reporting position taken in any Tax Return that could result in the imposition of penalties under Section 6662 of the Code or any comparable provisions of state, local or foreign Applicable Law.

(h) The Company has not consummated or participated in, and is not currently

participating in, any transaction that was or is a “Tax shelter” transaction as defined in Sections 6662 or 6111 of the Code or the Treasury Regulations promulgated thereunder. The Company has not participated in, and is not currently participating in, a “Listed Transaction” or “Reportable Transaction” within the meaning of Section 6707A(c) of the Code or Treasury Regulations Section 1.6011-4(b), or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign law.

(i) Neither the Company nor any predecessor of the Company has ever been a member of a consolidated, combined, unitary or aggregate group of which the Company or any predecessor of the Company was not the ultimate parent corporation.

(j) The Company is not a party to any joint venture, partnership or other agreement, contract or arrangement that, to the knowledge of the Company, could be treated as a partnership or disregarded entity for federal tax purposes.

(k) The Company has no Liability for the Taxes of any Person (other than the Company) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law) as a transferee or successor, by Contract or otherwise.

(l) The Company will not be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a Taxable period ending on or prior to the Closing Date, (ii) “closing agreement” described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) executed on or prior to the Closing Date, (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law) with respect to a transaction occurring on or prior to the Closing Date, (iv) installment sale or open transaction disposition made on or prior to the Closing Date or (v) prepaid amount received on or prior to the Closing Date.

(m) The Company has not received any private letter ruling from the Internal Revenue Service (or any comparable Tax ruling from any other Governmental Entity).

(n) The Company is not, and has never been, a “United States real property holding corporation” within the meaning of Section 897 of the Code, and the Company has filed with the Internal Revenue Service all statements, if any, that are required under Section 1.897-2(h) of the Treasury Regulations.

(o) The Company has not constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code in the two years prior to the Agreement Date.

(p) The Company has (i) complied with all Applicable Law relating to the payment, reporting and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445 and 1446 of the Code or similar provisions under any foreign law), (ii) withheld (within the time and in the manner prescribed by Applicable Law) from employee wages or consulting compensation and paid over to the proper governmental authorities (or is properly holding for such timely payment) all amounts required to be so withheld and paid over under all Applicable Law, including federal and state income Taxes, Federal Insurance Contribution Act, Medicare, Federal Unemployment Tax Act, relevant state income and employment Tax withholding laws and (iii) timely filed all withholding Tax Returns, for all periods through and including the Closing Date.

(q) There is no Contract to which the Company is a party or by which it is bound that is subject to Section 409A of the Code.

(r) For all Taxable periods since January 1, 2009, the Company has had in place a valid election under Section 301.7701-3 of the Treasury Regulations to be treated as a corporation for U.S. federal Tax purposes. Since January 1, 2009, the Company has had in place a valid election under Section 1362 of the Code to be treated as an S corporation for U.S. federal income Tax purposes, has filed all of its U.S. federal income Tax Returns on Form 1120-S and has filed all of its U.S. state income Tax Returns on the corresponding state or local income tax form. At no time since January 1, 2009, has the Company failed to qualify as a "small business corporation" within the meaning of Section 1361(b)(1) of the Code. Neither the Company nor the Sellers has taken any action (other than the Purchase) that would result in the termination of the Company's status as a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code or any comparable provision of state or local Tax law.

(s) The Company will not be liable for any Tax under Section 1374 of the Code (or any comparable provision under state or local Tax law) in connection with the deemed sale of the Company's assets occasioned by the election pursuant to Section 338(h)(10) of the Code (or corresponding election under state or local Tax law). The Company has never acquired assets from another corporation in a transaction in which the Company's Tax basis in the acquired assets was determined, in whole or in part, by reference to the Tax basis of the acquired assets (or any other property) in the hands of the transferor.

## 2.11 Employee Benefit Plans and Employee Matters.

(a) Schedule 2.11(a) of the Company Disclosure Schedule lists, with respect to the Company and any trade or business (whether or not incorporated) that is treated as a single employer with the Company (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, (ii) each loan to an employee, (iii) all stock option, stock purchase, phantom stock, stock appreciation right, restricted stock unit, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care (Section 129 of the Code), life insurance or accident insurance plans, programs or arrangements, (iv) all bonus, pension, profit sharing, savings, severance, retirement, deferred compensation or incentive plans (including cash incentive plans), programs or arrangements, (v) all other material written fringe or employee benefit plans, programs or arrangements and (vi) all employment or executive compensation or severance agreements that are sponsored by, maintained, contributed to, or required to be contributed to, by the Company or any ERISA Affiliate for the benefit of any current or former employee or independent contractor of the Company or any Affiliate of the Company, or with respect to which the Company or any ERISA Affiliate has or may have any Liability (all of the foregoing described in clauses (i) through (vi), collectively, the "Employee Plans").

(b) The Company does not sponsor or maintain any self-funded Employee Plan, including any plan to which a stop-loss policy applies. The Company has provided to Purchaser a true, correct and complete copy of each of the Employee Plans and related plan documents (including trust documents, insurance policies or Contracts, employee booklets, summary plan descriptions and other authorizing documents, and any material employee communications relating thereto) has, with respect to each Employee Plan that is subject to ERISA reporting requirements, provided to Purchaser true, correct and complete copies of the Form 5500 reports filed for the last three plan years, and has provided all discrimination tests required under the Code for each Employee Plan intended to be qualified under Section 401(a) of the Code for the three most recent plan years. Any Employee Plan intended to be

qualified under Section 401(a) of the Code has been established under a master, prototype, or volume submitter plan for which an Internal Revenue Service opinion or advisory letter has been obtained by the plan sponsor and is valid as to the adopting employer. The Company has provided to Purchaser a true, correct and complete copy of the most recent Internal Revenue Service determination, opinion or advisory letter issued with respect to each such Employee Plan, and nothing has occurred since the issuance of each such letter that would reasonably be expected to cause the loss of the Tax-qualified status of any Employee Plan subject to Section 401(a) of the Code.

(c) None of the Employee Plans promises or provides retiree medical or other retiree welfare benefits to any person other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law (“COBRA”) and the Company has complied in all material respects with the requirements of COBRA. The Company has not engaged in a “prohibited transaction” (within the meaning of Section 406 of ERISA and Section 4975 of the Code and not exempt under Section 408 of ERISA or applicable regulatory guidance thereunder) (a “non-exempt prohibited transaction”) with respect to any Employee Plan and, to the Company’s knowledge, no non-exempt prohibited transaction has occurred with respect to any Employee Plan. Each Employee Plan has been administered in all material respects in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code). All contributions required to be made by the Company or any ERISA Affiliate to any Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Employee Plan for the current plan years (and no further contributions will be due or will have accrued thereunder as of the Closing Date, other than contributions accrued in the ordinary course of business consistent with past practices after the Company Balance Sheet Date as a result of the operations of the Company after the Company Balance Sheet Date). In addition, with respect to each Employee Plan intended to include a Code Section 401(k) arrangement, the Company and each of the ERISA Affiliates have at all times been in material compliance with the rules regarding timely deposits of employee salary reduction contributions and participant loan repayments, as determined pursuant to regulations issued by the United States Department of Labor. Each Employee Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without Liability to Purchaser (other than ordinary administrative expenses typically incurred in a termination event). No Proceeding has been brought, or to the knowledge of the Company, is threatened, against or with respect to any such Employee Plan, including any audit or inquiry by the Internal Revenue Service or United States Department of Labor other than ordinary claims for benefits.

(d) There has been no amendment to, written interpretation or announcement (whether or not written) by the Company or any ERISA Affiliate relating to, or change in participation or coverage under, any Employee Plan since the Company Balance Sheet Date.

(e) Neither the Company nor any current or former ERISA Affiliate currently maintains, sponsors, participates in or contributes to, or has ever maintained, established, sponsored, participated in, or contributed to, any pension plan (within the meaning of Section 3(2) of ERISA) that is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(f) Neither the Company nor any ERISA Affiliate is a party to, or has made any contribution to or otherwise incurred any obligation under, any “multiemployer plan” as such term is defined in Section 3(37) of ERISA, a “multiple employer plan” as such term is defined in Section 413(c) of the Code, a “multiple employer welfare arrangement” as such term is defined in Section 3(40) of ERISA, or a funded welfare plan as such term is defined in Section 419 of the Code.

(g) No Employee Plan is sponsored, maintained or contributed to under the law or applicable custom or rule of the any jurisdiction outside of the United States.



(h) The Company has no material liability for any payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistently with past practice). There are no pending claims against the Company under any workers compensation plan or policy or for long term disability. There are no controversies pending or, to the knowledge of the Company, threatened, between the Company and any of its employees, which controversies have or would reasonably be expected to result in a Proceeding before any Governmental Entity.

(i) The Company has provided to Purchaser true, correct and complete copies of each of the following: (i) all forms of offer letters, (ii) all forms of employment agreements and severance agreements, (iii) all forms of agreements with current and former consultants and/or advisory board members, (iv) all forms of confidentiality, non-competition or inventions agreements between current and former employees/consultants and the Company (and a true, correct and complete list of employees, consultants and/or others not subject thereto), (v) the most current management organization chart(s) and (vi) a schedule of bonus commitments made to employees of the Company.

(j) The Company is not a party to, bound by, or had any obligations under any collective bargaining agreement or other labor union Contract, and no collective bargaining agreement is being negotiated by the Company. No union or other collective bargaining unit or employee organizing entity has been certified or recognized by the Company as representing any of its employees. To the knowledge of the Company, there is no pending demand for recognition or any other request or demand from a labor organization for representative status with respect to any Person employed by the Company. To the knowledge of the Company, there are no activities or proceedings of any labor union or to organize the employees of the Company. There is no labor dispute, strike or work stoppage against the Company pending or, to the knowledge of the Company, threatened that may interfere with the conduct of the Business. None of the Company and, to the knowledge of the Company, any of their respective Representatives has committed any unfair labor practice in connection with the conduct of the Business, and there is no charge or complaint against the Company by the National Labor Relations Board or any comparable Governmental Entity pending or, to the knowledge of the Company, threatened. No employee of the Company has been dismissed for cause since September 30, 2012.

(k) To the knowledge of the Company, no employee of the Company is in violation of any term of any employment agreement, non-competition agreement or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company because of the nature of the Business or to the use of trade secrets or proprietary information of others. To the knowledge of the Company, no contractor of the Company is in violation of any term of any non-competition agreement or any restrictive covenant to a former employer relating to the right of any such contractor to be providing services to the Company because of the nature of the Business or to the use of trade secrets or proprietary information of others. No employee of the Company has given written notice or, to the knowledge of the Company, any other communication to the Company of his or her intention to terminate his or her employment with the Company and, to the knowledge of the Company, no employee of the Company intends to terminate his or her employment with the Company. The employment of each of the employees of the Company is "at will" and the Company does not have any obligation to provide any particular form or period of notice prior to terminating the employment of any of its employees. As of the Agreement Date, the Company has not, and to the knowledge of Company, no other Person has, (i) entered into any Contract that obligates or purports to obligate Purchaser to make an offer of employment to any present or former employee or consultant of the Company and/or (ii) promised or otherwise provided any assurances (contingent or otherwise) to any present or former employee or consultant of the Company of any terms or conditions of employment with Purchaser following the Closing, except with respect to the Employment Offer Documents.

(l) The Company has provided to Purchaser a true, correct and complete list of the names, positions and rates of compensation of all officers, directors and employees of the Company, showing each such individual's name, position, annual remuneration, status as exempt/non-exempt and bonuses for the current fiscal year. The Company has no employees providing services outside of the United States. The Company has provided to Purchaser a true, correct and complete list of all of its consultants, advisory board members and independent contractors and, for each, such individual's compensation and the initial date of such individual's engagement and whether such engagements has been terminated by written notice by either party thereto.

(m) There are no disciplinary actions contemplated or pending against any of the employees of the Company.

(n) Except as contemplated by this Agreement or the Employment Offer Documents, none of the execution, delivery and performance of this Agreement, the consummation of the Purchase, any termination of employment or service and any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of some other event (whether contingent or otherwise), (i) result in any material payment or benefit (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due or payable, or required to be provided, to any current or former employee, director, independent contractor or consultant, (ii) materially increase the amount or value of any benefit or compensation otherwise payable or required to be provided to any current or former employee, director, independent contractor or consultant, (iii) result in the acceleration of the time of payment, vesting or funding of any such benefit or compensation, (iv) increase the amount of compensation due to any Person or (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person.

2.12 Interested Party Transactions. None of the Sellers, nor to the knowledge of the Company any other employee of the Company, or any of the immediate family members of any of the foregoing (i) has any direct or indirect ownership interest, or participation or royalty interest, in, or is an officer, director or employee of any firm, partnership, entity or corporation that competes with, or does any business with, the Company, (ii) is a party to, or is otherwise directly or indirectly interested in, any Contract to which the Company is a party or by which the Company or any of its assets is bound or (iii) to the knowledge of the Company, has any interest in any material property, real or personal, that is used in the Business, in each case except for Contracts with respect to compensation (including benefits) for services as an employee of the Company.

2.13 Insurance. The Company maintains the policies of insurance and bonds set forth in Schedule 2.13 of the Company Disclosure Schedule, including all legally required workers' compensation insurance and errors and omissions, casualty, fire and general liability insurance. Schedule 2.13 of the Company Disclosure Schedule sets forth the name of the insurer under each such policy and bond, the name of the underwriter, the policy or bond number, the type of policy or bond, the coverage amount and any applicable deductible. The Company has provided to Purchaser true, correct and complete copies of all policies of insurance and bonds issued at the request or for the benefit of the Company. There is no claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid and the Company is otherwise in compliance with the terms of such policies and bonds. All such policies and bonds remain in full force and effect, and to the knowledge of the Company there is no threatened termination of, or material premium increase with respect to, any such policies.

2.14 Books and Records. The Company has provided to Purchaser true, correct and complete copies of the following (other than any such document that does not exist): (i) all documents identified on

the Company Disclosure Schedule, (ii) the Articles of Organization as currently in effect and (iii) all permits, orders and consents issued by any regulatory agency with respect to the Company. The Company does not have, and has never kept, minute books or other records with respect to any meetings of the Members.

