

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

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SUBMISSION TYPE:	RESUBMISSION		
NATURE OF CONVEYANCE:	PURCHASE AND SALE AGREEMENT		
RESUBMIT DOCUMENT ID:	900575075		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Foto Fantasy, Inc.		12/19/2014	Corporation: DELAWARE
RECEIVING PARTY DATA			
Name:	DNP Imagingcomm America Corporation		
Street Address:	4524 Enterprise Drive, N.W.		
City:	Concord		
State/Country:	NORTH CAROLINA		
Postal Code:	28027		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 6			
Property Type	Number	Word Mark	
Registration Number:	2002920	FOTO FANTASY	
Registration Number:	2288575	THE PORTRAIT STUDIO	
Registration Number:	2409979	FOTOFUN	
Registration Number:	2769186	FOTO FANTASY	
Registration Number:	4345110	INNOVATIVE FOTO	
Registration Number:	3820785	BLABABOOTH	
CORRESPONDENCE DATA			
Fax Number:	4125666099		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
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ATTORNEY DOCKET NUMBER:	195805-00043		
NAME OF SUBMITTER:	Brij K. Agarwal		
SIGNATURE:	/Brij K. Agarwal/		

DATE SIGNED:	12/15/2020
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Total Attachments: 168

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PURCHASE AND SALE AGREEMENT

by and among

DNP IMAGINGCOMM AMERICA CORPORATION

as Buyer,

FOTO FANTASY, INC.

as the Company,

and

FOTO FANTASY HOLDINGS, INC.

as Seller,

December 19, 2014

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THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is made and entered into, as of December 19, 2014, by and among DNP Imagingcomm America Corporation, a Delaware corporation (“Buyer”), Foto Fantasy, Inc. d/b/a Innovative Foto, a Delaware corporation (the “Company”), and Foto Fantasy Holdings, Inc., a Delaware corporation (“Seller”).

WHEREAS, the Company designs, manufacturers, sells and operates self-service interactive photo booths (the “Business”);

WHEREAS, Seller is the sole stockholder of the Company and owns beneficially and of record 100 shares, par value \$0.01 per share, of common stock of the Company and 1,000,000 shares, par value \$0.01 per share, of preferred stock of the Company, which constitute all the issued and outstanding shares of the Company (collectively, the “Shares”);

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Shares on the terms and conditions set forth herein; and

WHEREAS, concurrently with the execution of this Agreement, as material inducement to Buyer’s willingness to enter into this Agreement, the Company is entering into new employment agreements (the “Key Employee Employment Agreements”) with each of the Key Employees (as defined below), each containing the terms and conditions set forth in the form of Employment Agreement attached hereto as Exhibit A, that will become effective immediately prior to the Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Certain Definitions. The terms defined in this Section 1, whenever used in this Agreement (including in the Schedules), shall have the respective meanings indicated below for all purposes of this Agreement, except as otherwise expressly provided herein:

“Accountant” means an independent accounting firm of recognized national standing in the United States as may be mutually agreed upon by Buyer and Seller in writing.

“Affiliate” of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person; the term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise.

“Ancillary Agreements” means the Escrow Agreement and the Key Employee Employment Agreements.

“Business Day” means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in New York, NY or Tokyo, Japan are authorized or obligated by Law to close.

“Buyer Indebtedness” means any amount owed by the Company to Buyer or its Affiliates.

“Closing Memorandum” means a statement, in the format of Exhibit C, to be delivered by Seller to Buyer at least two (2) Business Days prior to the Closing Date (provided that if the Closing is scheduled to take place on December 31, 2014, the Closing Memorandum shall be delivered no later than December 26, 2014) that sets forth the Indebtedness of the Company, the Company Transaction Expenses, the Transaction Bonuses, the Third Party Debt, the Third-Party Debt Excess and the Intragroup Debt, in each case as of the Closing (with all applicable wire transfer information).

“Cash Overdraft” means the aggregate amount of overdraft corresponding to outstanding checks that are (a) held back by the Company (in lieu of being delivered to the relevant payees) because of an insufficient cash balance in the applicable bank account or (b) delivered to the payees but not cashed.

“Cash Overdraft Net Amount” means an amount of overdraft net of cash equal to \$450,000.

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

“Company Employees” means the persons listed on Schedule 1.1(a) who are employed by the Company immediately preceding the Closing Date, including those on vacation, leave of absence or disability.

“Company Transaction Expenses” means any legal, financial advisory, investment banking, accounting and other fees and expenses incurred by the Company in connection with the negotiation, preparation and execution of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

“Contract” means any written contract, agreement, indenture, note, bond, loan, instrument, undertaking, lease, sublease, concession agreement, purchase or sale order, conditional sales contract, mortgage, license, franchise agreement or other legally binding commitment or arrangement (including any amendment, extension, renewal, guarantee or other supplement with respect thereto).

“Copyleft Open Source” means Software or similar subject matter that is generally available in source code form and that is distributed under a license which, by its terms, (i) does not prohibit licensees of such Software from licensing or otherwise distributing such Software in source code form, (ii) does not prohibit licensees of such Software from making modifications thereof, (iii) does not require a royalty or other payment for the licensing or other distribution, or the modification, of such Software (other than a reasonable charge to compensate the provider for the cost of providing a copy thereof) and (iv) purports to require a licensee to make one’s modifications, derivatives and or enhancements of such licensed Software or similar subject

matter available to distributees or others in designated circumstances under the terms of such copyleft open source license. Copyleft Open Source includes Software distributed under such licenses as the GNU General Public License and GNU Lesser General Public License.

“Current Assets” means and includes all accounts receivable, inventory, prepaid expenses and other current assets of the Company, in each case as determined in accordance with the Company’s past practices and procedures, consistently applied and otherwise consistent with GAAP.

“Current Liabilities” means and includes all accounts payable and accrued expenses and other current Liabilities of the Company (excluding the Buyer Indebtedness, Company Transaction Expenses, Transaction Bonuses and the current portion of the Third-Party Debt, but including accrued but unpaid Taxes), in each case as determined in accordance with the Company’s past practices and procedures, consistently applied and otherwise consistent with GAAP.

“Encumbrance” means the existence of any security interest, pledge, deed of trust, deed to secure debt, hypothecation, claim, mortgage, lien (statutory or otherwise), charge, lease or sublease, adverse claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar rights), restriction on use (such as an easement or covenant), encroachment, defect of title, or other encumbrance of any kind or character, including any agreements to establish any of the foregoing in the future.

“GAAP” means U.S. generally accepted accounting principles, consistently applied.

“Governmental Authority” means any government, any governmental or quasi-governmental entity or authority, including any department, commission, board, bureau, branch, agency or instrumentality thereof, any administrative or regulatory body obtaining authority from any of the foregoing, any official or contractor acting on behalf of any of the foregoing, and any court, tribunal, judicial or arbitral body, mediation or conciliation or self-regulatory authority, in each case whether federal, state, regional, county, city or of any other political subdivision, whether domestic or foreign.

“Incentive Compensation Plan” means the Foto Fantasy, Inc. Incentive Compensation Plan.

“Indebtedness” means, without duplication, (i) any amount owed (including outstanding principal and unpaid interest, penalties, fees and expenses thereon) in respect of borrowed money, including the Third-Party Debt (as hereinafter defined) and the Intragroup Debt; (ii) any other obligations upon which interest charges are customarily paid or owed; (iii) capitalized lease obligations, synthetic lease obligations, sale-leaseback obligations and other similar indebtedness obligations, whether secured or unsecured; (iv) obligations issued or assumed as the deferred purchase or acquisition price of property or services, conditional sale obligations and obligations under any title retention agreement; (v) the indebtedness of any other Person which is directly or indirectly guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured against loss; (vi) obligations under interest rate, currency and other derivative agreements; (vii)

payment obligations in respect of letters of credit, bankers' acceptances or similar instruments issued or accepted by banks and other financial institutions; provided, however, that notwithstanding the foregoing, Indebtedness shall not include any accounts payable and accrued expenses incurred in the ordinary course of business consistent with past practices and specifically reflected in the Financial Statements. For purposes of this Agreement, Buyer Indebtedness shall not be treated as Indebtedness.

"Intellectual Property Rights" means, throughout the world, all intangible property and all rights in, arising out of, or associated therewith (including any registrations thereof), including, without limitation, (i) patents and patent applications (and any patents that issue as a result of those patent applications, and any renewals, reissues, reexaminations, extensions, continuations, continuations-in-part, divisions and substitutions relating to any such patents and patent applications) and rights in inventions and improvements thereto, (ii) registered trademarks and service marks, trade names, unregistered trademarks and service marks, domain names, other internet or social media identifiers, and, in each case, all goodwill associated therewith, (iii) copyrights, design rights and database rights and all similar rights associated with works of authorship, software or other creations, (iv) trade secrets and other rights in confidential or proprietary information or technology, and (v) any other proprietary or intellectual property rights.

"Intercompany Agreements" means any Contract between the Company, on the one hand, and Seller or any Affiliate of Seller (other than the Company), on the other hand.

"Intragroup Debt" means the Indebtedness of the Company as of the Closing under (i) the Senior Subordinated Note between Foto Fantasy, Inc. and S.R. Group, LLC, dated as of October 24, 2014; (ii) the Senior Subordinated Note between Foto Fantasy, Inc. and Dale Valvo, dated as of October 24, 2014; and (iii) the Senior Subordinated Note between Foto Fantasy, Inc. and Carl Annese, dated as of October 24, 2014.

"Key Employees" means Dale Valvo, Carl Annese, Steve White, Casey Cammann, Jed San Pietro and Michael Swatko.

"Knowledge of the Company," the "Company's Knowledge" or any similar term used in this Agreement means the knowledge of the Key Employees after due inquiry (provided that no such due inquiry shall be required for purposes of Section 3.16(b)(ii)).

"Law" means any statute, law, treaty, ordinance, regulation, rule, code issued, promulgated or entered by or with any Governmental Authority, any Governmental order or any common law.

"Liabilities" means any liability for payment, Indebtedness, payment obligation, or any other amount or sum that is or will become due (whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated or otherwise), including any liability for Taxes.

"Losses" of a Person means any and all losses, Liabilities, damages, claims, awards, judgments, costs and expenses (including reasonable attorneys' fees), directly or indirectly suffered or incurred by such Person.