## 2.15 Material Contracts.

(a) Schedules 2.15(a)(i) through (xx) of the Company Disclosure Schedule set forth a list of each of the following Contracts to which the Company is a party (the “Material Contracts”):

(i) any Contract with a Significant Supplier (other than invoices and purchase orders made in the ordinary course of business consistent with past practice that do not contain any ongoing obligations (other than payment obligations) on the part of the Company);

(ii) any Contract that provided or provides for cash payments by or to the Company (or under which the Company has made or received such payments) in an aggregate amount of \$50,000 or more in calendar year 2012 or in an aggregate amount of \$35,000 or more from January 1, 2013 to the Company Balance Sheet Date;

(iii) any dealer, reseller, distributor or similar Contract other than any Ordinary Course Agreements;

(iv) any Contract relating to the advertising or promotion of the Business (including Contracts relating to the sponsorship by the Company of industry trade shows or celebrity endorsements of the Company), other than any such Contract pursuant to which Company paid less than \$10,000 in cash in calendar year 2012;

(v) other than Ordinary Course Agreements, (A) any joint venture Contract, (B) any Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with other Persons and (C) any Contract that involves the payment of royalties to any other Person in excess of \$30,000 per annum;

(vi) any Contract for or relating to the employment or service (including Contracts relating to sales commissions) of any Member, officer, employee or consultant or any other type of Contract with any of its Members, officers, employees or consultants, as the case may be, that are not terminable at will by the Company without any Liability (other than accrued base salary, accrued commissions, accrued vacation pay and legally mandated benefits);

(vii) any Contract required to be listed in Schedule 2.6 or Schedule 2.9(e) of the Company Disclosure Schedule;

(viii) other than Open Source Licenses, Ordinary Course Agreements and “shrink wrap” and similar generally available commercial end-user licenses to software that have an individual acquisition cost of \$5,000 or less, all licenses, sublicenses and other Contracts to which the Company is a party and pursuant to which the Company is licensed to use any material Third-Party Intellectual Property Rights used in the development or operation of the Company Products;

(ix) other than Ordinary Course Agreements, any license, sublicense or other Contract to which the Company is a party pursuant to which (A) any Person is licensed to use any Company-Owned IP Rights, (B) the Company has agreed to any restriction on the right of the

Company to use or enforce any Company-Owned IP Rights used in the Business or (C) the Company agrees to encumber, transfer or sell rights in or with respect to any Company-Owned IP Rights used in the Business;

(x) any Contract providing for the assignment or development (independently or jointly) of any material software, technology or Intellectual Property rights, either by or for the Company (other than employee invention assignment agreements and consulting agreements with Authors on the Company's standard form agreements (copies of which have been provided to Purchaser) or that are in substance substantially the same as Company's standard form agreements);

(xi) any confidentiality, secrecy or non-disclosure Contract other than any such Contract entered into by the Company in the ordinary course of business or in contemplation of a business combination transaction of the type that resulted in the Purchase;

(xii) any litigation settlement agreement;

(xiii) other than this Agreement, any Contract or plan (including any stock option, merger and/or stock bonus plan) relating to the sale, issuance, grant, exercise, award, purchase, repurchase or redemption of any Membership Interest or any other Equity Interests in the Company;

(xiv) any Contract with any labor union or any collective bargaining agreement or similar contract with its employees;

(xv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for or related to Company Debt, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;

(xvi) any material Contract of guarantee, surety, indemnification (other than pursuant to Ordinary Course Agreements), assumption or endorsement of, or any similar commitment with respect to, the Liabilities or indebtedness of any other Person;

(xvii) any Contract for capital expenditures in excess of \$25,000 in the aggregate with respect to such Contract;

(xviii) other than Ordinary Course Agreements, any Contract pursuant to which the Company is a lessor or lessee of any real property or any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property involving expenditures in excess of \$50,000 per annum;

(xix) any Contract pursuant to which the Company has acquired a business or entity, or material assets of a business or entity, whether by way of merger, consolidation, purchase of stock, purchase of assets, material exclusive licenses or otherwise, or any Contract pursuant to which the Company owns any Equity Interest in any other Person, in each case other than in the ordinary course of business consistent with past practice; and

(xx) any Contract with any Governmental Entity, any Company Authorization, or any Contract with a government prime contractor, or higher-tier government subcontractor, including any indefinite delivery/indefinite quantity contract, firm-fixed-price

contract, schedule contract, blanket purchase agreement, or task or delivery order (each a "Government Contract").

(b) All Material Contracts are in written form. The Company has performed all of the material obligations required to be performed by it and is entitled to all benefits under, and is not alleged to be in default in respect of, any Material Contract. Other than to the extent any Material Contract has expired by its terms, each of the Material Contracts is in full force and effect, subject only to the effect, if any, of applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies. There exists no default or event of default or event, occurrence, condition or act, with respect to the Company or, to the knowledge of the Company, with respect to any other contracting party, that, with the giving of notice, the lapse of time or the happening of any other event or condition, would reasonably be expected to (i) become a default or event of default under any Material Contract or (ii) give any third party (A) the right to declare a default or exercise any remedy under any Material Contract, (B) the right to a rebate, chargeback, refund, credit (in each case other than pursuant to the Company's standard terms and conditions in Ordinary Course Agreements), penalty or change in delivery schedule under any Material Contract, (C) the right to accelerate the maturity or performance of any obligation of the Company under any Material Contract or (D) the right to cancel, terminate or modify any Material Contract; other than in the case of clauses (i) and (ii), where any such default or right would not be material to the Company. The Company has not received any written notice or, to the knowledge of the Company, any other communication regarding any actual or possible violation or breach of, default under, or intention to cancel or modify any Material Contract. The Company has no Liability for renegotiation of Government Contracts.

(c) The Company has provided to Purchaser copies of all standard forms of the types of Contracts comprising the Ordinary Course Agreements and none of the terms of any of the Ordinary Course Agreements (other than commission terms) differ in any material respect from such standard forms.

2.16 Transaction Expenses. Other than Needham, no broker, finder, financial advisor, investment banker or similar Person is entitled to any brokerage, finder's or other fee or commission in connection with the origin, negotiation or execution of this Agreement or in connection with the Purchase.

2.17 Suppliers. The Company has provided Purchaser with a list of the 15 largest suppliers of products and/or services to the Company, based on aggregate amounts paid or payable in the 12 months ended June 30, 2013 (each, a "Significant Supplier"). The Company does not have any outstanding material disputes concerning any products and/or services provided by any Significant Supplier to the Company or the payment by the Company therefor. Each Significant Supplier is listed on Schedule 2.18 of the Company Disclosure Schedule. The Company has not received any written notice or, to the knowledge of the Company, any other communication from any Significant Supplier that such supplier shall not continue as a supplier to the Company (or Purchaser) after the Closing or that such Significant Supplier intends to terminate or materially modify its existing Contracts with the Company (or Purchaser).

### **ARTICLE III REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF THE SELLERS**

With respect to each of the following representations, warranties, covenants, agreements, releases and obligations, each Seller represents and warrants to, and covenants and agrees with, Purchaser, solely as to himself, as follows:

3.1 Power and Capacity. Such Seller has all requisite power, capacity and authority to enter into this Agreement and consummate the Purchase.

3.2 Enforceability; Non-contravention.

(a) This Agreement has been duly executed and delivered by such Seller. This Agreement constitutes a valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by such Seller does not, and the consummation of the Purchase and the performance by such Seller of its agreements and obligations hereunder will not, (i) result in the creation of any Lien on any of the material assets of the Company or any Membership Interest, (ii) require notice to, or the consent of any person under, any Contract or Order to which such Seller is a party or by which such Seller is, or any of his assets are, bound, except for such conflicts, breaches, violations or defaults that would not, individually or in the aggregate, prevent or delay consummation of the Purchase or otherwise prevent or delay such Seller from performing his obligations under this Agreement or (iii) conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, or result in the creation of any Lien upon such Seller's Membership Interest. The spouse, if any, of such Seller has the right, power and capacity to execute and deliver and to perform her obligations under the Spousal Consent executed by her. Such Spousal Consent constitutes such spouse's legal, valid and binding obligations, enforceable against her in accordance with its terms.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by or with respect to such Seller in connection with the execution and delivery of this Agreement or the consummation of the Purchase that would reasonably be expected to adversely affect the ability of such Seller to consummate the Purchase.

3.3 Title to Membership Interest. Such Seller is the beneficial and record owner of the Membership Interest set forth opposite such Seller's name on Schedule 2.2(a) of the Company Disclosure Schedule. As of the Closing, such Seller has examined the Spreadsheet and is entitled only to the distribution set forth therein, and such Seller waives any right to receive consideration for his Membership Interest other than as set forth therein. Such Seller has good and valid title to such Membership Interest (as set forth in the Spreadsheet), free and clear of all Liens, options, warrants and purchase rights that would adversely affect the Purchase, this Agreement or the exercise or fulfillment of the rights and obligations of Purchaser, the Company or such Seller under this Agreement. At the Closing, such Seller shall deliver to Purchaser good and valid title to such Membership Interest, free and clear of all Liens, options, warrants and purchase rights. Such Seller's Membership Interest constitutes such Seller's entire interest in the Equity Interests in the Company and such Seller does not have the right to acquire, directly or indirectly, any other Equity Interest in the Company. Such Seller is not a party to any option, warrant, purchase right, or other Contract or commitment that could require such Seller to sell, transfer, or otherwise dispose of any Membership Interest (other than this Agreement). No person not a signatory to this Agreement has a beneficial interest in or a right to acquire any of such Seller's Membership Interest (other than, if such Seller is a married individual and resides in a state with community property laws, the community property interest of his spouse to the extent applicable under such community property laws).

3.4 Acknowledgement. Such Seller acknowledges that such Seller has received a copy of the

Agreement and familiarized himself with the terms and conditions contained herein, including provisions relating to payment of the Purchase Consideration to be paid to such Seller pursuant to Section 1.1 and the indemnification obligations of such Seller pursuant to Article VIII.

3.5 Litigation. There are no Proceedings pending or threatened against such Seller that seek to restrain or enjoin the consummation of the Purchase. There is no Order against such Seller that seeks to restrain or enjoin the consummation of the Purchase.

3.6 Waiver and Release of Claims.

(a) Such Seller, for himself and on behalf of his heirs, legal representatives, successors and assigns (collectively, the “Relevant Persons”), hereby irrevocably, unconditionally and forever acquits, releases, waives and discharges Purchaser and the Company, and each of their respective officers, directors, employees, agents, divisions, affiliated corporations, affiliated non-corporation entities, representatives, successors, predecessors and assigns (individually and collectively, the “Released Parties”) from any and all past, present and future debts, losses, costs, bonds, suits, actions, causes of action, Liabilities, contributions, attorneys’ fees, interest, damages, punitive damages, expenses, claims, potential claims, counterclaims, cross-claims, or demands, in law or in equity, asserted or unasserted, express or implied, known or unknown, matured or unmatured, contingent or vested, liquidated or unliquidated, of any kind or nature or description whatsoever, that any of the Relevant Persons had, presently has or may hereafter have or claim or assert to have against any of the Released Parties by reason of any act, omission, transaction, occurrence, conduct, circumstance, condition, harm, matter, cause or thing that has occurred or existed at any time from the beginning of time up to and including the Closing, that in any way arise from or out of, are based upon or relate to (i) such Relevant Person’s or Relevant Persons’, as applicable, ownership or purported ownership of any Membership Interest or (ii) the negotiation or execution of this Agreement or the consummation of the Purchase, except for such Relevant Person’s or Relevant Persons’, as applicable, rights under this Agreement and each agreement attached as an exhibit thereto or entered into in connection therewith, including the Employment and Offer Documents and Non-Competition Agreements executed by and between such Relevant Person and Purchaser or any of its Affiliates (after taking into account such exceptions, the “Seller Claims”). This release is intended to be complete, global and all-encompassing and specifically includes claims that are known, unknown, fixed, contingent or conditional with respect to the matters described herein. With respect to such Seller Claims, such Seller hereby expressly waives any and all rights conferred upon him, her or it by any statute or rule of law that provides that a release does not extend to claims that the claimant does not know or suspect to exist in his, her or its favor at the time of executing the release, which if known by him, her or it must have materially affected his, her or its settlement with the released party, including the following provisions of California Civil Code Section 1542: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS, HER OR IT SETTLEMENT WITH THE DEBTOR.”

(b) Such Seller hereby gives any consents or waivers that are reasonably required for the consummation of the Purchase under the terms of any agreement or instrument to which such Seller is a party or subject or in respect of any rights such Seller may have in connection with the Purchase (whether such rights exist under the Company Operating Agreement, any Contract to which the Company is a party or by which it is, or any of its assets are, bound under Applicable Law or otherwise). Without limiting the generality or effect of the foregoing, such Seller hereby waives any and all rights to contest or object to the execution and delivery of this Agreement, the consummation of the Purchase or to seek damages or other legal or equitable relief in connection therewith except as otherwise provided or reserved in this Agreement. Contingent and effective upon the Closing, such Seller hereby agrees to

waive any rights of first refusal, preemptive rights, rights to notice, rights of co-sale, registration rights, information rights or any similar rights that such Seller may have (whether under Applicable Law or otherwise) or could potentially have or acquire in connection with the Purchase. From and after the Closing, such Sellers' right to receive consideration on the terms and subject to the conditions set forth in this Agreement shall constitute such Seller's sole and exclusive right against Purchaser or the Company in respect of such Seller's ownership of any Membership Interest or any agreement or instrument with the Company pertaining to any Membership Interest or such Seller's status as a Member.

(c) Such Seller, on behalf of each Relevant Person, further covenants and agrees that such Relevant Person has not heretofore sold, transferred, hypothecated, conveyed or assigned, and shall not hereafter sue any Released Party upon, any Seller Claim released under this Section 3.6, and that each Relevant Person shall indemnify and hold harmless the Released Parties against any loss or liability on account of any actions brought by such Releasing Party or such Relevant Person's assigns or prosecuted on behalf of such Releasing Party and relating to any Seller Claim released under this Section 3.6.