“Material Adverse Effect” means any fact, circumstance, event, change, effect, occurrence, development or condition that, individually or in the aggregate with all other facts, circumstances, events, changes, effects, occurrences, developments or conditions, (i) has had or would reasonably be expected to have a material adverse effect on the financial condition, properties, assets, Liabilities, business, prospects or results of operations of the Company or (ii) would reasonably be expected to materially adversely affect, the ability of the parties hereto to consummate the transactions contemplated hereby, in each case excluding the impact of (x) any changes in general economic or political conditions in the jurisdictions where the Company operates that do not disproportionately impact the Company, (y) changes, after the date of this Agreement, in conditions generally applicable to businesses in the same industries of the Company that do not disproportionately impact the Company compared to other businesses in such industry or industries and (z) the announcement of this Agreement and the transactions contemplated hereby.

“Net Working Capital” means the Current Assets minus Current Liabilities.

“Open Source” means Software or similar subject matter that is generally available in source code form and that is distributed under a license which, by its terms, (i) does not prohibit licensees of such Software from licensing or otherwise distributing such Software in source code form, (ii) does not prohibit licensees of such Software from making modifications thereof, and (iii) does not require a royalty or other payment for the licensing or other distribution, or the modification, of such Software (other than a reasonable charge to compensate the provider for the cost of providing a copy thereof). Open Source Software includes Software distributed under such licenses as the GNU General Public License, GNU Lesser General Public License, New BSD License, MIT License, Common Public License and other licenses approved as open source licenses under the Open Source Definition of the Open Source Initiative.

“Permit” means any license, permit, authorization, accreditation, provider number, registration, franchise, approval, certificate, variance, waiver or other authorization, approval, clearance, consent or similar right issued, granted or obtained by or from any Governmental Authority.

“Permitted Encumbrances” means: (i) all statutory liens for Taxes or assessments which are not yet due or the validity of which are being contested in good faith by appropriate proceedings for which adequate reserves are set forth on the Base Balance Sheet in accordance with GAAP; (ii) all cashiers’, landlords’, workmen’s, repairmen’s, warehousemen’s and carriers’ liens and other similar liens imposed by Law, incurred in the ordinary course of business consistent with past practices for obligations that are not yet due; (iii) any statutory liens in favor of lessors arising in connection with any property leased to the Company, which, individually or in the aggregate, are not material and do not materially and adversely interfere with the use or possession by the Company of such property; and (iv) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing; and, with respect to a Tax period that begins on or before the Closing and ends thereafter, the portion of such Tax period ending on the Closing Date.

“Related Party Indebtedness” means any Indebtedness owed by the Company to Sankaty or any of its Affiliates.

“Sankaty” means Sankaty Advisors, Inc.

“Software” means all (i) computer programs and other software, including software implementations of algorithms, models, and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (ii) computerized databases and other computerized compilations and collections of data or information, including all data and information included in such databases, compilations or collections; (iii) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (iv) descriptions, flow-charts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; and (v) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.

“Straddle Period” means each taxable period beginning on or before and ending after the Closing Date.

“Tax” or “Taxes” means (i) any federal, state, local or foreign net or gross income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium (including taxes under Code section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax, fee, assessment or charge of any kind whatsoever imposed by any Governmental Authority, (ii) all interest, penalties, fines, additions to tax or other additional amounts (and any interest in respect of such penalties, fines or additions to tax) imposed by any Governmental Authority with respect thereto; and (iii) any liability in respect of any items described in clauses (i) or (ii) payable by reason of transferee liability, operation of Law, Treasury Regulations Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

“Tax Return” means all returns, reports, forms, declarations, statements and information returns (including any attached schedules, supplements and additional or supporting material) supplied or required to be supplied to a Governmental Authority relating to Taxes, including any claim for refund, amended return or declaration of estimated Taxes (and including any amendments with respect thereto) and returns or reports with respect to backup withholding and other payments to third parties.

“Third-Party Debt” means the Indebtedness of the Company as of the Closing under the Loan and Security Agreement, by and between the Company and RBS Citizens National Association, dated as of July 21, 2011, as amended.

“Third-Party Debt Excess” means the positive difference (if any) between the Third Party Debt Payoff Amount and \$9,716,000.

“Third Party Debt Payoff Amount” means the amount required to pay off in full all amounts (principal, interest or otherwise) owing with respect to the Third Party Debt at the Closing, as set forth in the Third Party Debt Payoff Letter.

“Third Party Debt Payoff Letter” means a letter in form reasonably acceptable to Buyer (i) executed by RBS Citizens National Association, (ii) confirming the Third Party Debt Payoff Amount, and (iii) releasing all claims with respect to the Third Party Debt effective upon payment of the Third Party Debt Payoff Amount.

“Transaction Bonuses” means the aggregate amount due or to be paid by the Company to executives and other employees as a result of the transactions contemplated by this Agreement, including, without limitation, any amounts payable under the Incentive Compensation Plan (including pursuant to the units issued thereunder), the transaction bonus agreements and any other similar arrangements. For avoidance of doubt, the term “Transaction Bonuses” shall not include any monies paid to the Company’s employees or executives that are unrelated to or not contingent on the Closing..

2. Purchase and Sale of Shares.

2.1 *Purchase and Sale of Shares.* Subject to the terms and conditions set forth in this Agreement and in reliance on the representations and warranties contained herein, at the Closing (as defined below), Seller shall sell and transfer to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances, One Hundred Percent (100%) of the Shares for the consideration set forth in Section 2.2 below.

2.2 *Purchase Price; Escrow.*

(a) Subject to the terms and conditions set forth in this Agreement, the purchase price to be paid by Buyer on the Closing Date to Seller for the Shares shall be equal to the positive difference (if any) between (1) \$5,400,000 (the “Base Purchase Price”) and (2) the sum of (i) the Escrow Fund, (ii) the Transaction Bonuses, (iii) the Company Transaction Expenses, (iv) the Cash Overdraft Net Amount, (v) the Third-Party Debt Excess and (vi) the Intragroup Debt (such difference, the “Seller Closing Amount,” and, as it may be further adjusted pursuant to the terms of this Agreement, the “Purchase Price”).

(b) No later than two (2) days prior to the Closing Date, Seller shall deliver to Buyer the Closing Memorandum.

(c) On the Closing Date, Buyer or one of its Affiliates shall make the payments set forth in this Section 2.2(c) in the following order of priority:

(i) to the Escrow Agent, the Escrow Fund in accordance with Section 2.2(d);

(ii) to the extent the Base Purchase Price minus the Cash Overdraft Net Amount (such amount, the “Net Base Purchase Price”) is greater than the Escrow Fund, to the holders of the Company’s Third Party Debt, an amount equal to the Third-Party Debt Excess in partial satisfaction of the Third Party Debt (it being understood that such payment shall be deemed to evidence a loan from Buyer or an Affiliate of Buyer, as applicable, to the Company and a payment by the Company to the holders of the Third Party Debt in the same amount), which amount shall be paid as provided in the last sentence of Section 2.2(e); provided that in the event such remaining portion of the Net Base Purchase Price is insufficient for payment in full of the Third-Party Debt Excess, Seller shall be solely responsible to fund any such shortfall;

(iii) to the extent the Net Base Purchase Price is greater than the sum of (y) the Escrow Funds and (z) the Third-Party Debt Excess, to the holders of the Company’s Intragroup Debt, an aggregate amount equal to the Intragroup Debt (it being understood that such payment shall be deemed to evidence a loan from Buyer or an Affiliate of Buyer, as applicable, to the Company and an aggregate payment by the Company to the holders of the Intragroup Debt in the same amount); provided that in the event such remaining portion of the Net Base Purchase Price is insufficient for payment in full of the Intragroup Debt, the holders of the Intragroup Loans shall contribute any remaining portion of the Intragroup Debt (to be determined on a pro rata basis) to Seller and Seller shall contribute any such remaining portion of the Intragroup Debt to the Company prior to the Closing; and

(iv) to the extent the Net Base Purchase Price is greater than the sum of (x) the Escrow Funds, the (y) Third-Party Debt Excess and (z) the Intragroup Debt, to the Company’s advisors, the Company Transaction Expenses (it being understood that such payment shall be deemed to evidence a loan from Buyer or an Affiliate of Buyer, as applicable, to the Company and payments by the Company to its advisors and other intended recipients of Company Transaction Expenses in the same total amount); provided that in the event such remaining portion of the Net Base Purchase Price is insufficient for payment in full of the Company Transaction Expenses, Seller shall be solely responsible to fund any such shortfall;

(v) to the extent the Net Base Purchase Price is greater than the sum of (x) the Escrow Funds and (y) the Third-Party Debt Excess, (z) the Intragroup Debt and (aa) the Transaction Bonuses, to the Seller for payment (subject to applicable withholdings as required by any provisions of the Tax Laws) of the Transaction Bonuses; provided that in the event such remaining portion of the Net Base Purchase Price is insufficient for payment in full of the Transaction Bonuses, Seller shall be solely responsible to fund any such shortfall; provided further that immediately upon delivery of any such payment contemplated under this clause (v) to the Seller, Buyer and the Company shall be completely and validly discharged of any obligation to pay the Transaction Bonuses.

(vi) the Seller Closing Amount (if any) to be paid by Buyer to Seller by wire transfers of immediately available funds to a bank account to be designated in writing by Seller to Buyer not less than two (2) days prior to the Closing Date.

(d) At the Closing, Buyer shall deliver to Citibank N.A. (the “Escrow Agent”), \$1,540,000 (the “Escrow Fund”), to be held by the Escrow Agent in escrow pursuant to

the terms and conditions of an escrow agreement by and among Buyer, Seller, the Company and the Escrow Agent in substantially the form of Exhibit B attached hereto (the “Escrow Agreement”), to provide Buyer with security for the indemnification obligations of Seller pursuant to Section 9 of this Agreement. Subject to any claims asserted by Buyer against the Escrow Fund in accordance with the terms of this Agreement and the Escrow Agreement, the fifty percent (50%) of the then remaining Escrow Fund shall be released on the first anniversary of the Closing, and the remaining balance of the Escrow Fund, if any, together with any interest accrued on the Escrow Fund, if any, shall be released to Seller eighteen (18) months from the Closing Date; provided, however, that any amounts reserved for pending indemnity claims asserted by Buyer on or prior to the applicable date of the release of the Escrow Fund shall be retained in escrow until such time as such pending indemnity claim of Buyer is satisfied or settled in accordance with the terms and conditions of this Agreement and the Escrow Agreement. The parties agree that all costs and expenses relating to the Escrow Agent and the administration of the Escrow Fund shall be borne by Buyer. The parties further agree that a portion of the Purchase Price will be treated as “imputed interest” under Section 483 of the Code.

(e) At the Closing, in addition to the payments described above, Buyer or one of its Affiliates shall pay, on behalf of the Company, to the holders of the Third-Party Debt an amount equal to the lesser of (i) \$9,716,000 and (ii) the Third Party Debt Payoff Amount, which payment shall be deemed to evidence a loan to the Company from Buyer or an Affiliate of Buyer, as applicable, and a payment by the Company to the holders of the Third-Party Debt in the same amount. The payment contemplated pursuant to this Section 2.2(e) and the payment of the Third Party Debt Excess shall be effectuated through the wire transfer of a single aggregate amount from Buyer or one of its Affiliates to the holders of the Third Party Debt.

2.3 Withholding. Buyer shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts, if any, as may be required to be deducted or withheld therefrom under any provision of Tax Law, as a result of Seller’s failure to deliver to Buyer at Closing a properly completed statement as required by Section 8.3(a)(viii). Any such amounts shall be withheld or deducted from the Purchase Price payable pursuant to this Agreement, and such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant Person. Upon request, Seller shall provide any Tax forms, including Form W-9 or the appropriate series of Form W-8, as applicable.

2.4 Closing. The closing (the “Closing”) of the purchase and sale of the Shares and the other transactions contemplated by this Agreement shall be held at 10 a.m. (Boston time), effective as 11:59 p.m., at the offices of Hinckley, Allen & Snyder, LLP, 28 State Street, Boston, Massachusetts, on December 31, 2014, subject to the prior satisfaction or waiver of the conditions set forth in Section 8 (other than those conditions that by their nature are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions), or at such other time, date or place as Buyer and Seller may mutually determine. The date on which the Closing actually occurs is sometimes referred to herein as the “Closing Date.”

2.5 Further Assurance. Seller shall, from time to time after the Closing at the reasonable request of Buyer, execute and deliver further instruments of transfer and take such

other action as may be reasonably required to more effectively transfer and vest in Buyer the Shares and all rights thereto, and to fully implement the provisions of this Agreement.

3. Representations and Warranties Regarding the Company. In order to induce Buyer to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing.

3.1 Existence; Good Standing; Authority of the Company.

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Company has all requisite corporate power and authority, to own, operate, lease and encumber its properties and carry on its business as currently conducted. The Company is duly licensed or qualified to do business as a foreign corporation under the Laws of each other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect. Copies of the Company's Certificate of Organization (the "Company Certificate") and the Company's By-laws (the "Company By-laws"), each as amended to date and made available to Buyer's counsel are complete and correct.

(b) The Company has the corporate power and authority to execute and deliver this Agreement and such Ancillary Agreements to which it is a party, and to perform its obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement, and such Ancillary Agreements to which it is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Company. This Agreement, and such of the Ancillary Agreements to which it is a Party, have been, or will be as of the Closing, duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by all counterparties hereto and thereto, this Agreement, and each such Ancillary Agreement to which the Company is a party, constitutes, or will constitute as of the Closing, legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles.

3.2 Capitalization.

(a) As of the date of this Agreement, Seller is the sole stockholder of the Company and the Shares constitute all of the outstanding equity securities of the Company. All of the Shares (x) have been duly authorized and validly issued, (y) are fully paid and non-assessable and (z) were issued in compliance with all applicable Laws concerning the issuance of securities. Except as disclosed on Schedule 3.2 attached hereto, the Company has no outstanding subscriptions, options, warrants, commitments, agreements, arrangements or commitments of any kind for or relating to the issuance or sale of, any equity securities of the Company. Except as set forth on Schedule 3.2 attached hereto, the Company has no obligation to purchase, redeem, or otherwise acquire any of the Shares or any interests therein.

(b) Except as disclosed on Schedule 3.2 attached hereto, there are no preemptive or other outstanding rights, options, warrants, conversion rights, membership interest appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments of any character under which Seller or the Company is or may become obligated to issue or sell, or giving any Person a right to subscribe for or acquire, or in any way dispose of, any equity securities of the Company, or any securities or obligations exercisable or exchangeable for or convertible into any equity securities of the Company, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The outstanding Shares are not subject to any voting trust agreement or other Contract restricting or otherwise relating to the voting, dividend rights or disposition of such Shares. There are no phantom stock or similar rights providing economic benefits based, directly or indirectly, on the value or price of the Shares or other equity securities of the Company. The Company does not have any outstanding bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) on any matter. Other than the rights set forth on Schedule 3.2 attached hereto or set forth in the Company Certificate, there are no rights to have the Shares registered for sale to the public pursuant to the Laws of any jurisdiction.

(c) The Company does not own or control, directly or indirectly, any interest in any other corporation, partnership, limited liability company, association or other business entity.

3.3 *No Conflict.* The execution and delivery by the Company or Seller of this Agreement and the Ancillary Agreements to which either of them is a party, and the consummation by the Company of the transactions in accordance with the terms hereof and thereof do not and will not, (i) violate, conflict with or result in a breach of any provisions of the Company Certificate or the Company By-laws or (ii) violate or result in a breach of or constitute a default under any Law to which the Company is subject. Except as set forth on Schedule 3.3, and assuming the consents, approvals and authorizations contemplated by Section 3.6 are obtained, the execution and delivery by the Company or Seller of this Agreement and the Ancillary Agreements to which either of them is a party, and the consummation by the Company or Seller of the transactions in accordance with the terms hereof and thereof do not and will not (x) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, lease or other Contract to which the Company is a party or by which the Company or its properties or assets are bound, (y) result in the payment of any additional fee, penalty, consent fee or other amount, or (z) result in the creation or imposition of any Encumbrance other than an Encumbrance arising under this Agreement or any such Ancillary Agreement, or created by or resulting from the actions of Buyer or any of its Affiliates, in each case, except as it would not, individually or in the aggregate, adversely affect the Company in any material respect.

3.4 *Financial Statements.* The following financial statements (the “Financial Statements”) are attached hereto as Schedule 3.4:

(a) Audited balance sheet of the Company as of December 31, 2012 and as of December 31, 2013 and the related statements of income and members' equity and cash flows for the fiscal years then ended;

(b) Unaudited balance sheet of the Company as of September 30, 2014 (the "Base Balance Sheet"); and

(c) Unaudited statements of income of the Company for the nine (9) month period ending September 30, 2014.

Subject to the absence of footnotes and year-end audit adjustments with respect to any unaudited Financial Statements, the Financial Statements have been prepared in accordance with GAAP consistently applied throughout the periods indicated, and present fairly, in all material respects, the financial position, results of operation and cash flows of the Company as of their respective dates and for the periods covered thereby.

3.5 Absence of Certain Changes. Except as set forth on Schedule 3.5, from the date of the Base Balance Sheet to the date of this Agreement, there has not been a Material Adverse Effect, the Company has operated only in the ordinary course of business consistent with past practices and there has not been any:

- (a) change in the Company's authorized or issued capital stock;
- (b) grant of any option, right to purchase or similar right regarding the capital stock of the Company;
- (c) purchase, redemption, retirement, or other acquisition by the Company of any such capital stock;
- (d) declaration or payment of any dividend or other distribution or payment in respect of the capital stock of the Company or the payment of any management or similar fees to Sankaty or any of its Affiliates;
- (e) (A) payment of any bonuses, or material increase in salaries or other compensation, by the Company to any of its managers, directors, officers, or employees, except for bonus awards and increases in salaries made in the ordinary course of business consistent with past practices or as required under any bonus plan adopted by the Company prior to the date of the execution of this Agreement or (B) establishment, adoption, entry into or amendment of any collective bargaining, bonus, profit sharing, thrift, compensation, employment, termination, severance, retention, change of control, gross-up or other plan, agreement, trust, fund, policy or arrangement for the benefit of any managers, director, officer or employee, except to the extent required by applicable Laws;
- (f) damage to or destruction or loss of any material asset or property of the Company whether or not covered by insurance;
- (g) incurrence or repayment of any Indebtedness by the Company;

(h) acquisition or disposition of assets outside of the ordinary course of business consistent with past practice;

(i) creation or incurrence of any Encumbrance, individually or in the aggregate, material to the Company;

(j) settlement of any litigation or other proceedings before a Governmental Authority;

(k) material change in the accounting methods or principles used by the Company, other than (i) write-downs or write-offs in the value of assets as required by GAAP, or (ii) such adjustments as may be required by GAAP as a result of the transactions contemplated by this Agreement;

(l) material decrease in the Net Working Capital (it being acknowledged that a decrease of twenty (20%) percent or less of the Net Working Capital (year over year) shall be deemed to be immaterial);

(m) material change in the Company's past practices with respect to the Cash Overdraft; or

(n) entering into any written agreement to do any of the actions described in clauses (a) through (m).

3.6 Consents and Approvals.

(a) Except as set forth on Schedule 3.6(a), the execution and delivery by the Company and Seller of this Agreement and the Ancillary Agreement to which either of them is a party, the performance of their respective obligation hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require any consent, approval, authorization or other action by, or filing with or notification to, any Governmental Authority, except as may be necessary as a result of any facts or circumstances relating solely to Buyer or where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, have (A) a Material Adverse Effect or (B) a material adverse effect on the ability of the Company or Seller to perform their obligations under this Agreement.

(b) Except as set forth on Schedule 3.6(b), the execution and delivery by the Company and Seller of this Agreement and the Ancillary Agreement to which either of them is a party, the performance of their respective obligation hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require any third-party consents, approvals, authorizations or actions, except where failure to obtain such consents, approvals, authorizations or actions would not, individually or in the aggregate, (i) have a Material Adverse Effect or (ii) have a material adverse effect on the ability of the Company or Seller to perform its respective obligations under this Agreement and the Ancillary Agreements to which it is a party.

3.7 *Litigation.* Except as set forth on Schedule 3.7, there is no litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to the Company's Knowledge, threatened against the Company or any of its properties or assets that (i) if adversely decided would result in material Liability to the Company, (ii) seeks to enjoin any significant activity by the Company or (iii) challenges the validity of this Agreement or the transactions contemplated hereby, and, to the Knowledge of the Company, there is no basis for the same.