(d) Notwithstanding anything to the contrary in this Section 3.6, the foregoing releases and covenants shall not apply to any claims (i) relating to Purchaser's failure to pay and/or deliver the Purchase Consideration in accordance with this Agreement, (ii) relating to Purchaser's failure to perform any of its obligations, undertakings or covenants set forth in this Agreement or the Purchaser RSU Agreements, (iii) relating to any employment payment, including salary, bonuses, accrued vacation, any other employee compensation and/or benefits, and unreimbursed expenses, (iv) relating to or arising from any commercial relationship such Seller may have with any of the Released Parties, (v) relating to the indemnification provisions (if any) contained in any agreement with the Company that is set forth on Schedule 2.15(a)(xvi) of the Company Disclosure Schedule or the Company Operating Agreement.

(e) Notwithstanding anything to the contrary: (i) the foregoing release is conditioned upon the consummation of the Closing and shall become null and void, and shall have no effect whatsoever, without any action on the part of any Person, upon termination of this Agreement in accordance with Article VII and (ii) should any provision of this release be found, held, declared, determined, or deemed by any court of competent jurisdiction to be void, illegal, invalid or unenforceable under any Applicable Law, the legality, validity, and enforceability of the remaining provisions shall not be affected and the illegal, invalid, or unenforceable provision shall be deemed not to be a part of the release pursuant to this Section 3.6.

3.7 Tax Withholding Information. Any and all information provided to Purchaser by or on behalf of such Seller for purposes of enabling Purchaser to determine the amount to be deducted and withheld from the consideration payable to such Seller pursuant to this Agreement under Applicable Law is true, correct and complete.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to the Company as follows:

4.1 Organization and Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser is not in violation of any of the provisions of its articles or certificate of incorporation or bylaws. Purchaser has the corporate power to own, operate and lease its properties and to conduct its business and is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified or in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to have a material adverse effect with respect to Purchaser.



4.2 Authority; Non-contravention.

(a) Purchaser has all requisite corporate power and authority to enter into this Agreement and to consummate the Purchase. The execution and delivery of this Agreement and the consummation of the Purchase have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and, assuming the due execution and delivery of this Agreement by the other parties hereto, constitutes the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar Applicable Law affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by Purchaser do not, and the consummation of the Purchase and the performance by Purchaser of its agreements and obligations hereunder will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under, or require any consent, approval or waiver from any Person pursuant to, (i) any provision of the certificate of incorporation or bylaws of Purchaser, in each case as amended to date or (ii) Applicable Law, except where such conflict, violation, default, termination, cancellation or acceleration, individually or in the aggregate, would not be material to Purchaser's ability to consummate the Purchase in accordance with this Agreement and Applicable Law or to perform its obligations under this Agreement.

(c) No consent, approval, Order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement or the consummation of the Purchase that would reasonably be expected to adversely affect the ability of Purchaser to consummate the Purchase in accordance with this Agreement and Applicable Law.

4.3 Funds. Purchaser has, and will have available to it on the Closing Date, all funds necessary to consummate the Purchase and to perform its obligations hereunder.

**ARTICLE V  
ADDITIONAL AGREEMENTS**

5.1 Confidentiality; Public Disclosure.

(a) The parties hereto acknowledge that Purchaser and the Company have previously executed a non-disclosure agreement, dated as of June 17, 2013 (as amended from time to time, the "Confidentiality Agreement"), which shall continue in full force and effect in accordance with its terms. At no time shall any party hereto disclose any non-public information with respect to this Agreement or a party hereto to any other Person without the prior written consent of the party hereto about which such non-public information relates. Notwithstanding anything to the contrary in the foregoing, a party hereto shall be permitted to disclose any and all terms of this Agreement to its financial, tax and legal advisors (each of whom is subject to a similar obligation of confidentiality), and to any Governmental Entity to the extent necessary or advisable in compliance with Applicable Law; provided that the other parties hereto are given reasonable prior notice or consent thereto (unless prohibited by Applicable Law), or to the members of their immediate family to the extent required in connection with a Spousal Consent. The Sellers' Agent hereby agrees to be bound by the terms and conditions of the Confidentiality Agreement to the same extent as though the Sellers' Agent were a party thereto. With respect to the Sellers' Agent, as used in the Confidentiality Agreement, the term "Confidential Information" shall also include information

relating to the Purchase received by the Sellers' Agent after the Closing or relating to the period after the Closing.

(b) The Company shall not issue any press release or other public communications relating to the terms of this Agreement or the Purchase or use Purchaser's name or refer to Purchaser directly or indirectly in connection with Purchaser's relationship with the Company in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of Purchaser, unless required by Applicable Law and except as reasonably necessary for the Company to obtain the consents and approvals of third parties to the extent contemplated by this Agreement. Notwithstanding anything to the contrary contained herein or in the Confidentiality Agreement, following the Closing Purchaser may make such public communications regarding this Agreement or the Purchase as Purchaser may determine is reasonably appropriate.

5.2 Reasonable Best Efforts. Each of the parties hereto agrees to use its reasonable best efforts, and to cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable in accordance with Applicable Law to consummate and make effective the Purchase, including the satisfaction of the respective conditions set forth in Article VI, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Purchase. Without limiting the generality of the foregoing, the Company, on the one hand, and Purchaser, on the other hand, shall each furnish to the other such necessary information and reasonable assistance as the other party may reasonably request in connection with the foregoing.

5.3 Bonuses. At the Closing, Purchaser shall pay the bonuses set forth on Schedule 5.3. All such bonuses (and any payroll, withholding or other Taxes arising out of, resulting from or in connection with the foregoing) shall be Transaction Expenses.

5.4 Spreadsheet. The Company shall prepare and deliver to Purchaser, in accordance with Section 5.7, a spreadsheet (the "Spreadsheet") in the form provided by Purchaser prior to the Closing and reasonably acceptable to Purchaser and the Company, which spreadsheet shall be dated as of the Closing Date and shall set forth all of the following information (in addition to the other required data and information specified therein), as of immediately prior to the Closing: (a) the names of all the Sellers and their respective addresses and email addresses, wire account information and taxpayer identification numbers, (b) the Membership Interest owned by each Seller, (c) the calculation of aggregate cash amounts payable to each Seller pursuant to Section 1.1(a) and (d) the calculation of each Seller's Pro Rata Share of the Escrow Amount.

5.5 Expenses; Company Debt. Whether or not the Purchase is consummated, all costs and expenses incurred in connection with this Agreement and the Purchase (including Transaction Expenses) shall be paid by the party incurring such expense; provided that (i) at the Closing, Purchaser shall pay or cause to be paid all Transaction Expenses that are incurred but unpaid as of the Closing, (ii) Purchaser shall pay the fees, costs and expenses of the Escrow Agent and (iii) the fees and expenses of the Accounting Firm, if any, shall be allocated as provided in Section 1.3(e). At the Closing, Purchaser shall pay or cause to be paid all Company Debt.

5.6 Certain Employment Matters.

(a) Employee Plans. The Company shall take prior to the Closing all actions that were, or may be, requested by Purchaser in writing no later than one Business Days prior to the Closing Date with respect to (i) causing one or more Employee Plans to terminate as of the Closing Date, (ii)

resolutions terminating the Company 401(k) plan, as of the date immediately preceding the Closing Date and the Company shall provide a draft of such resolutions to Purchaser prior to their adoption and address, to the reasonable satisfaction of Purchaser, any comments Purchaser may have as to such resolutions, (iii) causing benefit accrual under any Employee Plan to cease as of the Closing Date or (iv) causing the continuation on and after the Closing Date of any insurance policy or arrangement relating to any Employee Plan.

(b) 401(k) Plan. As of the Closing, Purchaser, or one of Purchaser's Affiliates, shall maintain a defined contribution plan that (i) is intended to meet the requirements of Section 401(a) of the Code and (ii) includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (such plan, the "Purchaser 401(k) Plan"). Effective as of the Closing, all Continuing Employees and Key Employees who become employed by Purchaser and were eligible to participate in the Company 401(k) Plan immediately prior to the Closing shall be eligible to participate in the Purchaser 401(k) Plan according to the terms of such plans.

(c) Welfare Plans. Continuing Employees and Key Employees shall be eligible to participate in Purchaser's health and employee welfare benefit plans provided to similarly situated employees of Parent, with coverage effective as of the Closing. Purchaser shall waive any preexisting condition exclusions, evidence of insurability requirements and waiting periods with respect to participation and coverage requirements for the Continuing Employees and Key Employees under Purchaser medical, dental and vision plans in which they participate, to the extent permitted by such plans. With respect to the plan year in which the Closing occurs, Purchaser shall provide credit for co-payments, deductibles and maximum out-of-pocket requirements under the Employee Plans for the purpose of satisfying any applicable co-payment, deductible or maximum out-of-pocket requirements under Parent medical, dental and vision plans, to the extent permitted by such plans. Purchaser also shall roll-over to Purchaser's flexible spending account plan the account balances and elections of Continuing Employees and Key Employees with respect to the Company's medical and dependent care flexible spending account plans for the plan year in which the Closing occurs. This Section 5.6(c) shall not be deemed to make any employee of the parties hereto or their respective subsidiaries a third-party beneficiary of this Section 5.6(c) or any rights relating hereto.

(d) Notices. Prior to the Closing, the Company shall give all notices and other information required to be given to the employees of the Company, any collective bargaining unit representing any group of employees of the Company, and any applicable government authority under any Applicable Law in connection with the Purchase.

(e) Founder PTO. Each Founder agrees that his Pro Rata Share of the Purchase Consideration includes payment in full for any unused paid time off that such Founder accrued during his employment with the Company in excess of the amount of accrued but unused paid time off to be transferred to Purchaser in accordance with such Founder's Employment Offer Documents.

5.7 Purchaser RSUs. As inducements to entering into employment with Purchaser, the Founders shall be granted on the Closing Date a number of restricted stock units (the "Purchaser RSUs") equal to (i) \$15,000,000 divided by (ii) the average closing price per share for Purchaser's common stock for the 30 trading days immediately preceding the Closing Date. The Purchaser RSU shall be (i) allocated equally between the recipients thereof, (ii) vest over two years, with 50% vesting on each of the first and second anniversaries of the Closing Date; provided that such recipients are still employed by Purchaser as of such vesting date, (iii) granted in accordance with Rule 5635(c)(4) of the Nasdaq Marketplace Rules and (iv) subject to the restricted stock unit agreement substantially in the form attached hereto as Exhibit E and executed by Purchaser and the recipient thereof (a "Purchaser RSU Agreement"). For the avoidance of doubt, Purchaser shall be responsible for the employer portion of any payroll taxes due in

connection with the payment of such Purchaser RSUs.

5.8 Certain Closing Certificates and Documents. The Company shall prepare and deliver to Purchaser a draft of each of the Company Closing Financial Certificate and the Spreadsheet prior to the Closing and a final version of the Company Closing Financial Certificate and the Spreadsheet to Purchaser (which final version shall be revised by the Company to reflect any changes thereto as may be agreed by Purchaser and the Company prior to the Closing). Without limiting the foregoing the Company shall provide to Purchaser, together with the Company Closing Financial Certificate and the Spreadsheet, reasonable supporting information to evidence the calculations, amounts and other matters set forth in the Company Closing Financial Certificate and the Spreadsheet.

5.9 Tax Matters.

(a) Preservation of S Corporation Status. Through and including the Closing, the Company and the Sellers shall not revoke the Company's election to be treated as an S corporation within the meaning of Sections 1361 and 1362 of the Code or any similar election under state or local Tax law. Neither the Company nor the Sellers shall take or allow any action (other than the Purchase) that would result in the termination of the Company's status as a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code or any comparable provision of state or local Tax law.

(b) Responsibility for Tax Returns for Pre-Closing Tax Periods.

(i) The Sellers shall prepare, or cause to be prepared, and shall timely file or cause to be filed, all Tax Returns for the Company required to be filed on or prior to the Closing Date and shall prepare, or cause to be prepared, and shall deliver to Purchaser as provided below, all income Tax Returns for the Company for all periods ending on or prior to the Closing Date, whether required to be filed before, on or after the Closing Date. Such Tax Returns shall be prepared in accordance with Applicable Laws and consistent with past practices. The Sellers shall deliver to the Purchaser draft copies of each such Tax Return no later than the earlier of 30 days prior to the date for filing such Tax Return or six months after the Closing Date. The Sellers shall permit Purchaser to review and comment on each such income Tax Return prior to filing, and shall (A) consider in good faith Purchaser's reasonable comments on each such income Tax Return made within 15 days of the Purchaser's receipt of the draft copies of such income Tax Returns and (B) with respect to the reporting of items of income, gain, loss and deduction arising from the deemed asset sale resulting from the Section 338(h)(10) Election, make all changes to such income Tax Returns requested by Purchaser within 15 days of Purchaser's receipt of the draft copies of such income Tax Returns that are consistent with Applicable Law. The Sellers shall deliver the final income Tax Returns to Purchaser not less than five days prior to the earlier of the date for filing such income Tax Returns or seven months of the Closing Date. Purchaser shall timely file or cause to be filed such income Tax Returns for the Company and provide copies of such income Tax Returns to the Sellers within five days of filing. Not later than five days prior to the filing date of any such income Tax Return, the Sellers shall pay to Purchaser the amount of (i) any Pre-Closing Taxes and (ii) to the extent provided in Section 5.9(d), any Company-Level Section 338(h)(10) Taxes, in each case as reflected on such Tax Returns to the extent not included in the calculation of Company Net Working Capital. The Sellers shall include any Tax items in the Sellers' income Tax Returns in a manner consistent with the Company's income Tax Returns for all periods ending on or prior to the Closing Date.

(ii) Except as set forth in Section 5.9(b)(i), Purchaser shall prepare and file, or cause to be prepared and filed, all Tax Returns for the Company required to be filed after the Closing Date. Beginning 10 days prior to the due date for payment of any Taxes with respect to

any such Tax Return for a taxable period beginning before the Closing Date, Purchaser shall be entitled to reimbursement from the Escrow Fund for the amount of any Pre-Closing Taxes as reflected on such Tax Returns (to the extent not included in the calculation of Company Net Working Capital).

(c) Responsibility for Audits and Examinations. The Sellers shall have the sole right to control and make all decisions regarding any Tax audit, examination or other administrative or court proceeding relating to Tax Returns filed on or prior to the Closing Date and all income Tax Returns of the Company for all periods ending on or prior to the Closing Date, including selection of counsel and selection of a forum for such matters; provided that if such audit, examination or proceeding reasonably could be expected to adversely affect Purchaser or any of its Affiliates (including the Company) for any Tax period or portion of a period after the Closing Date, Purchaser shall have the right (but not the obligation) to participate in such audit, examination or proceeding and the Sellers shall not enter into any settlement or agreement with the relevant Tax Authority with respect to such audit, examination or proceeding without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Section 338(h)(10) Election. The Company and each Seller shall join with Purchaser in making an election under Section 338(h)(10) of the Code and any corresponding election under state, local, and non-U.S. tax law) with respect to the Purchase (collectively, the "Section 338(h)(10) Election"). Each Seller shall include any income, gain, loss, deduction or other tax item resulting from the Section 338(h)(10) Election on his individual income Tax Returns to the extent required by Applicable Law. The Sellers shall also pay to Purchaser (i) any Tax of the Company attributable to the deemed asset sale as a result of making of the Section 338(h)(10) Election ("Company-Level Section 338(h)(10) Taxes") up to \$200,000 and (ii) any amount of Company-Level Section 338(h)(10) Taxes that the Company is assessed or required to pay that, together with any penalties and interest thereon, exceeds \$300,000. For the avoidance of doubt, Company-Level Section 338(h)(10) Taxes shall (i) include any Tax imposed under Section 1374 of the Code, any Tax imposed under Treasury Regulations Section 1.338(h)(10)-1(d)(2), any state, local or non-U.S. Tax imposed on the Company's gain on the deemed asset sale and any Taxes required to be withheld by the Company under Applicable Laws on a Seller's share of the Company's gain, and (ii) exclude, and the Sellers shall not be required to indemnify Purchaser against, any Taxes or tax detriments suffered by the Purchaser or the Company in a taxable period (or portion thereof) beginning after the Closing Date resulting from the Purchaser's or the Company's failure or inability to claim deductions for the amortization of the Company's assets.

(i) To facilitate the Section 338(h)(10) Election, Purchaser and the Sellers shall cooperate to prepare copies of Internal Revenue Service Form 8023 and any similar forms under applicable state, local and foreign income Tax law (collectively, the "338(h)(10) Forms"). The 338(h)(10) Forms shall be duly executed by each Seller and an authorized person for Purchaser at the Closing. Purchaser shall duly and timely file the 338(h)(10) Forms as prescribed by Treasury Regulations Section 1.338(h)(10)-1 or the corresponding provisions of applicable state, local or foreign income Tax law.

(ii) Purchaser shall provide the Sellers' Agent with a draft of Internal Revenue Service Form 8883 (including the calculation and proposed allocation of the Purchase Consideration consistent with the principles of allocating the Purchase Consideration used in the determination of the Gross-Up Amount and the requirements of Section 338 and the Treasury Regulations promulgated thereunder) within 60 days following the Closing Date. The Sellers' Agent shall review such Form 8883 and provide any proposed revisions to Purchaser within 15 days after receipt thereof, and Purchaser shall consider in good faith any reasonable comments

received from the Sellers' Agent. The Form 8883, as prepared by Purchaser after considering any reasonable comments received from the Sellers' Agent, shall be referred to as the "Final Allocation." Each of Purchaser, the Company and the Sellers shall prepare and file all Tax Returns consistent with, and shall not take any Tax position inconsistent with, the Final Allocation.

(e) Cooperation; Maintenance of Records. Each of Purchaser, the Sellers, the Company and the Sellers' Agent shall cooperate fully, as and to the extent reasonably requested by any of the others, in connection with the filing of Tax Returns and any Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request therefor) the provision of records and information reasonably relevant to any such Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Without limiting the generality of the foregoing, the Company and each Seller shall execute such forms and documents as Purchaser may reasonably request to perfect the filing of the Section 338(h)(10) Election with the applicable Tax Authorities. Purchaser, the Sellers, the Company and the Sellers' Agent agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority.

## ARTICLE VI CONDITIONS TO THE PURCHASE

6.1 Conditions to Obligations of the Company. The obligations of the Company to consummate the Purchase shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions (it being understood that each such condition is solely for the benefit of the Company and may be waived by the Company in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The representations and warranties of Purchaser herein shall be true and correct in all respects (after taking into account any qualifications included therein, including any materiality or similar qualifiers) on the date hereof (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). Purchaser shall have performed and complied in all material respects with all covenants, agreements and obligations herein required to be performed and complied with by Purchaser at or prior to the Closing.

(b) Receipt of Closing Deliveries. The Company shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(a).

6.2 Conditions to the Obligations of Purchaser. The obligations of Purchaser to consummate the Purchase shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions (it being understood that each such condition is solely for the benefit of Purchaser and may be waived by Purchaser in writing in its sole discretion without notice or Liability to any Person):

(a) Representations, Warranties and Covenants. The representations and warranties of the Company herein shall be true and correct in all respects (after taking into account any qualifications included therein, including any materiality or similar qualifiers) on the date hereof (except for representations and warranties that address matters only as to a specified date or dates, which representations and warranties shall be true and correct with respect to such specified date or dates). The Company shall have performed and complied in all material respects with all covenants, agreements and

obligations herein required to be performed and complied with by the Company at or prior to the Closing.

(b) Receipt of Closing Deliveries. Purchaser shall have received each of the agreements, instruments, certificates and other documents set forth in Section 1.2(b).

(c) Injunctions or Restraints on Ownership of Membership Interest. No Governmental Entity shall have commenced any Proceeding challenging or seeking the recovery of a material amount of damages in connection with the Purchase or seeking to prohibit the ownership by Purchaser of 100% of the Membership Interest.

(d) No Material Adverse Effect. There shall not have occurred and be continuing a Material Adverse Effect.

(e) Employees. Each of the Key Employees shall continue to be employed by the Company, each of the Employment Offer Documents signed by the Key Employees shall continue to be in full force and effect and no action shall have been taken by any such individual to rescind any of such documents.

## **ARTICLE VII TERMINATION**

7.1 Termination. At any time prior to the Closing, this Agreement may be terminated by mutual written consent duly authorized by Purchaser and the Company.

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no Liability on the part of Purchaser, the Company, the Sellers or their respective officers, directors, securityholders or Affiliates; provided that (a) Section 5.1 (Confidentiality; Public Disclosure), Section 5.5 (Expenses), this Section 7.2 (Effect of Termination), Article IX (General Provisions) and any related definition provisions in or referenced in Exhibit A and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (b) nothing herein shall relieve any party hereto from Liability directly or indirectly arising out of or resulting from any breach of such party's representations, warranties, covenants, agreements or obligations contained herein.

## **ARTICLE VIII ESCROW FUND AND INDEMNIFICATION**

### 8.1 Escrow Fund.

(a) Purchaser shall withhold the Escrow Amount from the Purchase Consideration payable pursuant to Section 1.1(a) and, at the Closing, shall deposit the Escrow Amount, by wire transfer of immediately available funds, with Wells Fargo Bank, National Association, or another institution selected by Purchaser and reasonably satisfactory to the Company, as escrow agent (the "Escrow Agent") (the aggregate amount of cash so held by the Escrow Agent from time to time, including all accumulated earnings thereon, the "Escrow Fund"), which Escrow Fund shall be governed by this Agreement and the escrow agreement in substantially the form attached hereto as Exhibit F with such changes as Purchaser and the Sellers' Agent may agree in writing (the "Escrow Agreement"). The Escrow Fund shall constitute partial security for the benefit of Purchaser (on behalf of itself or any other Indemnified Person) with respect to any Indemnifiable Damages pursuant to the indemnification obligations of the Sellers under this Article VIII and, at Purchaser's election, any payment required to be made to Purchaser pursuant to Section 1.3(d) and Section 5.9. The Escrow Agent shall hold the Escrow Fund until 11:59

p.m. Pacific time on the date (the “Escrow Release Date”) that is 16 months following the Closing Date (the period between the Closing and such time, the “Escrow Period”).

(b) Subject to Section 8.4, within two Business Days following the Escrow Release Date, the Escrow Agent will distribute to each Seller such Seller’s Pro Rata Share of the Escrow Fund; provided that if there are any claims for indemnification specified in any Claim Certificate delivered to the Sellers’ Agent prior to the Escrow Release Date in accordance with this Article VIII that are pending on the Escrow Release Date, the applicable portion of the Escrow Fund that is subject to any such claims shall not be released until such applicable claims are finally resolved and satisfied. Any portion of the Escrow Fund held by the Escrow Agent following the Escrow Release Date with respect to pending but unresolved claims for indemnification that is not awarded to Purchaser upon the resolution of such claims shall be distributed by the Escrow Agent to the Sellers within two Business Days following resolution of such claims and in accordance with each such Seller’s Pro Rata Share of such portion of the Escrow Fund.

## 8.2 Indemnification.

(a) Subject to the limitations set forth in this Article VIII, from and after the Closing, the Sellers shall severally (according to such Seller’s Pro Rata Share) but not jointly indemnify and hold harmless Purchaser and the Company and their respective officers, directors, agents and employees, members, and Affiliates and each Person, if any, who controls or may control Purchaser within the meaning of the Securities Act (each of the foregoing being referred to individually as an “Indemnified Person” and collectively as “Indemnified Persons”) from and against any and all losses, liabilities, damages (including consequential, special, punitive, exemplary or similar damages; provided that any such damages that are special, punitive or exemplary shall only be so included to the extent paid to a third party; provided, further, that any such damages that are consequential shall only be so included to the extent awardable under Applicable Law), fees, penalties, fines, reasonable costs and expenses, including the reasonable costs of investigation and defense and reasonable fees and expenses of outside counsel, experts and other professionals, directly or indirectly (collectively, “Indemnifiable Damages”) arising out of or resulting from:

(i) any failure of any representation or warranty made by the Company or the Sellers herein or in the Company Disclosure Schedule (including any exhibit or schedule to the Company Disclosure Schedule) to be true and correct as of the date hereof (except in the case of representations and warranties that by their terms speak only as of a specific date or dates, which representations and warranties shall be true and correct as of such date or dates);

(ii) any failure of any certification, representation or warranty made by the Company in any certificate (other than the Spreadsheet and the Company Closing Financial Certificate) delivered by the Company or the Sellers to Purchaser pursuant to this Agreement to be true and correct as of the date hereof;

(iii) any breach of, or default in connection with, any of the covenants, agreements or obligations made by the Company or the Sellers herein;

(iv) any inaccuracies in the Spreadsheet or the Company Closing Financial Certificate (including any inaccuracies resulting from the failure of the Company to properly take into account any item of Company Cash, Company Debt, Company Net Working Capital or Transaction Expense);

(v) any claim by any Person other than the Sellers that such Person is



entitled to any Equity Interest in the Company or any payment in connection with the Purchase (including as a result of any failure to obtain and deliver a Spousal Consent); or

(vi) any Pre-Closing Taxes to the extent not included in the calculation of Company Net Working Capital, any Company-Level Section 338(h)(10) Taxes to the extent that Sellers are obligated to pay such Taxes to Purchaser pursuant to Section 5.9(d) or the Sellers' portion of the Taxes described in Section 1.5 to the extent not paid by the Sellers.

(b) Materiality and knowledge standards or qualifications, qualifications or requirements that a matter be or not be "reasonably expected" or "reasonably likely" to occur and qualifications by reference to the defined term "Material Adverse Effect" in any representation, warranty, covenant, agreement or obligation shall only be taken into account in determining whether a breach of or default in connection with such representation, warranty, covenant, agreement or obligation (or failure of any representation or warranty to be true and correct) exists, and shall not be taken into account in determining the amount of any Indemnifiable Damages with respect to such breach, default or failure to be true and correct.

### 8.3 Indemnifiable Damage Threshold; Other Limitations.

(a) Notwithstanding anything to the contrary contained herein, no Indemnified Person may make a claim against the Escrow Fund in respect of any claim for Indemnifiable Damages directly or indirectly arising out of or resulting from the matters listed in clauses (i) and (ii) of Section 8.2(a) (other than claims directly or indirectly arising out of or resulting from any failure of any of the Fundamental Representations unless and until the Indemnified Persons have suffered, paid, sustained or incurred Indemnifiable Damages in an aggregate amount greater than \$375,000 (the "Threshold Amount"), in which case the Indemnified Persons may make claims for indemnification and may receive cash from the Escrow Fund for all Indemnifiable Damages (including all amounts below the Threshold Amount).

(b) If the Purchase is consummated, recovery from the Escrow Fund shall constitute the sole and exclusive remedy for the indemnity obligations under this Agreement for the matters listed in clauses (i) and (ii) of Section 8.2(a), except (i) in the case of fraud, willful breach or intentional misrepresentation by or on behalf of any Person, (ii) any failure of any of the representations and warranties (A) of the Company or the Sellers contained in Section 2.2, Section 2.3(a), Section 2.3(b)(ii)(A), Section 2.3(b)(ii)(C) or Article III or (B) of the Company or the Sellers contained in any certificate delivered to Purchaser pursuant to this Agreement that are within the scope of those covered by the foregoing Sections (collectively, the "Fundamental Representations") to be true and correct as aforesaid and (iii) as provided in Section 9.10. In the case of all other claims, including claims directly or indirectly arising out of or resulting from (i) fraud, willful breach or intentional misrepresentation by or on behalf of the Company and (ii) any failure of any of the Fundamental Representations to be true and correct as aforesaid, after Indemnified Persons have exhausted all amounts of cash held in the Escrow Fund (after taking into account all other claims for indemnification from the Escrow Fund made by Indemnified Persons), each Seller shall have Liability for such Seller's Pro Rata Share of the amount of any Indemnifiable Damages resulting therefrom; provided that such Liability shall be limited to the aggregate amount of cash actually paid to such Seller pursuant to Section 1.1(a); provided, further, that such limitation of Liability shall not apply to a Seller in the case of (x) fraud, willful breach or intentional misrepresentation by or on behalf of such Seller or (y) fraud, willful breach or intentional misrepresentation by or on behalf of the Company in which such Seller participated or had knowledge.