3.8 *Taxes.*

(a) Except as set forth on Schedule 3.8:

(i) The Company and all other companies that are or have been included for income tax purposes in the same affiliated, consolidated, combined or unitary group of corporations of which the Company is or has been a member (hereinafter referred to collectively as the "Company Group") have timely filed, or joined in the filing of, all material Tax Returns required to be filed by or with respect to them before the date of this Agreement, taking into account any extension of time to file, all such Tax Returns are true, accurate and complete in all material respects, all amounts of Taxes shown to be due in such Tax Returns have been timely paid, collected or withheld, as the case may be, and no other material Taxes are payable by the Company Group with respect to items or periods covered by such Tax Returns (whether or not shown or reportable on such Tax Returns) or with respect to any period prior to the date of this Agreement;

(ii) Except as otherwise set forth in Schedule 3.8(a)(ii), the amount of the Company Group's liability for unpaid Taxes for all periods ending on or before the date of this Agreement does not, in the aggregate, exceed the amount of the current liability accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Base Balance Sheet, and the amount of the Company Group's liability for unpaid Taxes for all periods ending on or before the Closing Date shall not, in the aggregate, exceed the amount of the current liability accruals for Taxes (excluding reserves for deferred Taxes) as such accruals are reflected on the Base Balance Sheet, as adjusted for operations and transactions in the ordinary course of business since September 30, 2014 in accordance with past custom and practice;

(iii) The Company has, in all material respects, withheld and paid over all Taxes required to have been withheld and paid over and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor, Affiliate, or other third party;

(iv) Neither the Internal Revenue Service (the "IRS") nor any other Governmental Authority is asserting or has asserted, or to the Knowledge of the Company, has threatened to assert, as of the date of this Agreement, any deficiency or claim for any Taxes against Seller or the Company Group;

(v) No federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending as of the date of this Agreement with regard to any Taxes or Tax Returns of Seller or the Company Group and neither Seller nor

the Company Group has received any written notice prior to the date of this Agreement of any actual, or to the Knowledge of the Company, threatened audits or proceedings nor is it otherwise aware of any such audits or proceedings;

(vi) No extensions or waivers of statutes of limitation have been given or requested with respect to any Taxes of the Company Group. There is no power of attorney granted with respect to Taxes relating to the Company Group;

(vii) Seller has made available to Buyer true, correct and complete copies of all material Tax Returns filed by, or with respect to the income of the Company Group for all taxable periods for the past three years, and all examination reports, and statements of deficiencies assessed against or agreed to by Seller or the Company Group with respect to such taxable periods. Except as set forth in Schedule 3.8(a)(vii), the Company has never been a member of an affiliated group (within the meaning of Section 1504 of the Code), or filed or been included in a combined, consolidated or unitary Tax Return, other than an affiliated group or Tax Return in which Seller was the common parent;

(viii) The Company is not and has never been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code and Buyer is not required to withhold Tax on the purchase of the Shares by reason of Section 1445 of the Code;

(ix) The Company has never been the “distributing corporation” (within the meaning of Section 355(c)(2) of the Code) with respect to a transaction described in Section 355 of the Code within the 3-year period ending as of the date of this Agreement;

(x) Except as set forth in Schedule 3.8(a)(x), the Company has no permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country. No claim has been made in writing by any Governmental Authority in a jurisdiction where the Company does not file Tax Returns that such Company is or may be subject to any Taxes assessed by such jurisdiction;

(xi) The Company is not a party to or otherwise bound by any agreement relating to the sharing, allocation or indemnification of Taxes, or any similar agreement, Contract or arrangement, or has any liability for Taxes of any Person under Treasury Regulations Sections 1.1502-6 or 1.1502-78 or similar provisions of state, local or foreign Tax Law, as a transferee or successor, by Contract, or otherwise;

(xii) Neither the Company nor the Seller has (A) participated in a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(c)(3)(i)(A) or any similar provision of state, local or foreign Tax Law, or (B) taken any reporting position on a Tax Return, which reporting position (x) if not sustained would be reasonably likely, absent disclosure, to give rise to a penalty for substantial understatement of federal income Tax under Section 6662 of the Code (or any similar provision of state, local or foreign Tax Law), and (y) has not adequately been disclosed on such Tax Return in accordance with Section 6662(d)(2)(B) of the Code (or any similar provision of state, local or foreign Tax Law);

(xiii) The Company will not be required to include in a taxable period ending after the Closing Date U.S. federal, state or local taxable income attributable to income that accrued in a taxable period prior to the Closing Date but was not recognized for U.S. federal, state or local Tax purposes in such prior taxable period (or to exclude from taxable income in a taxable period ending after the Closing Date any deduction the recognition of which was accelerated from such taxable period to a taxable period prior to the Closing Date) as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting, the cash method of accounting, intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law), any “closing agreement” as described in Section 7121 of the Code (or any similar provision of state, local or foreign Tax Law), Section 481 of the Code or Section 108(i) of the Code, or comparable provisions of state, local or Tax Law. The Company is not a party to any joint venture, partnership or other agreement, Contract or arrangement (either in writing or verbally, formally or informally) which could be treated as a partnership for federal income Tax purposes;

(xiv) Except as set forth in Schedule 3.8(a)(xiv), the Company Group has no net operating losses or other Tax attributes presently subject to limitation under Sections 269, 382, 383, 384, or 1502 of the Code or the Treasury Regulations thereunder or otherwise under Law;

(xv) The portion of the loss carryforwards and credits of the Company Group set forth in Schedule 3.8(a)(xv) that is attributable to the Company pursuant to Treasury Regulations Section 1.1502-21(b) as of the Closing will be at least equal to the amount set forth opposite such carryforward or credit in Schedule 3.8(a)(xv);

(xvi) All intercompany transactions between members of the Company Group or between a member of the Company Group and any Affiliate have been conducted on terms commensurate with third party terms in compliance with the principles of Section 482 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law) and have complied in all respects with applicable rules relating to transfer pricing (including the preparation of all required transfer pricing reports); and

(xvii) There are no Encumbrances for Taxes (other than Permitted Encumbrances) on any of the assets of the Company.

3.9 Employee Benefit Plans.

(a) Schedule 3.9(a) contains a complete and accurate list of each plan, program, policy, practice, or Contract providing for employment, compensation, incentive or deferred compensation, severance, relocation, retention or change in control compensation or benefits, termination pay, retirement pay, pension, profit-sharing, performance awards, stock or stock-related awards, fringe benefits or other benefits, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA) which is or has been maintained, contributed to, or required to be contributed to by the Company or any Affiliate of the Company or with respect to which the Company or any Affiliate of the Company has or may have any Liability, including any plan, program, policy, practice, or Contract adopted or

maintained (formally or informally) for the benefit of employees or independent contractors who perform services outside the United States (the “Company Benefit Plans”). Neither the Company nor any of its Affiliates has any formal or informal plan or commitment to establish any new, or modify any existing Company Benefit Plan. At no time has the Company or any Affiliate of the Company contributed to or been obligated to contribute to, or otherwise participated in, any (i) multiemployer plan (as defined in Section 3(37) of ERISA), (ii) multiple employer plan (within the meaning of Sections 4063/4064 of ERISA and Section 413(c) of the Code) or (iii) any similar plan under the Laws of a non-U.S. jurisdiction. Neither the Company nor any Affiliate of the Company has (i) ever sponsored, participated in, contributed to, or had any Liability with respect to, any pension plan which is subject to Title IV of ERISA or Section 412 of the Code or similar Laws of a non-U.S. jurisdiction or (ii) incurred or reasonably expects to incur any material Liability pursuant to Title I or Title IV of ERISA or the penalty, excise Tax or joint and several Liability provisions of the Code, whether contingent or otherwise, or any such Liability under similar applicable Laws of a non-U.S. jurisdiction. No Company Benefit Plan promises or provides retiree medical, health or life insurance or other retiree welfare benefits to any Person, except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) and there has been no communication (whether oral or written) to any Person that would reasonably be expected to promise or guarantee any such retiree medical, health or life insurance or other retiree welfare benefits, except to the extent required by COBRA.

(b) The Company has provided Buyer correct and complete copies of all documents relating to each Company Benefit Plan, including (i) the plan document or Contract, or with respect to any Company Benefit Plan that is not in writing, a written description of the material terms thereof; (ii) all amendments thereto; (iii) any trust instruments or insurance Contracts, if any, forming a part thereof, (iv) the most recent determination or opinion letter issued by the IRS with respect to each Company Benefit Plan that is intended to be a “qualified plan” under Section 401 of the Code, (v) all governmental and regulatory approvals received from any foreign Governmental Authority, (vi) the two most recent annual reports on Form 5500 (including all exhibits and attachments thereto) and (vii) any comparable documents with respect to Company Benefit Plans that are required to be prepared or filed under the applicable Laws of a non-U.S. jurisdiction.

(c) Each of the Company and its Affiliates has performed in all material respects all obligations required to be performed by it (including the timely payment of payments and insurance premiums) under each Company Benefit Plan and all material contributions (including all employer contributions and employee salary reduction contributions), premiums and expenses to or in respect of each such Company Benefit Plan have been timely paid in full or, to the extent not yet due, have been adequately accrued on the Financial Statements. Each Company Benefit Plan has been established, operated and maintained in all material respects in accordance with its terms and in compliance with all applicable Laws, statutes, orders, rules and regulations, including ERISA and the Code. To the Knowledge of the Company, each of the Company Benefit Plans is in compliance with, and the operation of each such Company Benefit Plan will not result in the incurrence of any material penalty to any of the Company or its Affiliates under, the Patient Protection and Affordable Care Act and its companion bill, the Health Care and Education Reconciliation Act of 2010, to the extent applicable.

(d) Each Company Benefit Plan that is an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) and intended to qualify under Section 401 of the Code has received a favorable determination letter (or, in the case of a prototype plan, a favorable opinion letter) from the IRS with respect to such qualification, and nothing has occurred since the date of such letter that has or is likely to adversely affect such qualification.

(e) There are no pending or, to the Knowledge of the Company, threatened material actions against any Company Benefit Plan, by any employee or by any beneficiary covered under any such Company Benefit Plan (other than routine claims for benefits). No Company Benefit Plan is under audit or is the subject of an investigation by the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation, the U.S. Securities and Exchange Commission or any other Governmental Authority, nor is any such audit or investigation pending or, to the Knowledge of the Company, threatened.