(c) Notwithstanding anything to the contrary contained herein, (i) no Seller shall have any right of indemnification, contribution or right of advancement from Purchaser or any other

Indemnified Person with respect to any Indemnifiable Damages claimed by any Indemnified Person or any right of subrogation against the Company with respect to any indemnification of a Indemnified Person by reason of any of the matters set forth in Section 8.2 and (ii) the rights and remedies of the Indemnified Persons after the Closing shall not be limited by (x) any investigation or disclosure (other than as set forth in the Company Disclosure Schedule to the extent provided in the preamble of Article II) made by or on behalf of any Indemnified Person prior to the Closing regarding any failure, breach or other event or circumstance or (y) any waiver of any condition to the Closing related thereto.

8.4 Period for Claims. The period during which claims for Indemnifiable Damages may be made (the "Claims Period") (i) against the Escrow Fund for Indemnifiable Damages directly or indirectly arising out of or resulting from the matters listed in clauses (i) and (ii) of Section 8.2(a) (other than with respect to any of the Fundamental Representations) shall commence at the Closing and terminate at 11:59 p.m. Pacific time on the last date of the Escrow Period and (ii) for Indemnifiable Damages directly or indirectly arising out of or resulting from any other matter shall commence at the Closing and terminate upon the expiration of the applicable statute of limitations. Notwithstanding anything to the contrary contained herein, such portion of the Escrow Fund at the conclusion of the Escrow Period as is the subject of any unresolved or unsatisfied claims for Indemnifiable Damages specified in any Claim Certificate delivered to the Sellers' Agent in accordance with Section 8.5 shall remain in the Escrow Fund until such claims for Indemnifiable Damages have been resolved or satisfied. The availability of the Escrow Fund to indemnify the Indemnified Persons will be determined without regard to any right to indemnification that any Seller may have in his or her capacity as an officer, director, employee or agent of the Company and no such Seller will be entitled to any indemnification from the Company for amounts paid for indemnification under this Article VIII.

8.5 Claims.

(a) From time to time during the applicable Claims Period, Purchaser may deliver to the Sellers' Agent one or more certificates signed by any officer of Purchaser (each, a "Claim Certificate"):

(i) stating that an Indemnified Person has suffered, paid, sustained or incurred, or in good faith reasonably expects to suffer, pay, sustain or incur (which may be evidenced by the fact that such Indemnified Person was required (in such Indemnified Person's reasonable determination) under GAAP to reserve or accrue Indemnifiable Damages), Indemnifiable Damages;

(ii) stating the amount of such Indemnifiable Damages (which, in the case of Indemnifiable Damages not yet suffered, paid, sustained or incurred, may be the maximum amount reasonably expected by Purchaser in good faith to be incurred, paid or demanded by a third party); and

(iii) specifying in reasonable detail (based upon the information then available to Purchaser) the individual items of such Indemnifiable Damages included in the amount so stated, the nature of the claim (including, if applicable, the representation or warranty in this Agreement) to which such Indemnifiable Damages are related and, if applicable, the section(s) or subsection(s) of this Agreement from which such Indemnifiable Damages arise or result.

(b) Any Claim Certificate may be updated and amended from time to time by Purchaser delivering an updated or amended Claim Certificate, so long as the delivery of the original Claim Certificate is made within the applicable Claims Period and in accordance with this Section 8.5,

and only in the event that such Claim Certificate, as so updated or amended, continues to satisfy the requirements of clauses (i) through (iii) of Section 8.5(a). No Indemnifiable Damages may be sought pursuant to this Article VIII by any Indemnified Person unless such Indemnifiable Damages are the subject of a Claim Certificate delivered in accordance with this Section 8.5.

#### 8.6 Resolution of Objections to Claims.

(a) If the Sellers' Agent does not contest, by written notice to Purchaser, any claim or claims by Purchaser made in any Claim Certificate and the Indemnifiable Damages that any Person has claimed with respect thereto within the 30-day period following receipt of the Claim Certificate, then the Escrow Agent shall, at Purchaser's direction, distribute to Purchaser an amount of cash from the Escrow Fund having a total value equal to the amount of such Indemnifiable Damages the Sellers' Agent has not contested corresponding to such claim or claims as set forth in such Claim Certificate.

(b) If the Sellers' Agent objects in writing to any claim or claims by Purchaser made in any Claim Certificate within the 30-day period following receipt of the Claim Certificate, Purchaser and the Sellers' Agent shall attempt in good faith for 30 days after Purchaser's receipt of such written objection to resolve such objection. If Purchaser and the Sellers' Agent shall so agree, a joint written instruction setting forth such agreement shall be prepared, signed by both parties and delivered to the Escrow Agent. Upon receipt of such instruction, the Escrow Agent shall distribute to Purchaser an amount of cash from the Escrow Fund in accordance with the terms of such joint written instruction.

(c) If no such agreement can be reached during the 30-day period for good faith negotiation set forth in Section 8.6(b), or such longer period as Purchaser and the Sellers' Agent may mutually agree, either Purchaser or the Sellers' Agent may bring suit in a court of competent jurisdiction in accordance with Section 9.11 to resolve the matter. The ultimate decision in any such suit as to the validity and amount of any claim in such Claim Certificate shall be binding and conclusive upon the parties hereto, and Purchaser or, following the Escrow Release Date, the Sellers' Agent shall be entitled to instruct the Escrow Agent to distribute an amount of cash from the Escrow Fund in accordance therewith. Upon receipt of such instruction, the Escrow Agent shall distribute an amount of cash from the Escrow Fund in accordance with the terms of such written instruction.

(d) In any Proceeding in which any claim or the amount thereof stated in a Claim Certificate is at issue, the court shall determine the prevailing party and the prevailing party shall be entitled to seek to recover its reasonable costs and expenses arising out of, resulting from or in connection with such Proceeding, including reasonable attorneys' fees and costs.

(e) If any amount is to be distributed from the Escrow Fund in accordance with this Agreement and the Escrow Agreement, the recipient of such amount shall deliver written instructions to the Escrow Agent (with a copy to Purchaser or the Sellers' Agent, as applicable) stating the amount and designated recipient of such distribution and any other information reasonably necessary for the Escrow Agent to make such distribution.

#### 8.7 Sellers' Agent.

(a) At the Closing, Fortis Advisors LLC shall be constituted and appointed as the Sellers' Agent. The Sellers' Agent shall be the agent for and on behalf of the Sellers to: (i) execute, as Sellers' Agent, this Agreement and any agreement or instrument entered into or delivered in connection with the Purchase, (ii) give and receive notices, instructions and communications permitted or required under this Agreement, or any other agreement, document or instrument entered into or executed in connection herewith, for and on behalf of any Seller, to or from Purchaser (on behalf of itself or any other

Indemnified Person) relating to this Agreement or the Purchase and any other matters contemplated by this Agreement or by such other agreement, document or instrument (except to the extent that this Agreement expressly contemplates that any such notice or communication shall be given or received by each Seller individually), (iii) review, negotiate and agree to and authorize Purchaser to reclaim an amount of cash from the Escrow Fund in satisfaction of claims asserted by Purchaser (on behalf of itself or any other Indemnified Person, including by not objecting to such claims) pursuant to this Article VIII, (iv) object to such claims pursuant to Section 8.6, (v) consent or agree to, negotiate, enter into, or, if applicable, contest, prosecute or defend, settlements and compromises of, and comply with Orders of courts and awards of arbitrators (including awards contemplated by Section 1.3(c)) with respect to, such claims, resolve any such claims, take any actions in connection with the resolution of any dispute relating hereto or to the Purchase by settlement or otherwise, and take or forego any or all actions permitted or required of any Seller or necessary in the judgment of the Sellers' Agent for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement, (vi) consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Sellers, (vii) consent or agree to any amendment to this Agreement or to waive any terms and conditions of this Agreement providing rights or benefits to the Sellers (other than with respect to the payment of the Purchase Consideration less the Escrow Amount) in accordance with the terms hereof and in the manner provided herein and (viii) take all actions necessary or appropriate in the judgment of the Sellers' Agent for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance unless required by Applicable Law. Purchaser and its Affiliates (including after the Closing, the Company) shall be entitled to rely on the appointment of Fortis Advisors LLC as the Sellers' Agent and treat such Sellers' Agent as the duly appointed attorney-in-fact of each Seller and has having the duties, power and authority provided for in this Section 8.7. The Sellers shall be bound by all actions taken and documents executed by the Sellers' Agent in connection with this Article VIII, and Purchaser and other Indemnified Persons shall be entitled to rely exclusively on any action or decision of the Sellers' Agent. The powers, immunities and rights to indemnification granted to the Sellers' Agent under this Agreement: (1) are coupled with an interest and shall be irrevocable and survive the death, incompetence, bankruptcy or liquidation of the respective Seller and shall be binding on any successor thereto, and (2) shall survive the delivery of an assignment by any Seller of the whole or any fraction of his, her or its interest in the Escrow Fund. The Person serving as the Sellers' Agent may be replaced from time to time by the holders of a majority in interest of the aggregate amount of cash then held in the Escrow Fund upon not less than 30 days' prior written notice to Purchaser. No bond shall be required of the Sellers' Agent. The immunities and rights to indemnification and shall survive (1) the replacement (by resignation or removal) of the Sellers' Agent and (2) the Closing and/or any termination of this Agreement and the Escrow Agreement.

(b) Neither the Sellers' Agent nor any of its Representatives shall be liable to any Seller for any act done or omitted hereunder as the Sellers' Agent while acting in good faith (and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith) and without gross negligence or willful misconduct. The Sellers shall severally but not jointly indemnify the Sellers' Agent and hold it harmless against any loss, Liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Sellers' Agent and arising out of, resulting from or in connection with the acceptance or administration of his duties hereunder, including all reasonable out-of-pocket costs and expenses and fees of attorneys, accountants or other advisors or experts incurred by the Sellers' Agent in connection with such duties. If not paid directly to the Sellers' Agent by the Sellers, such losses, Liabilities or expenses may be recovered by the Sellers' Agent from the portion of the Escrow Fund otherwise distributable to the Sellers (and not distributed or distributable to an Indemnified Person or subject to a pending indemnification claim of an Indemnified Person) after the expiration of the Escrow Period pursuant to the terms hereof, at the time of distribution, and such recovery will be made from the Sellers according to their respective Pro Rata Shares of such losses, Liabilities or expenses. The Sellers acknowledge that the Sellers' Agent shall not be required to expend

or risk its own funds or otherwise incur any financial liability in the exercise or performance of any of its powers, rights, duties or privileges or administration of the Sellers' Agent's duties.

(c) Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Sellers' Agent that is within the scope of the Sellers' Agent's authority under Section 8.7(a) shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of all the Sellers and shall be final, binding and conclusive upon each such Seller; and each Indemnified Person shall be entitled to rely exclusively upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Seller. Purchaser, the Company and the Indemnified Persons are hereby relieved from any Liability to any Person for any acts done by them in accordance with such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of the Sellers' Agent.

(d) The Sellers' Agent shall designate one or more Persons to serve as successor Sellers' Agents in the event of its resignation or bankruptcy, which Person or Persons shall in such event succeed to and become vested with all the rights, powers, privileges and duties of the Sellers' Agent under this Agreement. Each successor Sellers' Agent shall designate one or more Persons to serve as successor Sellers' Agents in the event of such successor Sellers' Agent's resignation, death, incapacity, bankruptcy or dissolution.

8.8 Third-Party Claims. In the event of the assertion of any claim (other than a direct claim against one or more Sellers by one or more Indemnified Persons) with respect to which any of the Sellers may become obligated to hold harmless, indemnify, compensate or reimburse any Indemnified Person (a "Third Party Claim"), Purchaser will, promptly after receipt of notice of any such Third-Party Claim, notify the Sellers' Agent of the commencement thereof; provided that the failure to so notify the Sellers' Agent of the commencement of any such Third-Party Claim will relieve the Sellers from liability in connection therewith only if and to the extent that such failure prejudices the defense of such Third-Party Claim. Purchaser shall control the defense or settlement of such Third-Party Claim; provided that the Sellers' Agent (or, in the event indemnification is being sought hereunder directly from a Seller, such Seller) and its counsel (at the Sellers' or such Seller's sole expense, as applicable) may participate in (but not control the conduct of) the defense of such Third-Party Claim. The Sellers' Agent and the Sellers shall make available to Purchaser any documents and materials in his possession or control that may be necessary to the defense of such Third-Party Claim. No settlement of any such Third-Party Claim without the consent of the Sellers' Agent (which consent shall not be unreasonably withheld, conditioned or delayed) shall be determinative of the existence of or amount of Indemnifiable Damages relating to such matter. In the event that the Sellers' Agent has consented to any such settlement or resolution, neither the Sellers' Agent nor any Seller shall have any power or authority to object under Section 8.6 or any other provision of this Article VIII to the amount of any Indemnifiable Damages that are the subject of such settlement or resolution.

8.9 Offset of Indemnifiable Damages. All Indemnifiable Damages shall be calculated net of the amount of any actual recoveries under any existing insurance policies and contractual indemnification or contribution provisions (in each case, calculated net of any actual collection costs and reserves, expenses, deductibles or premium adjustments or retrospectively rated premiums (as determined in good faith by an Indemnified Person) incurred or paid to procure such recoveries) in respect of any Indemnifiable Damages suffered, paid, sustained or incurred by any Indemnified Person; provided that no Indemnified Person shall have any obligation to seek to obtain or continue to pursue any such recoveries.

8.10 Treatment of Indemnification Payments. Purchaser, the Sellers' Agent and the Sellers agree to treat (and cause their respective Affiliates to treat) any payment received by the Indemnified Persons pursuant to this Article VIII as adjustments to the Purchase Consideration for all Tax purposes, to the maximum extent permitted by Applicable Law.

## ARTICLE IX GENERAL PROVISIONS

9.1 Survival of Representations, Warranties and Covenants. If the Purchase is consummated, the representations and warranties of the Company contained herein, in the Company Disclosure Schedule (including any exhibit or schedule to the Company Disclosure Schedule), and in the other certificates contemplated by this Agreement shall survive the Closing and remain in full force and effect, regardless of any investigation or disclosure (other than as set forth in the Company Disclosure Schedule to the extent provided in the preamble of Article II) made by or on behalf of any of the parties hereto, until the date that is 16 months following the Closing Date; provided that the Fundamental Representations will remain operative and in full force and effect, regardless of any investigation or disclosure (other than as set forth in the Company Disclosure Schedule to the extent provided in the preamble of Article II) made by or on behalf of any of the parties hereto, until the expiration of the applicable statute of limitations (if later than the expiration of 16 months following the Closing Date) for claims against the Sellers that seek recovery of Indemnifiable Damages directly or indirectly arising out of or resulting from an inaccuracy or breach of such representations or warranties; provided, further, that no representation or warranty that is the subject of any claim that is set forth in a Claim Certificate delivered to the Sellers' Agent in accordance with Section 8.5 shall expire with respect to such claim until the final resolution of such claim; provided, further, that such expiration shall not affect the rights of any Indemnified Person under Article VIII or otherwise to seek recovery of Indemnifiable Damages directly or indirectly arising out of or resulting from any fraud, willful breach or intentional misrepresentation by or on behalf of the Company until the expiration of the applicable statute of limitations. If the Purchase is consummated, the representations and warranties of Purchaser contained herein and in the other certificates contemplated by this Agreement shall expire and be of no further force or effect as of the Closing. If the Purchase is consummated, all covenants, agreements and obligations of the parties hereto shall expire and be of no further force or effect as of the Closing, except to the extent such covenants, agreements and obligations provide that they are to be performed after the Closing; provided that no right to indemnification pursuant to Article VIII in respect of any claim based upon any breach of a covenant, agreement or obligation shall be affected by the expiration of such covenant, agreement or obligation.

9.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via e-mail to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

(i) if to Purchaser, to:

Shutterfly, Inc.  
2800 Bridge Parkway, Suite 101  
Redwood City, CA 94065  
Attention: Charlotte Falla, Vice President Legal and General  
Counsel  
Telephone No.: (650) 610-3555  
e-mails: cfalla@shutterfly.com and legal@shutterfly.com

with a copy (which shall not constitute notice) to:

Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Attention: David Michaels  
Telephone No.: (650) 988-8500  
e-mail: dmichaels@fenwick.com

(ii) if to the Company, to:

BorrowLenses.com  
Attention: Max Shevyakov and Mark Gurevich  
1664 Industrial Rd, San Carlos, CA 94070  
Telephone No.: (650) 508-3370  
e-mail: max.shevyakov@borrowlenses.com and  
mark.gurevich@borrowlenses.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati, P.C.  
One Market Plaza  
Spear Tower, Suite 3300  
San Francisco, California 94105-1126  
Attention: Rachel B. Proffitt  
Telephone No.: (650) 849-3412  
e-mail: rproffitt@wsgr.com

(iii) If to the Sellers' Agent, to:

Fortis Advisors LLC  
Attention: Notice Department  
Facsimile No. (858) 408-1843  
e-mail: notices@fortisrep.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati, P.C.  
One Market Plaza  
Spear Tower, Suite 3300  
San Francisco, California 94105-1126  
Attention: Rachel B. Proffitt  
Telephone No.: (650) 849-3412  
e-mail: rproffitt@wsgr.com

Any notice given as specified in this Section 9.2 (i) if delivered personally or sent by facsimile transmission shall conclusively be deemed to have been given or served at the time of dispatch and (ii) if sent by commercial delivery service or mailed by registered or certified mail (return receipt requested) shall conclusively be deemed to have been received on the Business Day after the post of the same.

9.3 Interpretation. When a reference is made herein to Articles, Sections, Subsections or Exhibits, such reference shall be to an Article, Section or Subsection of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The phrases “provided to,” “delivered to,” and phrases of similar import when used herein, unless the context otherwise requires, shall mean that an electronic copy of the information or material referred to has been provided to the party to whom such information or material is to be provided or delivered, including documents made available for review by Purchaser in the virtual data room hosted by Ansarada as of 11:59 p.m. on the day immediately prior to the Agreement Date (on a continuous basis and without subsequent modification). Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender, (ii) words using the singular or plural form also include the plural or singular form, respectively, (iii) the terms “hereof,” “herein,” “hereunder” and derivative or similar words refer to this entire Agreement and (iv) in comparing any two numbers, the phrases “exceeds” or “is greater than” means that (A) if both numbers are positive, the first number has a higher absolute value than the second number, (B) if both numbers are negative, the first number has a lower absolute value than the second number or (C) the first number is positive and the second number is negative, and vice versa with respect to the phrase “is less than.” The symbol “\$” refers to United States Dollars. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if.” References to a Person are also to its permitted successors and assigns. All references to “days” shall be to calendar days unless otherwise indicated as a “Business Day.”

9.4 Amendment. Subject to Applicable Law, the parties hereto may amend this Agreement by authorized action at any time pursuant to an instrument in writing signed on behalf of each of the parties hereto. To the extent permitted by Applicable Law, Purchaser and the Sellers’ Agent may cause this Agreement to be amended at any time after the Closing by execution of an instrument in writing signed on behalf of Purchaser and the Sellers’ Agent.

9.5 Extension; Waiver. At any time at or prior to the Closing, any party hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto owed to such party, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the covenants, agreements, obligations or conditions for the benefit of such party contained herein. At any time after the Closing, Purchaser and the Sellers’ Agent may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other owed to such party, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the covenants, agreements, obligations or conditions for the benefit of such party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing that is (x) prior to the Closing with respect to the Company and/or the Sellers, signed by the Company, (y) after the Closing with respect to the Sellers and/or the Sellers’ Agent, signed by the Sellers’ Agent and (z) with respect to Purchaser, signed by Purchaser. Without limiting the generality or effect of the preceding sentence, no failure to exercise or delay in exercising any right under this Agreement shall constitute a waiver of such right, and no waiver of any breach or default shall be deemed a waiver of any other breach or default of the same or any other provision herein.

9.6 Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood that all parties hereto need not sign the same counterpart. The delivery by facsimile or by electronic delivery in PDF format of this Agreement with all executed signature pages



(in counterparts or otherwise) shall be sufficient to bind the parties hereto to the terms and conditions set forth herein. All of the counterparts will together constitute one and the same instrument and each counterpart will constitute an original of this Agreement.

9.7 Entire Agreement; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the exhibits attached hereto, the Schedules, including the Company Disclosure Schedule, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with its terms and (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder (except that Article VII is intended to benefit the Indemnified Persons).

9.8 Assignment. Neither this Agreement nor any of the rights and obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void, except that Purchaser may assign its rights and delegate its obligations under this Agreement to any direct or indirect wholly owned subsidiary of Purchaser without the prior consent of any other party hereto; provided that notwithstanding any such assignment, Purchaser shall remain liable for all of its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

9.9 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably necessary to effect the intent of the parties hereto. The parties hereto shall use their reasonable best efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.10 Remedies Cumulative; Specific Performance. The parties hereto agree that irreparable damage would occur and that the parties hereto would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity, and the parties hereto hereby waive the requirement of any posting of a bond in connection with the remedies described herein. If any Proceeding relating to this Agreement or the enforcement of any provision hereof is brought by any party hereto against any other party hereto, the prevailing party shall be entitled to seek to recover reasonable attorneys' fees, costs and disbursements, in addition to any other relief to which the prevailing party may be entitled at law or in equity.

9.11 Submission to Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

(a) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California and the Federal courts of the United States of America located in the County of Santa Clara, California, in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to herein, and in respect of the Purchase, and hereby waive, and agree not to assert, as a defense in any Proceeding for the interpretation or enforcement hereof or

thereof, that it is not subject thereto or that such Proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such Proceedings shall be heard and determined in such a California State or Federal court. The parties hereto hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such Proceeding in the manner provided in Section 9.2 or in such other manner as may be permitted by Applicable Law, shall be valid and sufficient service thereof. With respect to any particular Proceeding, venue shall lie solely in the County of Santa Clara, California. A party hereto may apply to a court of competent jurisdiction for prejudgment remedies and emergency relief pending final determination of a claim pursuant to this Section 9.11.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PURCHASE OR THE AGREEMENTS OR ACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING THOSE OF PURCHASER, THE COMPANY, THE SELLERS OR THE SELLERS' AGENT (ON BEHALF OF THE SELLERS) IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

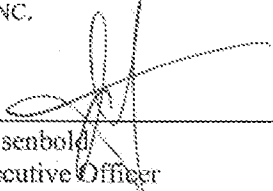
9.12 Governing Law. This Agreement, all acts and transactions pursuant hereto and all obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California without reference to such state's principles of conflicts of law that would refer a matter to a different jurisdiction.

9.13 Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, each Schedule and each Exhibit attached hereto, the application of any Applicable Law or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

[SIGNATURE PAGE NEXT]

IN WITNESS WHEREOF, Purchaser, the Company, the Sellers and the Sellers' Agent have caused this Membership Interest Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Sellers, personally), all as of the date first written above.

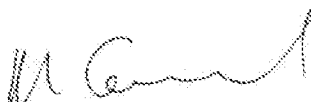
SHUTTERFLY, INC.

By:   
Name: Jeff Housenbold  
Title: Chief Executive Officer

[Signature Page to Membership Interest Purchase Agreement]

IN WITNESS WHEREOF, Purchaser, the Company, the Sellers and the Sellers' Agent have caused this Membership Interest Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Sellers, personally), all as of the date first written above.

SHEVGUR, LLC

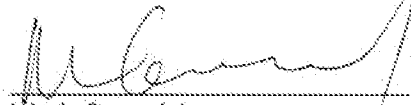
By:   
Name: Mark Gurovich  
Title: President.

[Signature Page to Membership Interest Purchase Agreement]

TRADEMARK  
REEL: 005140 FRAME: 0449

IN WITNESS WHEREOF, Purchaser, the Company, the Sellers and the Sellers' Agent have caused this Membership Interest Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Sellers, personally), all as of the date first written above.

THE SELLERS



Mark Gurevich

Max Shevyakov


Alex Rukhotskiy

[Signature Page to Membership Interest Purchase Agreement]

IN WITNESS WHEREOF, Purchaser, the Company, the Sellers and the Sellers' Agent have caused this Membership Interest Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Sellers, personally), all as of the date first written above.

THE SELLERS

\_\_\_\_\_  
Mark Gurevich

  
\_\_\_\_\_  
Max Shevyakov

\_\_\_\_\_  
Alex Rukhotskiy

[Signature Page to Membership Interest Purchase Agreement]

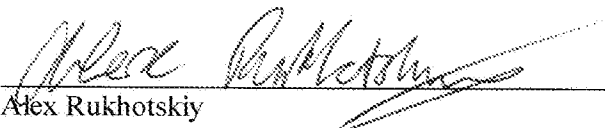
**TRADEMARK**  
**REEL: 005140 FRAME: 0451**

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THE SELLERS

\_\_\_\_\_  
Mark Gurevich

\_\_\_\_\_  
Max Shevyakov

  
\_\_\_\_\_  
Alex Rukhotskiy

[Signature Page to Membership Interest Purchase Agreement]

**TRADEMARK**  
**REEL: 005140 FRAME: 0452**

IN WITNESS WHEREOF, Purchaser, the Company, the Sellers and the Sellers' Agent have caused this Membership Interest Purchase Agreement to be executed and delivered by their respective officers thereunto duly authorized (or with respect to the Sellers, personally), all as of the date first written above.

THE SELLERS' AGENT

A handwritten signature in black ink, appearing to read "Ryan Simkin". The signature is written in a cursive style with a large initial "R".

---

Name: Ryan Simkin  
Title: Managing Director

[Signature Page to Membership Interest Purchase Agreement]

**TRADEMARK**  
**REEL: 005140 FRAME: 0453**



## Exhibit A

### DEFINITIONS

As used herein, the following terms shall have the meanings indicated below. Unless indicated otherwise, all mathematical calculations contemplated by this Agreement shall be rounded to the tenth decimal place.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, including any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person, in each case as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by Contract or otherwise.

“Applicable Law” means, with respect to any Person, any federal, state, foreign, local, municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, directive, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any Orders applicable to such Person or such Person’s Affiliates or to any of their respective assets, properties or businesses.

“Authors” means consultants and independent contractors who have been engaged by the Company to develop Intellectual Property for the Company and its employees.

“Business” means the business of the Company as currently conducted by the Company.

“Business Day” means a day (i) other than Saturday or Sunday and (ii) on which commercial banks are open for business in San Francisco, California.

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

“Company Cash” means, as of 11:59 p.m. on the day immediately preceding the Closing Date, all cash and cash equivalents held in the bank or brokerage accounts of the Company.

“Company Closing Financial Certificate” means a certificate executed by the Sellers dated as of the Closing Date, certifying the following amounts: (i) Company Cash, (ii) Company Debt (including an itemized list of each item of Company Debt and the Person to whom such Company Debt is owed), (iii) Company Net Working Capital (including (A) an itemized list of each element of the Company’s consolidated current assets included in the calculation of Company Net Working Capital and (B) an itemized list of each element of the Company’s consolidated total current liabilities included in the calculation of Company Net Working Capital) and (iv) incurred but unpaid Transaction Expenses.