(f) Except as set forth in Schedule 3.9(f), the execution and delivery by the Company of this Agreement, either alone or in combination with another event, and the consummation of the transactions contemplated by this Agreement, will not (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any employee or independent contractor of the Company or any Affiliate of the Company; (ii) materially increase any compensation or benefits otherwise payable to any employee or independent contractor of the Company or any Affiliate of the Company; or (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits, in each case, except as required by applicable law in connection with the termination of any such Company Benefit Plan. Without limiting the generality of the foregoing, no amount paid or payable in connection with any of the transactions contemplated by this Agreement will give rise to any payments or benefits that are nondeductible under Section 280G of the Code.

(g) Each Company Benefit Plan that is or has ever been a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code has been operated in compliance with Section 409A of the Code (together with the guidance and regulations thereunder) and is in documentary and operational compliance with Section 409A of the Code (together with the guidance and regulations thereunder). No payment pursuant to any Company Benefit Plan or other arrangement to any “service provider” (as such term is defined in Section 409A of the Code, together with the guidance and regulations thereunder) would subject any Person to Tax pursuant to Section 409A(1) of the Code, whether pursuant to the transactions contemplated by this Agreement or otherwise. Neither the Company nor any Affiliate is a party to, or otherwise obligated under, any Contract, plan, agreement or arrangement that provides for a “gross-up,” indemnity, reimbursement, make-whole or similar payment in respect of any Taxes, including, without limitation, any Taxes that may become payable under Section 409A or Section 4999 of the Code.

3.10 *Real and Personal Property.*

(a) The Company does not own any real property. All leases, relating to any real property leased by the Company (the “Leased Real Property”) are identified on Schedule 3.10(a) (the “Leases”). Except as disclosed on Schedule 3.10(a), the Company has

delivered or made available to Buyer or its counsel a true, correct and complete copy of every Lease. With respect to each Lease listed on Schedule 3.10(a):

(i) the Company has good, valid and enforceable leasehold interests to the leasehold estate in the Leased Real Property granted to it pursuant to each pertinent Lease, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity;

(ii) each of said Leases has been duly authorized and executed by the Company and is in full force and effect; and

(iii) the Company is not in default under any of said Leases, nor has any event occurred which, with notice or the passage of time, or both, would give rise to such a default by the Company, and with respect to the Headquarters Lease, the Company has not been in material default of the Headquarters Lease more than three (3) times during the three (3) years prior to the date of this Agreement, such that the Company is entitled to exercise its renewal option under the Headquarters Lease pursuant to the terms thereof;

(b) Except as disclosed on Schedule 3.10(b), other than the Leased Real Property, no other land or premises or any interest therein is used or occupied by the Company in connection with its Business as it is presently conducted.

(c) Except as set forth on Schedule 3.10(b) or as specifically disclosed in the Base Balance Sheet, and except with respect to leased personal property, the Company has good title to all of its respective tangible personal property and assets shown on the Base Balance Sheet or acquired after the date of the Base Balance Sheet, free and clear of any Encumbrances except for Permitted Encumbrances. The tangible personal property owned, leased or used by the Company (including buildings, structures, facilities and equipment), taken in the aggregate, is in good operating condition and repair consistent with age, reasonable wear and tear not caused by neglect and operated in all material respects in conformity with applicable Laws.

3.11 *Labor and Employment Matters.*

(a) Except as set forth on Schedule 3.11(a), the Company has complied in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, and wages and hours, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1967, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act, as amended, and the related rules and regulations adopted by those federal agencies responsible for the administration of such Laws, and there are no arrearages in the payment of wages. The Company has correctly classified employees as exempt employees and nonexempt employees under the Fair Labor Standards Act and any other applicable Laws. All independent contractors providing services to the Company have been properly classified as independent contractors under all applicable Laws. There is no litigation, action, suit, proceeding, claim, arbitration, or investigation pending, or to the Company's Knowledge, threatened against the Company with respect to its employment practices. Except as set forth on Schedule 3.11(a), the employment of each of the Company's employees is terminable at will

without cost or liability to the Company, except for amounts earned prior to the time of termination.

(b) Except as set forth on Schedule 3.11(b), the Company has not recognized nor is it a party to or otherwise bound by any collective bargaining agreement, Contract or other agreement or understanding with a labor union or labor organization. Except as set forth on Schedule 3.11(b), the Company is not subject to any charge, demand, petition or representation proceeding seeking to compel, require or demand it to bargain with any labor union or labor organization nor, as of the date of this Agreement, is there pending or, to the Company's Knowledge, threatened, any labor strike or lockout involving the Company.

(c) Schedule 3.11(c)(1) accurately lists all current employees of the Company, and for each such employee, his or her: (i) job position, (ii) classification as full-time, part-time or seasonal, (iii) classification as exempt or non-exempt under applicable Law, (iv) hourly rate of compensation or base salary (as applicable), (v) accrued but unused vacation expressed both in terms of the number of days and the dollar value of such days, and (vi) location of employment. Schedule 3.11(c)(2) accurately lists all independent contractors of the Company, and for each such independent contractor, his or her: (x) terms of compensation, (y) commencement date with the Company or any Affiliate of the Company, and (z) if the independent contractor is providing services through a third party vendor, the name of such third party vendor.

3.12 *Contracts and Commitment.* Schedule 3.12 sets forth, as of the date of this Agreement, a list of all written Contracts of the following types (collectively, the "Material Contracts") to which the Company is a party:

- (a) any Contract relating to Indebtedness.
- (b) any joint venture, partnership or similar Contract involving a sharing of profit, losses, costs or Liabilities with any other Person;
- (c) any Contract (i) materially limiting or restricting the ability of the Company to enter into or engage in any market or line of business or to compete with any Person; (ii) that purports to prohibit or restrict in any material respect the freedom of the Company to operate in any geographical area (other than geographical limitations in license agreements); or (iii) that purports to prohibit, in any material respect, any Person from competing with the Company in any line of business in any geographical area;
- (d) any Contract providing for employment of an officer, employee or independent contractor;
- (e) any Contracts with any labor union or association representing any employee of the Company;
- (f) any Contract or purchase order for the purchase of materials, supplies, goods, services, equipment or other assets providing for annual payments by the Company in excess of \$75,000;

(g) any Contract relating to the acquisition of any operating business, material assets or the capital stock of any other Person (whether by merger, sale of stock, sale of assets or otherwise);

(h) any Contract relating to the disposition of any of the assets of the Company other than in the ordinary course of business or for the grant to any Person of any preferential rights to purchase any of its assets;

(i) any sales, distribution, marketing or other similar Contract or purchase order providing for the sale by the Company of materials, supplies, goods, services, equipment or other assets that provides for annual payments to the Company in excess of \$150,000;

(j) any Contract providing for the Company to provide severance, termination, retention, change in control or other similar payments;

(k) any Contract under which the Company has advanced or loaned any amount to any director, manager, officer or employee of the Company;

(l) any Contract providing for the settlement of any disputes or legal proceedings involving the Company, its properties or its assets that have occurred in the last three (3) years;

(m) any Contract pursuant to which the Company (i) is granted a license, covenant-not-to-sue or other authorization from a Person to use, commercialize or otherwise exploit any Intellectual Property Rights of a Person (but excluding licenses of off-the-shelf or similar commercially available Software available pursuant to customary, standard-form, non-negotiated written license agreements for an annual or one-time license fee of no more than \$35,000 in the aggregate), or (ii) grants a license, covenant-not-to-sue or other authorization to a Person to use, sublicense, commercialize or otherwise exploit any Intellectual Property Rights;

(n) any Contract pursuant to which any Intellectual Property Rights are incorporated into, integrated or bundled with any Company Product;

(o) any Contract with Seller or any of its Affiliates or any director or officer of Seller or any of its Affiliates that will survive the Closing;

(p) any other material Contract (or group of related Contracts) the performance of which involves consideration in excess of \$100,000; and

(q) any Contract that is otherwise material to the Company or its Business.

Prior to the date of this Agreement, Buyer has been provided with, via e-mail, complete and correct copies of all of the Material Contracts to which the Company is a party. Each Material Contract is in full force and effect and is valid, binding and enforceable against each party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws affecting the enforcement of creditors'

rights generally or, as to enforceability, by general equity principles. None of the Company and, to the Knowledge of the Company, any other Person is in breach or violation of, or default under, any Material Contract. To the Knowledge of the Company, no event has occurred which would result in a breach of or default under, require any consent or other action by any Person under, or give rise to any penalty or right of termination, cancellation or acceleration of any right or obligation of the Company to a loss of any benefit to which the Company is entitled under (in each case, with or without notice or lapse of time, or both) any Material Contract.

3.13 *Intellectual Property.*

(a) Schedule 3.13(a) contains a list of all Intellectual Property Rights that are registered, filed or issued under the authority of any Governmental Authority, including all issued patents, patent applications, registered trademarks, registered copyrights, and domain names and all filed applications for any of the foregoing, in each case that is owned or purported to be owned by, applied for, filed, registered or requested by or in the name of the Company (the “Company Registered IP”), setting forth for each item, as applicable, (i) the type of such item, (ii) the name of the applicant, registrant, grantee, or current owner, (iii) the application, registration, or serial or other similar identification number, (iv) the jurisdiction of such application, filing, issue, registration, or grant (or, for Internet domain names, the jurisdiction in which the applicable registrar is located), (v) the current status (e.g., pending or issued), and (vi) for Internet domain names, the applicable registrar and registration term. All Company Registered IP (other than pending applications) are valid, subsisting and enforceable. All Company Registered IP was prosecuted in good faith, and Company has not misrepresented, and there has been no failure to disclose, any fact or circumstance in any application for any Company Registered IP that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the validity or enforceability of any Company Registered IP (including, without limitation, applications therefor). The Company has timely filed with or submitted to the relevant Governmental Authority, has paid when due, and is current in its payment of, all application, filing, registration, maintenance, renewal and other fees in connection with the Company Registered IP, and has taken all other actions reasonably required to be made or taken to maintain each item of Company Registered IP in full force and effect in accordance with all applicable Laws. No interference, opposition, reissue, reexamination, or other proceeding is pending or has been brought, or, to the Knowledge of the Company, threatened, in which the scope, validity or enforceability of any Company Registered IP is being, or has been contested or challenged. Company has not abandoned, allowed to lapse or rejected any registration for any material Intellectual Property Right filed by or on behalf of the Company that are essential for the Business as currently operated by Company.