“Company Debt” means, as of the Closing, all indebtedness of the Company for borrowed money, whether current or funded, short- or long-term, including any accrued and unpaid interest, fees, premiums and prepayment or termination penalties; provided that Company Debt shall not include any Liabilities for incurred but unpaid Transaction Expenses.

any security or other asset, (ii) the receipt of any income derived from any asset, (iii) the use of any asset and (iv) the possession, exercise or transfer of any other attribute of ownership of any asset).

“Material Adverse Effect” any change, event, violation, inaccuracy, circumstance or effect (each, an “Effect”) that, individually or taken together with all other Effects, (i) is, or is reasonably likely to be, materially adverse in relation to the properties, assets (including intangible assets) and liabilities (taken together), business, operations or condition of the Company, except in each case to the extent that any such Effect results from or is attributable to: (A) changes in general economic conditions (provided that such changes do not adversely affect the Company disproportionately as compared to its competitors); (B) changes affecting the industry generally in which the Company operates (provided that such changes do not adversely affect the Company disproportionately as compared to its competitors); (C) any acts of terrorism, military action or war; (D) actions by or on behalf of the Company taken at the written direction of Purchaser or taken pursuant to the express terms of this Agreement or (E) changes in Applicable Law or GAAP or (ii) prevents or is materially adverse to the ability of the Company to consummate the Purchase.

“Member” has the meaning set forth in the Company Operating Agreement.

“Order” means any judgment, writ, decree, stipulation, determination, decision, award, ruling, preliminary or permanent injunction, temporary restraining order or other order of a Governmental Entity.

“Ordinary Course Agreements” means: (i) agreements providing for the rental of photographic equipment to customers, (ii) affiliate agreements for the promotion of the Business, (iii) consignment agreements providing for the rental of third-party owned equipment through the Company’s website(s), (iv) agreements providing for the distribution of third parties’ e-books through the Company’s website(s) and (v) agreements providing for pick-up or drop-off of photographic equipment.

“Permitted Liens” means: (i) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings for which adequate reserves have been established, (ii) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (iii) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by Applicable Law, (iv) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens, (v) liens in favor of customs and revenue authorities arising as a matter of Applicable Law to secure payments of customs duties in connection with the importation of goods and (vi) rights granted pursuant to Ordinary Course Agreements.

“Person” means any natural person, company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, trust, estate, proprietorship, joint venture, business organization or Governmental Entity.

“Personal Data” means a natural person’s name, street address, telephone number, e-mail address, photograph, social security number, driver’s license number, passport number, or any other piece of information that allows the identification of a natural person or is otherwise considered personally identifiable information or personal data under Applicable Law.

“Pre-Closing Taxes” means any Taxes of the Company for a Taxable period ending on or prior to the Closing Date (excluding any Company-Level Section 338(h)(10) Taxes). In the case of any Taxes of the Company that are imposed on a periodic basis and that are payable for a Taxable period that includes (but does not end on) the Closing Date, such Taxes shall (i) in the case of property, *ad valorem*

returns and reports) filed or required to be filed with respect to Taxes.

“Third-Party Intellectual Property Rights” means any and all Intellectual Property owned by a third party.

“Transaction Expenses” means all third-party fees, costs, expenses, payments and expenditures incurred by the Company in connection with this Agreement and the Purchase, whether or not incurred, billed or accrued, including (i) the fees, costs expenses, payments and expenditures of legal counsel and accountants, (ii) any fees, costs, expenses, payments and expenditures payable to brokers, finders, financial advisors, investment bankers or similar Persons notwithstanding any earnouts, escrows or other contingencies, (iii) any such fees, costs, expenses, payments and expenditures incurred by the Sellers paid for or to be paid for by the Company and (iv) all bonuses or severance payments (excluding, for the avoidance of doubt, the Purchaser RSUs) paid or payable by the Company to its respective employees and/or consultants in connection with the Purchase, whether paid or payable at or following the Closing and any payroll taxes due in connection with any of the foregoing.

“Treasury Regulations” means the United States Treasury Department’s income tax regulations promulgated under the Code.

Other capitalized terms used herein and not defined in this Exhibit A shall have the meanings assigned to such terms in the following Sections:

“ <u>338(h)(10) Forms</u> ” .....	5.9(d)(i)	“ <u>Company Balance Sheet Date</u> ” .....	2.4(b)
“ <u>Accounting Firm’s Determination</u> ” .....	1.3(e)	“ <u>Company Balance Sheet</u> ” .....	2.4(b)
“ <u>Accounting Firm</u> ” .....	1.3(c)	“ <u>Company Disclosure Schedule</u> ” .....	Article II
“ <u>Accounts Receivable</u> ” .....	2.4(e)	“ <u>Company IP Rights Agreement</u> ” .....	2.9(e)
“ <u>Adjustment Amount</u> ” .....	1.3(d)	“ <u>Company Operating Agreement</u> ” .....	Recitals
“ <u>Agreement Date</u> ” .....	Preamble	“ <u>Company</u> ” .....	Preamble
“ <u>Agreement</u> ” .....	Preamble	“ <u>Confidential Information</u> ” .....	5.1(a)
“ <u>Amended and Restated Company Operating Agreement</u> ” .....	1.1(c)	“ <u>Confidentiality Agreement</u> ” .....	5.1(a)
“ <u>Articles of Organization</u> ” .....	1.2(b)(ii)	“ <u>Contaminants</u> ” .....	2.9(t)
“ <u>Business Day</u> ” .....	Preamble	“ <u>Determination Date</u> ” .....	1.3(c)
“ <u>Claim Certificate</u> ” .....	8.5(a)	“ <u>Disputed Amounts</u> ” .....	1.3(b)
“ <u>Claims Period</u> ” .....	8.4	“ <u>Employee NDA</u> ” .....	2.9(l)
“ <u>Closing Date</u> ” .....	1.1(b)	“ <u>Employee Plans</u> ” .....	2.11(a)
“ <u>Closing Statement</u> ” .....	1.3(a)	“ <u>Employment Offer Documents</u> ” .....	Recitals
“ <u>Closing</u> ” .....	1.1(b)	“ <u>ERISA Affiliate</u> ” .....	2.11(a)
“ <u>COBRA</u> ” .....	2.11(c)	“ <u>ERISA</u> ” .....	2.11(a)
“ <u>Company-Level Section 338(h)(10) Taxes</u> ” .....	5.9(d)	“ <u>Escrow Agent</u> ” .....	8.1(a)
“ <u>Company Authorizations</u> ” .....	2.7(b)	“ <u>Escrow Agreement</u> ” .....	8.1(a)
		“ <u>Escrow Fund</u> ” .....	8.1(a)

“ <u>Escrow Period</u> ” .....	8.1(a)	“ <u>Purchase</u> ” .....	Recitals
“ <u>Escrow Release Date</u> ” .....	8.1(a)	“ <u>Purchaser 401(k) Plan</u> ” .....	5.6(b)
“ <u>Financial Statements</u> ” .....	2.4(a)	“ <u>Purchaser RSU Agreement</u> ” .....	5.7
“ <u>Final Allocation</u> ” .....	5.9(d)(ii)	“ <u>Purchaser RSUs</u> ” .....	5.7
“ <u>Founders</u> ” .....	Preamble	“ <u>Purchaser’s Determination</u> ” .....	1.3(e)
“ <u>Fundamental Representations</u> ” .....	8.3(b)	“ <u>Purchaser</u> ” .....	Preamble
“ <u>Government Contract</u> ” .....	2.15(a)(xx)	“ <u>Released Parties</u> ” .....	3.6(a)
“ <u>Indemnifiable Damages</u> ” .....	8.2(a)	“ <u>Relevant Persons</u> ” .....	3.6(a)
“ <u>Indemnified Person</u> ” .....	8.2(a)	“ <u>Section 338(h)(10) Election</u> ” .....	5.9(d)
“ <u>Indemnified Persons</u> ” .....	8.2(a)	“ <u>Seller Claims</u> ” .....	3.6(a)
“ <u>Interim Financial Statements</u> ” .....	2.4(a)	“ <u>Sellers’ Agent’s Determination</u> ” .....	1.3(e)
“ <u>IT Systems</u> ” .....	2.9(t)	“ <u>Sellers’ Agent</u> ” .....	Preamble
“ <u>Material Contracts</u> ” .....	2.15(a)	“ <u>Sellers</u> ” .....	Preamble
“ <u>Membership Interest</u> ” .....	Recitals	“ <u>Significant Supplier</u> ” .....	2.17
“ <u>Needham</u> ” .....	1.2(b)(v)	“ <u>Spousal Consent</u> ” .....	Recitals
“ <u>Non-Competition Agreement</u> ” .....	Recitals	“ <u>Spreadsheet</u> ” .....	5.4
“ <u>non-exempt prohibited transaction</u> ” .....	2.11(c)	“ <u>Tax Authority</u> ” .....	Tax
“ <u>Notice of Objection</u> ” .....	1.3(b)	“ <u>Third-Party Claim</u> ” .....	8.8
“ <u>Open Source License</u> ” .....	2.9(r)	“ <u>Threshold Amount</u> ” .....	8.3(a)
“ <u>Open Source Materials</u> ” .....	2.9(r)		

**Exhibit B**

**Form of Spousal Consent**

**SPOUSAL CONSENT**

I, the undersigned, am the spouse of [●]. On behalf of myself, my heirs and legatees, I hereby acknowledge that I have read, understand and approve all of the terms and conditions of, and hereby irrevocably consent to, that certain Membership Interest Purchase Agreement, dated October 24, 2013 (the "Purchase Agreement") by and among Shutterfly, Inc. a Delaware corporation ("Purchaser"), ShevGur, LLC a California limited liability company (the "Company"), Mark Gurevich, Max Shevyakov and Alex Rukhotskiy (collectively, the "Sellers") and Fortis Advisors LLC, solely in his capacity as the seller's agent (the "Sellers's Agent") and hereby irrevocably agree to be bound by all terms and conditions of the Purchase Agreement, including the sale and transfer to Purchaser of one-hundred percent (100%) of the membership interest in the Company registered in the name of my spouse or otherwise registered (the "Membership Interest") that my spouse proposes to sell and transfer to Purchaser pursuant to the Purchase Agreement and the indemnification obligations set forth in Section 1.3 and Article VIII therein. I hereby irrevocably appoint my spouse as my attorney-in-fact to execute and deliver the Purchase Agreement, including any amendments or supplements thereto, and to do and perform any act necessary with respect to the sale and transfer of the Membership Interest pursuant to the Purchase Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Spouse)

\_\_\_\_\_  
(Print Name)

**Exhibit C**

**Form of Amended and Restated Company Operating Agreement**

**AMENDED AND RESTATED OPERATING AGREEMENT**  
**OF**  
**SHEVGUR, LLC**  
**A CALIFORNIA LIMITED LIABILITY COMPANY**

October 24, 2013

WHEREAS, on August 23, 2007, Mark Gurevich, Max Shevyakov and Alex Rukhotskiy (collectively, the "Former Members") caused a California limited liability company to be formed pursuant to the filing of an Articles of Organization with the Secretary of State of the State of California in accordance with the Beverly-Killea Limited Liability Company Act, as it may be amended from time to time (the "Act"), under the name "ShevGur, LLC" (the "Company");

WHEREAS, on September 6, 2008, the Former Members entered into that certain Operating Agreement of the Company (the "Original Operating Agreement");

WHEREAS, on October 24, 2013, the Former Members sold, transferred and delivered 100% of the Membership Interest (as defined in the Original Operating Agreement) to Shutterfly, Inc., a Delaware corporation (the "Member"), pursuant to the Membership Interest Purchase Agreement, dated as of October 24, 2013, by and among the Member, the Company, the Former Members and Fortis Advisors LLC as the Sellers' Agent; and

WHEREAS, pursuant to Section 8.7 of the Original Operating Agreement, the Original Operating Agreement may be amended in a writing signed by all of the Former Members;

NOW, THEREFORE, the Former Members and the Member agree that the Original Operating Agreement is hereby amended and restated in its entirety as follows:

1. Prior Agreement. The Original Operating Agreement of the Company is no longer of any force or effect.
2. Name. The name of the limited liability company is ShevGur, LLC. The Company may conduct business under that name or any other name approved by the Member or the Manager, including "BorrowLenses.com."
3. Purposes. The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act.
4. Sole Member. Shutterfly, Inc., whose principal business address is 2800 Bridge Parkway, Suite 101, Redwood City, CA 94065, is the sole member of the Company and the sole owner of, or rights holder with respect to, the Unit (as defined below). It is expressly intended and provided that the Company shall have only one member. Unless specifically provided by amendment of the Agreement, no additional members shall be admitted to the Company.
4. Member's Ownership Interest. The Company is authorized to issue a single unit of ownership interest in the Company (the "Unit") to the Member, providing all benefits to



which the holder of such Unit may be entitled in the Agreement, together with all obligations of such holder to comply with the terms and provisions of the Agreement and the Act. All prior issuances of membership units or interests shall be cancelled. The Unit shall, for all purposes, be deemed to be personal property.

5. Filing of Certificates. The Member, or any authorized person, within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates required or permitted by the Act to be filed in the Office of the Secretary of State of the State of California and any other certificates, notices or documents required or permitted by law for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

6. Registered Agent. The name of the registered agent for the Company shall be Corporation Service Company which will do business in California as CSC-Lawyers Incorporating Service.

7. Principal Business Office. The principal business office of the Company shall be the same address as that of the Member.

8. Limited Liability. The Member shall have no liability for the obligations of the Company except to the extent required by the Act.

9. Management. The management and control of the Company shall be vested in its Manager (as hereinafter defined). The initial manager of the Company shall be Brian Regan (the "Manager"). The Manager shall serve in such capacity until such time as [s]he dies, resigns or is removed by the Member. In addition to the Member, the Manager shall have the power on behalf of and in the name of the Company to carry out any and all of the objects and purposes of the Company in accordance with, and subject to the limitations contained in, the Agreement, if any, and to perform all acts which it may, in its discretion, deem necessary or desirable. Either the Manager or the Member of the Company may, from time to time, appoint officers of the Company, whose duties it shall be to run the day to day operations of the Company.