(b) Except as set forth in Schedule 3.13 (b), the Company solely and exclusively owns, free and clear of all Encumbrances, all right, title, and interest in and to, and has the sole and exclusive right to enforce, all Company Registered IP, and all other Intellectual Property Rights that are owned or purported to be owned by the Company (collectively, “Company Intellectual Property Rights”). None of the Company Intellectual Property Rights is subject to any license, permission to use, covenant not to sue, standstill, co-existence agreement, option, release, immunity, or other right (in each case, whether accrued or unaccrued, absolute or contingent, matured or unmatured, vested or unvested), except for any such rights that are expressly granted in the agreements that are listed in Schedule 3.12(m)(ii), which agreements,

except as listed in Schedule 3.13(b), are granted pursuant to written Contracts. All assignments of Company Registered IP to the Company have been duly executed and recorded with the appropriate Governmental Authorities. The Company has not assigned or otherwise conveyed any (sole or joint) ownership interest to any Person in or to any Intellectual Property Rights that are or were, since January 1, 2012, Company Intellectual Property Rights. No Company Intellectual Property Rights are subject to any exclusive license or option, or other exclusive right, of any Person. No Intellectual Property Right is jointly owned by the Company and any other Person. No Company Intellectual Property Rights are subject to any outstanding decree, order, judgment, office action, settlement agreement or co-existence agreement that by its terms (i) restricts in any manner the use, transfer or licensing of any Company Intellectual Property Rights by the Company, (ii) affects the validity or enforceability of any Company Intellectual Property Rights and/or (iii) requires Company to grant to any Person any license, immunity or other right with respect to any Company Intellectual Property Rights.

(c) All Intellectual Property Rights that are used or held for use by the Company and that are not solely owned by the Company ("Licensed IP Assets") are duly and validly licensed to the Company under Contracts listed in Schedule 3.13(c) ("In-Licenses") for use, practice and exploitation in the manner in which such Intellectual Property Rights are being and, since January 1, 2012, have been used, practiced and exploited in the conduct of the Company's Business (including rights to sublicense where Licensed IP Assets are provided to end-users, customers, or other Persons, as part of any Company Products or otherwise). The Company Intellectual Property Rights and the Licensed IP Assets constitute, collectively, all of the Intellectual Property Rights used in the operation of the Business by the Company.

(d) Each Person who is or was at any time after January 1, 2008 an employee, officer, director or a contractor of the Company and who is or was at any time after January 1, 2008 involved in the creation or development of any Company Intellectual Property Rights (each, a "Developer") has signed an agreement (each, a "Proprietary Information Agreement") that (i) irrevocably assigns to the Company (or, to the extent applicable Law does not permit such assignment, otherwise transfers to the Company to the maximum extent permitted by applicable Law all rights to use, license, commercially exploit, and transfer) all Intellectual Property Rights associated with any Intellectual Property Rights created, invented, or developed by each such Developer in the course of or in connection with their employment with, or their performance of services for, the Company (including the right to seek protection for and bring actions for any past and future infringement or other violation of such Intellectual Property Rights and the right to seek and retain past and future damages and other remedies with respect thereto), and (ii) contains customary obligations to maintain the secrecy of the Company's confidential information and trade secrets. No current employee of the Company or other Person that was at any time after January 1, 2008 an employee of the Company and no other Developer (y) has any right, title, or interest, directly or indirectly, in whole or in part, in any Company Intellectual Property Rights, nor (z) to Company's Knowledge is in default or breach of any material term of any Proprietary Information Agreement. The Company has, in accordance with the applicable Law of each jurisdiction in which the Company operates the Business or stores confidential information or trade secrets, taken efforts that are reasonable in Company's reasonable business judgment to maintain the secrecy of and otherwise sufficient to protect its own confidential information and trade secrets and the confidential information and trade secrets of any other Person provided to the Company under an obligation of confidentiality, including by

not making or permitting any disclosure thereof except under written confidentiality obligations. The Company has not been notified by any Person that it is not in full compliance with or that it has breached any contractual obligation to protect the confidential information and trade secrets of any Person.

(e) The Company has not infringed, misappropriated or otherwise violated any Intellectual Property Right of any other Person. The Business as conducted by the Company does not infringe on or conflict with the rights of any third party under any Intellectual Property Rights. No litigation, action, suit, proceeding, claim, arbitration or investigation with respect to any actual, alleged or suspected infringement, misappropriation or other violation of any Intellectual Property Right of any other Person has been brought, is pending or, to the Knowledge of the Company, threatened, against the Company. The Company has not received any written notice or other communication alleging any actual, alleged or suspected infringement, misappropriation or violation of any Intellectual Property Right of any other Person. The Company has not received any unsolicited written communication that offers to license or grant any other rights or immunities under any Intellectual Property Right owned by a third party.

(f) To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated, and no Person is currently infringing, misappropriating or otherwise violating, any Company Intellectual Property Rights. The Company has not brought any action, suit or proceeding against any Person for infringement, misappropriation or violation of any Company Intellectual Property Rights.

(g) The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, will not, with or without notice or the lapse of time or both: (i) except as set forth in Schedule 3.13(g), materially breach any agreement governing any Company Intellectual Property Rights and/or Licensed IP Assets; (ii) cause any loss of, or forfeiture or termination of (or give rise to a right of forfeiture or termination of), any Company Intellectual Property Rights and/or Licensed IP Assets; (iii) in any way impair the right to use, or bring any action for the unauthorized use or disclosure, infringement, or misappropriation of, any Company Intellectual Property Rights and/or Licensed IP Assets, or narrow, eliminate or otherwise adversely affect any representation, warranty, indemnification or other obligations of any licensor with respect to any Licensed IP Assets; (iv) result in any Person receiving (or give any Person the right or option to modify or terminate) any license, covenant not to sue or other rights with respect to any Company Intellectual Property and/or Licensed IP Assets, or result in the Company not having any such rights to the same extent as it would had such execution, delivery, performance, or consummations not taken place; (v) cause or require the Company to be bound by, or subject to, any non-compete or other restriction on the operation or scope of its businesses; or (vi) cause or require the Company (or accelerate any obligation of the Company) to pay any royalties or other amounts to any Person that Company would not otherwise have been required to pay pursuant to licenses or other Contracts set forth in Schedule 3.13(c).

(h) Except as set forth in Schedule 3.13(h), no Open Source or Copyleft Open Source is incorporated into, integrated or bundled with, linked to, used in the development or compilation of, or otherwise used in or with any services and products of the

Company that are currently offered commercially or under development (each, a “Company Product”). Except as set forth in Schedule 3.13(h), no Company Product incorporates, is integrated or bundled with, links to or is otherwise used in or with any Copyleft Open Source. Company has used commercially reasonable efforts to (a) identify all Open Source in any Company Product; and (b) regulate the use of Open Source in compliance with any applicable Open Source licenses. Correct and complete copies of all audits and other reviews regarding Open Source by Company (whether performed by Company or by a third party), to the extent such audits and other reviews are in the Company’s possession as of the date of this Agreement, have been made available to Buyer. The Software included in the Company Products is substantially free of any material defects, bugs and errors in accordance with generally accepted industry standards, and does not contain or make available 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, Software, data or other materials.

3.14 *Environmental Matters.*

(a) To the Company’s Knowledge, the Company is in material compliance with Environmental Laws, except for such noncompliance as would not, individually or in the aggregate, have a Material Adverse Effect. To the Company’s Knowledge, the Company has not received any written notice, report or other information regarding any actual or alleged material violation of Environmental Laws, or any material Liabilities or potential material Liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to the Company or its facilities arising under Environmental Laws, the subject of which would have a Material Adverse Effect.

(b) “Environmental Laws” means all applicable federal, state and local statutes or Laws, judgments, orders, regulations, licenses, Permits, rules and ordinances relating to pollution or protection of health, safety or the environment, including, but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resources Conservation and Recovery Act (42 U.S.C. §6901 et. seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et. seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et. seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), and other similar state and local statutes.

3.15 *Insurance Coverage.* Schedule 3.15 sets forth a true and correct summary of the insurance policies currently held by, or for the benefit of, the Company, including the underwriter of such policies and the amount of coverage thereunder. All of such policies are in full force and effect (and except as set forth on Schedule 3.15, all of such policies will remain in full force and effect following the Closing) and the Company is not in material default thereunder, and no event has occurred that (with or without notice, lapse of time or both) would constitute such a material default by the Company. Except to the extent set forth in Schedule 3.15, since January 1, 2012, there has been no denial in respect of any material claim pertaining to the Company submitted pursuant to any such policies.

3.16 Compliance with Laws.

(a) Except as set forth in Schedule 3.16(a), the Company is not, and since January 1, 2012 has not been, in default or violation of any Law, order, judgment or decree applicable to the Company or by which any property or asset of the Company is bound, except for any such conflicts, defaults or violations that would not, individually or in the aggregate, adversely affect the Company in any material respect.

(b) Except as would not, individually or in the aggregate, adversely affect the Company in any material respect, (i) the Company possesses all material Permits necessary for the ordinary course operation of the Business, as presently conducted; (ii) all material Permits possessed by the Company are in full force and effect and, to the Knowledge of the Company (without due inquiry or investigation), the material Permits will continue to be valid and in full force and effect, on identical terms following the Closing; (iii) to the Knowledge of the Company, there has occurred no breach of or default (with or without notice or lapse of time or both) under any such Permit and the Company has not received any written notice of, and there has been no action, suit or proceeding filed, commenced or, to the Knowledge of the Company, threatened, alleging any such breach or default or otherwise seeking to revoke, terminate, suspend or modify any such Permit or impose any fine, penalty or other sanctions in connection therewith; and (iv) the Company has filed all reports, notifications and filings material to the Business with, and have paid all material regulatory fees due and payable to, the applicable Governmental Authority necessary to maintain all such Permits substantially in full force and effect.

3.17 Undisclosed Liabilities. There are no Liabilities of the Company (whether or not required to be reflected on an audited balance sheet of the Company, or in the notes thereto, prepared in accordance with GAAP), other than: (i) those recorded in the Financial Statements (or the notes thereto, if applicable) and not heretofore paid or discharged; (ii) those incurred in the ordinary course of business consistent with past practices since January 1, 2014 (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of Contract, breach of warranty, tort, infringement, or violation of Law), which do not, individually or in the aggregate, adversely affect the Company or its Business in any material respects; and (iii) those set forth on Schedule 3.17.

3.18 Bank Accounts; Powers of Attorney.

(a) Schedule 3.18(a) sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains any deposit, checking or other account, the account numbers of all such accounts and the names of all Persons authorized to draw thereon or make withdrawals therefrom.

(b) Schedule 3.18(b) sets forth a correct and complete list of the names of all Persons holding general or special powers of attorney from the Company and a summary of the terms thereof.

3.19 Accounts Receivable and Payable. Subject to the allowances for doubtful accounts set forth on the Base Balance Sheet and consistent with the Company's historic reserve practices, all accounts receivable as set forth on the Base Balance Sheet or arising since the date thereof have arisen only in the ordinary course of business for goods actually sold and delivered or services actually or to be performed, are not, except as otherwise reserved for in the Base Balance Sheet or set forth on Schedule 3.19, subject to any set-offs or counterclaim and, unless collected prior to the date hereof, are due and payable in accordance with the terms of the Contract under which they arose.

3.20 Customers and Suppliers.

(a) Schedule 3.20(a) sets forth a list of the twenty (20) largest customers (the "Material Customers") and the twenty (20) largest suppliers (the "Material Suppliers") of the Business, each as measured by the dollar amount of purchases therefrom or thereby, for the twelve (12) month period immediately preceding the Closing Date.

(b) Since January 1, 2014, no Material Customer or Material Supplier has terminated its relationship with the Company or materially changed the pricing or other terms of its business with the Company and, to the Knowledge of the Company, no Material Customer or Material Supplier has notified the Company that it intends to terminate or materially reduce or materially change the pricing or other terms of its business in a manner adverse to the Company in any material respect.

3.21 Transactions with Affiliates. Except in connection with the Intercompany Agreements listed on Schedule 3.21, no Affiliate of the Company (a) owes any amount to the Company nor does the Company owe any amount to, or has the Company committed to make any loan or extend or guarantee credit to or for the benefit of, any Affiliate or (b) is a party to any Contract or involved in any business arrangement or other relationship with the Company.

3.22 Illegal Payments. None of the Company or any of its directors, officers, agents, employees or other Persons associated with the Company or acting on its behalf, has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or (c) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

3.23 Disclaimer of Other Representations and Warranties; Knowledge; Disclosure. **NONE OF THE COMPANY, ITS REPRESENTATIVES OR SELLER HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR THE BUSINESS, THE SELLER OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 3 AND IN SECTION 4 HEREOF.**

(a) Without limiting the generality of the foregoing, none of the Company, its representatives or Seller have made, and shall not be deemed to have made, any

representations or warranties in the materials relating to the Business made available to Buyer or in any presentation of the Business in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise.

(b) Notwithstanding anything to the contrary contained in this Agreement or in any of the Schedules, any information disclosed on one Schedule shall be deemed to have been disclosed on such other Schedule or Schedules to the extent that its relevance to information called for by such other Schedule or Schedules is readily apparent on its face from a plain reading thereof, notwithstanding the omission of a reference or cross-reference thereto. Certain information set forth in the Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Company or Seller in this Agreement or that such information is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any Liability of, or concession as to any defense available to, the Company or Seller.

4. Representations and Warranties Regarding Seller. In order to induce Buyer to enter into this Agreement and consummate the transactions contemplated hereby, Seller hereby makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing.

4.1 *Shares.* Seller owns of record and beneficially all of the Shares. Such Shares are, and when delivered by Seller to Buyer pursuant to this Agreement will be, free and clear of any and all Encumbrances, other than Encumbrances resulting from this Agreement.

4.2 *Existence; Good Standing; Authority.*

(a) Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller is duly licensed or qualified to do business as a foreign corporation under the Laws of any other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not, individually or in the aggregate, have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(b) Seller has full right, power and authority to execute and deliver this Agreement and such Ancillary Agreements to which it is a party, and to perform its obligations hereunder and thereunder. The execution and delivery by Seller of this Agreement, and such Ancillary Agreements to which it is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Seller. This Agreement, and such of the Ancillary Agreements to which Seller is a Party, have been, or will be as of the Closing, duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by all counterparties hereto and thereto, this Agreement, and each such Ancillary Agreements to which Seller is a party constitutes or, as of the Closing, will constitute a legal,

valid and binding obligation Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles. Seller has full power and authority to transfer, sell and deliver the Shares to Buyer pursuant to this Agreement.

4.3 *No Conflict.* The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it is a Party, and the consummation by Seller of the transactions in accordance with the terms hereof and thereof, do not and will not (a) violate, conflict with or result in a breach of any provisions of the organizational documents of Seller or (b) violate or results in a breach of or constitute a default under any Law to which Seller is subject. Except as set forth on Schedule 4.3, and assuming the consents, approvals and authorizations contemplated by Section 3.6 are obtained, the execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is a party, and the consummation by Seller of the transactions in accordance with the terms hereof and thereof, do not and will not violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, lease, or other Contract to which Seller is a party, or by which Seller or its properties or assets are bound, except, in each case, as would not have, individually or in the aggregate, a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

4.4 *Litigation.* There is no litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to Seller's knowledge, threatened, against Seller or any of its properties or assets that, if adversely determined, (i) would delay, hinder or prevent the consummation of the transactions contemplated by this Agreement by Seller, or (ii) would have, individually or in the aggregate, a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

4.5 *Brokers.* Neither the Company nor Seller has incurred or become liable for any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement.

5. Representations and Warranties of Buyer. In order to induce Seller to enter into this Agreement and consummate the transactions contemplated hereby, Buyer hereby makes to Seller the following representations and warranties, as of the date of this Agreement and as of the Closing.

5.1 *Existence; Good Standing; Authority.*

(a) Buyer is a corporation validly existing and in good standing under the Laws of Delaware. Buyer is duly licensed or qualified to do business as a foreign corporation under the Laws of any other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(b) Buyer has full right, power and authority to execute and deliver this Agreement and such Ancillary Agreement to which it is a party, and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement, and each Ancillary Agreement to which it is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Buyer. This Agreement, and such of the Ancillary Agreements to which Buyer is a party, have been, or will be as of the Closing, duly executed and delivered by Buyer and, assuming the due authorization, execution and delivery by all counterparties hereto and thereto, this Agreement, and each such Ancillary Agreements to which Buyer is a party constitutes or, as of the Closing, will constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles.

5.2 No Conflict. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party, and the consummation by Buyer of the transactions in accordance with the terms hereof and thereof, do not and will not (a) violate, conflict with or result in a breach of any provisions of the organizational documents of Buyer or (b) violate or results in a breach of or constitute a default under any Law to which Buyer is subject. Assuming the consents, approvals and authorizations contemplated by Section 5.3 are obtained, the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is a party, and the consummation by Buyer of the transactions in accordance with the terms hereof and thereof, will not violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, lease, or other Contract to which Buyer is a party, or by which Buyer or its properties or assets are bound, except, in each case, as would not have, individually or in the aggregate, a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

5.3 Consents and Approvals.

(a) The execution and delivery by Buyer of this Agreement and the Ancillary Agreement to which it is a party, the performance of their respective obligation hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require any consent, approval, authorization or other action by, or filing with or notification to, any Governmental Authority, except (i) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement, and (ii) as may be necessary as a result of any facts or circumstances relating solely to the Company or Seller.

(b) The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party, the performance of their respective obligation hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require any third-party consents, approvals, authorizations or actions, except

where failure to obtain such consents, approvals, authorizations or actions would not have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

5.4 *Litigation.* There is no litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to Buyer's knowledge, threatened, against Buyer or any of its properties or assets that, if adversely determined (i) would delay, hinder or prevent the consummation of the transactions contemplated by this Agreement by Buyer, or (ii) would have, individually or in the aggregate, a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

5.5 *Financing.* As of the Closing, Buyer will have sufficient funds to purchase the Shares and to pay the Purchase Price, in each case on the terms and conditions contemplated by this Agreement. Buyer acknowledges and agrees that Buyer's performance of its obligations under this Agreement is not in any way contingent upon the availability of financing to Buyer.

5.6 *Brokers.* Except for the fees payable to Mizuho Securities, which fees will be paid by Buyer, Buyer has not incurred or become liable for any broker's commission or finder's fee relating to or in connection with the transactions contemplated by this Agreement.

5.7 *Investment Intent.* Buyer is acquiring the Shares solely for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof.

5.8 *Inspection; No Other Representations.* Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of companies such as the Company as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated hereby. Buyer agrees to accept the Shares and the Company in the condition they are in at the Closing based upon the representations and warranties set forth in this Agreement and its own inspection, examination and determination, and without reliance upon any other express or implied representations or warranties of any nature, whether in writing, orally or otherwise, made by or on behalf of or imputed to the Company or Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges that except as set forth in this Agreement, neither the Company nor Seller makes any representation or warranty with respect to any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Company or the future business and operations of the Company.