10. Indemnification of the Managers and Officers.

(a) Unless otherwise provided in this Agreement, the Company, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of Company property) shall indemnify, hold harmless and pay all judgments and claims against any Manager and/or officer relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any Manager and/or officer in connection with the business of the Company, including reasonable attorneys' fees incurred by the Manager and/or officer in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred. The Company shall indemnify, hold harmless and pay all expenses, costs, or liabilities of any Manager and/or officer, if for the benefit of the Company and in accordance with this Agreement said Manager and/or officer makes any deposit or makes any other similar payment or assumes any obligation in connection with any property proposed to be acquired by the Company and suffers any financial loss as the result of such action.

(b) Notwithstanding anything to the contrary, such indemnification shall be enforced only to the maximum extent permitted by law and no Manager or officer shall be indemnified from any liability for the fraud, intentional misconduct, gross negligence or a knowing violation of the law which was material to the cause of action.

11. Reliance by Third Parties. Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the Manager as herein set forth. Notwithstanding the foregoing, however, any act or activity which may be legally taken by the Manager of the Company may also be taken independently by the sole member thereof.

12. Duration. Except as otherwise set forth in the Agreement, the Company shall continue in perpetuity.

13. Dissolution. The Company may be dissolved by a decision made by the Member, in its discretion, to dissolve the Company; or by the entry of a decree of judicial dissolution under Section 17351 of the Act. Upon dissolution, the business of the Company shall be wound up and liquidated in an orderly manner. The Manager shall act as the liquidator to wind up the affairs of the Company pursuant to the Agreement.

14. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of California to the rights and duties of the parties. In particular, it shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Act. If it shall be determined by a court of competent jurisdiction that any provision or wording of this Agreement shall be invalid or unenforceable under the Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement, in which case this Agreement shall be construed to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable provisions.

[SIGNATURE PAGE FOLLOWS]

**Exhibit D-1**

**Form of FIRPTA Certificate: Sellers**

**CERTIFICATE OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon my disposition of a U.S. real property interest, I hereby certify the following:

- 1. I am not a nonresident alien for purposes of U.S. income taxation;
- 2. My U.S. taxpayer identification number is \_\_\_\_\_; and
- 3. My home address is \_\_\_\_\_.

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete.

**[Shareholder]**

Dated: \_\_\_\_\_

**Exhibit D-2**

**Form of FIRPTA Certificate: Company**

**CERTIFICATE OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [ShevGur LLC], the undersigned hereby certifies the following on behalf of [ShevGur, LLC] hereby certifies that:

1. [ShevGur LLC] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. [ShevGur LLC] is not a disregarded entity as defined in Treasury Regulation § 1.1445-2(b)(2)(iii);
3. [ShevGur, LLC]'s U.S. employer identification number is \_\_\_\_\_; and
4. [ShevGur LLC]'s office address is \_\_\_\_\_.

[ShevGur LLC] understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [ShevGur LLC].

[SHEVGUR LLC]

Dated: \_\_\_\_\_

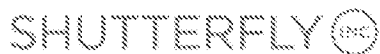
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: CEO

**Exhibit E**

**Form of Purchaser RSU Agreement**



2800 Bridge Pkwy  
Redwood City, CA 94065

shutterflyinc.com

**ATTACHMENT B - SHUTTERFLY, INC.  
2013 RESTRICTED STOCK UNIT INDUCEMENT AWARD AGREEMENT**

You ("**Participant**") have been granted an award ("**Award**") of Restricted Stock Units ("**RSUs**") by Shutterfly, Inc. ("**Company**"), subject to the terms, restrictions and conditions of this 2013 Restricted Stock Unit Inducement Award Agreement ("**Agreement**").

**Name:**

**Address:**

**Number of RSUs:**     *to be determined at close*\_\_\_\_\_

**Date of Grant:**         *to be determined*

**Expiration Date:** The date on which settlement of all RSUs granted hereunder occurs, with earlier expiration upon the Termination Date.

**Vesting Schedule:** Subject to your continued service as an employee, director or consultant of the Company or any Subsidiary of the Company, the RSUs will vest in two (2) equal annual installments on each of the first and second anniversaries of the Date of Grant.

In addition, the RSUs will vest on an accelerated basis in the event that your service as an employee, director or consultant is Terminated by the Company (or a Subsidiary of the Company), for any reason other than for "Cause" or if you resign for "Good Reason."

Participant acknowledges that, except in the case of these limited circumstances, the vesting of the RSUs pursuant to this Award ceases on the Termination Date.

- 1. Settlement.** Settlement of RSUs shall be made within thirty (30) days following the applicable date of vesting under the vesting schedule set forth above. Settlement of RSUs shall be in Shares on a one-for-one basis, subject to adjustment as provided below in the event of certain corporate events.
- 2. Adjustment of Shares.** In the event that the number or type of outstanding shares of the Company's Common Stock is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company without consideration, then the number and class of Shares reserved for settlement of this Award shall be proportionately adjusted in compliance with applicable securities laws to prevent enlargement or dilution of the benefits provided under this Award; provided, however, that fractions of a Share will not be issued.
- 3. No Shareholder Rights.** Unless and until such time as Shares are issued in settlement of vested RSUs, Participant shall have no ownership of the Shares allocated to the RSUs and shall have no right to dividends with respect to or to vote such underlying Shares.
- 4. Dividend Equivalents.** Dividends, if any (whether in cash or Shares), shall not be credited to Participant with respect to the RSUs.
- 5. No Transfer.** The RSUs and any interest therein shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of.
- 6. Termination.** If Participant's service as an employee, director or consultant of the Company (or other Subsidiary of the Company) Terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights of Participant to such RSUs shall immediately terminate, except to the extent otherwise provided in this Agreement under the heading "Vesting Schedule". In case of any dispute as to whether Termination has occurred, the Committee shall have sole discretion to determine whether such Termination has occurred and the effective date of such Termination.
- 7. Acknowledgement.** The Company and Participant agree that the RSUs are granted under and governed by this Agreement. Participant: (i) represents that Participant has carefully read this Agreement and is familiar with their provisions; and (ii) hereby accepts the RSUs subject to all of the terms and conditions set forth herein.
- 8. General Tax Consequences.** Participant acknowledges that there will be tax consequences upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and Participant should consult a tax adviser regarding Participant's tax obligations prior to such settlement or disposition. Upon vesting of the RSUs, Participant will include in income the fair market value of the Shares subject to the



RSUs. The included amount will be treated as ordinary income by Participant and will be subject to withholding by the Company when required by applicable law (the “**Tax Withholding Obligation**”). Upon vesting of the Shares in accordance with Vesting Schedule, such vested Shares, minus the number of Shares sold to offset the Tax Withholding Obligation (as defined herein), will be deposited directly into the Participant’s account with the brokerage firm so designated by the Company for this purpose (hereinafter, the “**Designated Brokerage Firm**”). Participant’s acceptance of this Award constitutes Participant’s authorization to the Company to sell on Participant’s behalf a whole number of Shares from those Shares issuable to Participant as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the minimum applicable Tax Withholding Obligation. Participant has entered into or will enter into an instruction under Rule 10b5-1 to authorize the sale described in this Section 8. Participant shall also complete any one-time sale authorization form required by the Designated Brokerage Firm. Such Shares shall be sold on the first trading day immediately following the day on which such Tax Withholding Obligation arises (e.g., a vesting date) with a market order at the opening of such trading day by the Designated Brokerage Firm. The Participant shall be responsible for all broker’s fees and other costs of sale and will indemnify and hold the Company harmless from any losses, costs, damages, or expenses arising from Participant’s failure to do so. To the extent the proceeds of such sale exceed Participant’s minimum Tax Withholding Obligation, the excess will be placed in the Participant’s account with the Designated Brokerage Firm. Participant acknowledges that the Company or the Designated Brokerage Firm is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the Participant’s minimum Tax Withholding Obligation. Participant is responsible for payment of any additional amounts to satisfy Participant’s minimum Tax Withholding Obligation. In such event, the Company shall contact Participant regarding the manner in which such additional amount will be remitted to the Company. Upon disposition of the Shares, any subsequent increase or decrease in value will be treated as short-term or long-term capital gain or loss, depending on whether the Shares are held for more than one year from the date of settlement. Further, RSUs are considered a deferral of compensation that is subject to Section 409A of the Code. Section 409A of the Code imposes special rules to the timing of making and effecting certain amendments of this Agreement with respect to distribution of any deferred compensation. You should consult your personal tax advisor for more information on the actual and potential tax consequences of these RSUs.

9. **Compliance with Laws and Regulations.** The issuance of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state, federal, and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company’s Common Stock may be listed or quoted at the time of such issuance or transfer.
10. **Successors and Assigns.** The Company may assign any of its rights under this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon Participant and Participant’s heirs, executors, administrators, legal representatives, successors and assigns.
11. **Governing Law; Severability.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes in entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof. This Agreement is governed by California law, without giving effect to that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain fully effective and enforceable.
12. **No Rights as Employee, Director or Consultant.** Participant understands that Participant’s service relationship with the Company (or any Subsidiary) is for an unspecified duration, can be terminated at any time with or without Cause. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company or a Subsidiary of the Company, to terminate Participant’s employment or other service relationship, for any reason, with or without Cause.
13. **Securities Law and Other Regulatory Compliance.** This Award will not become effective unless such Award is in compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of settlement. The Company will have no obligation to issue or deliver certificates for Shares under this Agreement prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal law or ruling of any governmental body. The Company will be under no obligation to register the Shares with the Securities and Exchange Commission or any other securities authority or to effect compliance with the registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.
14. **Corporate Transactions.** In the event of a Corporate Transaction, this Award may be assumed or replaced by the successor corporation, which assumption or replacement will be binding on Participant. In the alternative, the successor corporation may substitute an equivalent Award or provide substantially similar consideration to Participant as was provided to shareholders (after taking into account the existing provisions of this Award). The successor corporation may also issue, in place of outstanding Shares of the Company held by the Participant, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Participant. In the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute this Award, as provided above, pursuant to a Corporate Transaction,

then this Award will expire on such Corporate Transaction at such time and on such conditions at the Committee shall determine..

**15. Insider Trading Policy.** Participant shall comply with any policy adopted by the Company from time to time covering transactions in the Company's securities by employees, officers and/or directors of the Company.

**16. Certain Definitions.**

**"Board"** means the Board of Directors of the Company.

**"Cause"** means (i) employee's gross negligence or willful misconduct in the performance of the employee's duties; (ii) failure to perform the duties of such employee's role after written notice thereof from the Company describing the applicable conduct and his failure to remedy the same within thirty (30) days of receiving notice; (iii) commission of any act of fraud or dishonesty (resulting or intended to result in material personal enrichment, embezzlement, or theft against Shutterfly or any entity or individual having any connection to Shutterfly (including, without limitation, any employee, independent contractor, shareholder, agent, customer, affiliate, vendor, supplier, or business partner of Shutterfly) (any such entity or individual, a "Shutterfly-Related Person" (iv) conviction of, or plea of guilty or "no contest" to, a felony or crime of moral turpitude or dishonesty; (v) material breach of any proprietary information or inventions agreement with Shutterfly, including without limitation the Employee Invention Assignment and Confidentiality Agreement to be executed in connection with acceptance of the offer of employment; (vi) employee's continuing willful violation of any of Shutterfly's company policies or codes of conduct (including, without limitation, policies concerning ethics, insider trading, or harassment); or (vi) violence or threatened violence towards a Shutterfly-Related Person.

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

**"Committee"** means the Compensation Committee of the Board or those persons to whom administration of the Award has been delegated as permitted by law.

**"Common Stock"** shall mean the Company's common stock \$0.0001, par value per share.

**"Company-Related Person"** shall mean an entity or individual having any connection to the Company, including, without limitation, any employee, independent contractor, shareholder, agent, customer, affiliate, vendor, supplier, or business partner of the Company.

**"Corporate Transaction"** means (a) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company and the Awards granted under the Company's 2006 Equity Incentive Plan are assumed or replaced by the successor corporation, which assumption shall be binding on all Participants), (b) a dissolution or liquidation of the Company, (c) the sale of substantially all of the assets of the Company, (d) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company; or (e) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company).

**"Employment Offer"** shall mean the terms of acceptance of the offer of employment with the Company as provided under that certain offer letter of employment/employment agreement dated **October 24, 2013** between the Company and Participant.

**"Good Reason"** means employee's resignation following the occurrence of one or more of the following, without employee's express written consent: (i) a material reduction of employee's position, or the removal of employee from such position, which results in a material diminution of employee's duties and responsibilities; (ii) a material reduction in employee's base salary, bonus or benefits; or (iii) a relocation of more than thirty (30) miles from employee's then present geographic work location.

**"Parent"** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**"Shares"** means shares of the Company's Common Stock as adjusted pursuant to Sections 2 and 14 and any successor security.

**"Subsidiary"** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**“Termination”** or **“Terminated”** means with respect to a Participant, that the Participant has for any reason ceased to provide services as an employee, officer, director, consultant, independent contractor or advisor to the Company or a Parent or Subsidiary of the Company. An employee will not be deemed to have ceased to provide services in the case of (i) sick leave, (ii) military leave, or (iii) any other leave of absence approved by the Committee; provided, that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute or unless provided otherwise pursuant to formal policy adopted from time to time by the Company and issued and promulgated to employees in writing. In the case of any employee on an approved leave of absence, the Committee may make such provisions respecting suspension of vesting of the Award while on leave from the employ of the Company or a Parent or Subsidiary of the Company as it may deem appropriate, except that in no event may an Award be exercised after the expiration of the term set forth in this Agreement. The Committee will have sole discretion to determine whether a Participant has ceased to provide services and the effective date on which the Participant ceased to provide services (the **“Termination Date”**).

\* \* \*

By your signature and the signature of the Company’s representative below, Participant and the Company agree that these RSUs are granted under and governed by the terms and conditions of this Agreement. Participant has reviewed this Agreement in its entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to this Agreement. Participant further agrees to notify the Company upon any change in Participant’s residence address.

**PARTICIPANT**

**SHUTTERFLY, INC.**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Stephen Leech \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit F**

**Form of Escrow Agreement**