6. Certain Covenants of Buyer, the Company and Seller.

6.1 *Conduct of Business Prior to Closing.* Between the date hereof and the Closing Date, the Company shall, and Seller shall cause the Company to, (i) maintain, in all material respects, normalized levels (based on applicable time periods) of Net Working Capital

consistent with past practice, (ii) operate in the ordinary course of business, consistent with past practices, except as described on Schedule 6.1 or as otherwise contemplated by this Agreement, and (iii) to the extent consistent therewith, use all reasonable efforts to preserve intact the Business and its relationship with customers, suppliers, lessors, creditors and employees. In furtherance of the foregoing, without the prior written consent of Buyer, the Company (and Seller, in the case of Section 6.1(l)) shall, and Seller shall cause the Company to, refrain from:

(a) changing or introducing any method of management or operations except in the ordinary course of business and consistent with prior practices or as set forth in any written business plan disclosed by the Company to Buyer prior to the execution date of this Agreement;

(b) making any changes to Company Certificate or the Company By-laws or any of the organizational documents of the Company, or changing the authorized or issued equity securities of the Company;

(c) issuing, granting, awarding, selling, pledging, disposing of or encumbering or authorizing the issuance, grant, award, sale, pledge, disposition or Encumbrance of any shares of, or securities convertible or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any of its capital stock of any class thereof;

(d) (i) incurring any Indebtedness (other than any such Indebtedness that will be discharged on or prior to Closing), (ii) forgiving, cancelling or compromising any debt or (iii) assuming, guaranteeing or endorsing any obligations of any other Person;

(e) making any loans, advances or capital contributions to, or investments in, any other Person;

(f) acquiring (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division or material assets thereof or any equity interest therein (including by executing or entering into or agreeing upon any letter of intent, term sheet or similar arrangement, whether binding or non-binding);

(g) selling, assigning, leasing, subleasing, transferring, subjecting to any Encumbrance, licensing, or otherwise disposing of, or extending or exercising any option to sell, assign, lease, sublease, transfer, subject to any Encumbrance, license, or otherwise dispose of, any assets, other than in the ordinary course of business;

(h) encumbering any of the Company's properties or assets, other than with respect to Permitted Encumbrances;

(i) (i) making any change in its borrowing arrangements or altering the practices followed by the Company with respect to Cash Overdraft prior to the date hereof, (ii) entering into, modifying, amending or terminating any Material Contract or (iii) waiving, releasing or assigning any material rights or claims, other than in the ordinary course of business;

(j) adopting a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization;

(k) changing any of its present accounting policies or procedures;

(l) making, amending, or revoking any election relating to Taxes; adopting or changing any accounting method relating to Taxes; filing any amended Tax Return; entering into any Tax sharing, Tax allocation, Tax indemnity or similar agreement; entering into any closing agreement; settling or compromising any claim or assessment relating to Taxes; consenting to any extension or waiver of the limitations period applicable to any Taxes or Tax Returns; entering into any transaction pursuant to which consideration is received by the Company prior to the Closing Date but the income associated with such consideration is includable in the income of the Company in a period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date;

(m) declaring, setting aside, paying or making any distribution or payment (whether in cash, stock, property or any combination thereof) with respect to its capital stock or other equity interests, or making any payment of management or similar fees to Sankaty or any of its Affiliates, except to the extent that such amounts are included in the Transaction Bonuses or Transaction Expenses;

(n) settling any legal proceeding or material dispute;

(o) selling, transferring, licensing, sublicensing, covenanting not to assert, or assigning any Intellectual Property Rights of the Company, except granting licenses to the Company's customers in the ordinary course of business consistent with past practice;

(p) (i) increasing the compensation or benefits of any current or former employee or independent contractor of the Company or any Affiliate of the Company, (ii) establishing, adopting, entering into or amending any collective bargaining agreement or Company Benefit Plan, or (iii) granting any new compensation awards;

(q) making any acquisition or capital expenditure in excess of \$15,000; or

(r) authorizing or entering into any executory agreement, commitment or undertaking to do any of the activities prohibited by the foregoing provisions.

6.2 Access to Information.

(a) Between the date of this Agreement and the Closing Date, the Company will, and Seller will cause the Company to, give Buyer and its representatives reasonable access upon reasonable notice and during times mutually convenient to Buyer and the Company to the facilities, properties, employees, books, and records of the Company as from time to time may be reasonably requested.

(b) Any such access by Buyer shall not unreasonably interfere with any of the businesses or operations of the Company.

6.3 Confidentiality. The parties shall adhere to the terms and conditions of that certain Confidentiality Agreement dated January 28, 2014, by and between the Company and Buyer (the “Confidentiality Agreement”). The Confidentiality Agreement shall terminate at the Closing. If, for any reason, the transactions contemplated by this Agreement are not consummated, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

6.4 Regulatory and Other Authorizations; Consents.

(a) Seller and Buyer shall cooperate and use their respective commercially reasonable efforts to obtain the authorizations, consents, orders and approvals necessary for their execution and delivery of, and the performance of their obligations pursuant to, this Agreement.

(b) Each party shall promptly consult with the others with respect to, provide any necessary information with respect to, and provide copies of all filings made by such party with any Governmental Authority or any other third party or any other information supplied by such party to a Governmental Authority or any other third party in connection with this Agreement and the transactions contemplated hereby.

(c) Buyer shall use its commercially reasonable efforts to assist Seller and the Company in obtaining the consents of third parties listed on Schedule 3.6, including by providing to such third parties such financial statements and other financial information as such third parties may reasonably request and executing agreements to effect the assumption of such agreements.

6.5 Further Action. Each of the parties hereto shall use its respective commercially reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement, fulfill as promptly as practicable the conditions precedent to the other party’s obligations hereunder and consummate and make effective the transactions contemplated by this Agreement.

6.6 Press Releases. The parties hereto will, and will cause each of their Affiliates and representatives to, maintain the confidentiality of this Agreement and will not, and will cause each of their Affiliates not to, issue or cause the publication of any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld or delayed; provided, however, that a party may, without the prior consent of the other parties hereto, issue or cause publication of any such press release or public announcement to the extent that such party reasonably determines, after consultation with outside legal counsel, such action to be required by Law or by the rules of any applicable self-regulatory organization, in which event such party will use its commercially reasonable efforts to allow the other parties hereto reasonable time to comment on such press release or public announcement in advance of its issuance.

6.7 *No Solicitation.* From the date of this Agreement until the earlier of the Closing or the two year anniversary of any termination of this Agreement, Buyer shall not, and shall ensure that its Affiliates and its and their respective directors, managers, officers, employees, partners, agents, advisors or representatives shall not, directly or indirectly, (i) solicit for employment or employ any director, manager, officer, employee or consultant of the Company, (ii) encourage, induce or attempt to induce any director, manager, officer or employee or consultant of the Company to terminate his or her employment or consulting relationship with the Company or (iii) intentionally take or fail to take any actions which could reasonably be expected to adversely affect the Company's business relationships with its customers and suppliers or goodwill, other than any action undertaken in connection with the existing business relationship between Buyer and its Affiliates, on the one hand, and the Company, on the other hand (including, by way of example, terminating or modifying the terms of such relationship); provided, however, that a general advertisement or general solicitation not targeted to the Company's directors, managers, officers, employees or consultants shall not be deemed to be a solicitation thereof in violation of this Section 6.7.

6.8 *Non-Competition, Non-Solicitation, Confidentiality.*

(a) In consideration of the Purchase Price being paid by Buyer for the Shares pursuant to this Agreement (which Seller agrees and acknowledges constitutes adequate and sufficient consideration), Seller agrees as follows:

(i) ***Non-Competition.*** Seller will not at any time during the three (3) year period after the Closing, directly or indirectly, own, operate, manage, control, participate in, be employed by, consult with, advise or engage in services for any Person engaged in the Business, as it is presently conducted and intended to be conducted, within the United States of America; provided, however, that this Section 6.8(a)(i) shall not prohibit any Seller from being a passive owner of not more than three percent (3%) of the outstanding capital stock of a Person which is publicly-traded, as long as Seller has no active participation in such Person's business.

(ii) ***Non-Solicitation.*** Seller will not at any time during the three (3) year period after the Closing, directly or indirectly: (i) induce or attempt to induce any Person who is a director, manager, officer, employee or consultant of the Company to leave the employ of or terminate or breach their respective Contracts with the Company, or in any other way deliberately interfere with the relationship between the Company and any such Person; (ii) solicit the employment of, or hire or otherwise engage, any Person who was a director, manager, officer, employee or consultant of the Company within the six (6) month period preceding such solicitation, hire or engagement; or (iii) induce or attempt to induce any customer, supplier, distributor or other business relation of or to the Company to cease doing business with the Company, to reduce or otherwise adversely change its business with the Company, or in any other way deliberately interfere with the relationship between the Company and any such customer, supplier, distributor or other business relation of the Company; provided, however, that a general advertisement or general solicitation not targeted to the Company's directors, managers, officers, employees or consultants shall not be deemed to be a solicitation thereof in violation of this Section 6.8(a)(ii).

(iii) **Confidentiality.** Except and solely to the extent otherwise required by applicable Law, Seller will not, and will cause its Affiliates and its and their respective representatives not to, for at least seven (7) years after the Closing, disclose to any Person or use for any purpose, other than exercising his rights and performing his obligations under this Agreement and in connection with its capacity as the former holder of his Shares, any written, oral or other information relating to the Company or the Business or obtained from Buyer or its Affiliates (including the Company); provided, that if Seller or any of its Affiliates (or any of its or their representatives), becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial or administrative process to disclose such information, Seller shall provide Buyer with prompt prior written notice of such requirement and, to the extent reasonably practicable, cooperate with Buyer and Buyer's Affiliates, at Buyer's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed, including interposing all available objections thereto, such as objections based on privilege. In the event that such protective order or other similar remedy is not obtained, Seller (or the applicable Affiliate or representative) shall furnish only that portion of confidential information that has been legally compelled, and shall exercise its reasonable best efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Seller shall instruct its Affiliates and its and their respective representatives having access to such information of such obligation of confidentiality.

Seller agrees and acknowledges that: (i) the covenants set forth in this Section 6.8 are reasonable in geographic and temporal scope and in all other respects; and (ii) the covenants of Seller contained in this Section 6.8 have been made in order to induce Buyer to enter into this Agreement and consummate the transactions contemplated hereby and Buyer would not have entered into this Agreement or consummated the transactions contemplated hereby, but for the covenants of Seller contained in this Section 6.8. If, at any time of enforcement of any of the provisions of this Section 6.8, a court determines that the duration, scope or area restrictions stated herein are not enforceable under applicable Law, the parties agree that the maximum duration, scope or area (as applicable) permitted by applicable Law shall be substituted for the duration, area or scope (as applicable) stated herein and the court shall be authorized to revise the restrictions contained herein to cover such maximum duration, area or scope (as applicable).

6.9 Notice of Certain Facts. From the date of this Agreement until the Closing, Seller shall promptly notify and inform Buyer of (a) any material variance or incorrect statement in the representations and warranties contained in Section 3 or Section 4 of this Agreement discovered by Seller or its representatives or agents; (b) the receipt of any notice or other communication from any Person alleging that the consent, authorization, waiver, license or approval of such Person is or may be required in connection with the transactions contemplated hereby; and (c) any actions, suits, claims, investigations, proceedings or inquiries commenced or, to the Knowledge of the Company, threatened, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed to Buyer; provided, however, that the delivery of any notice pursuant to this Section 6.9 shall not limit or otherwise affect the remedies available hereunder to Buyer or any Buyer Indemnified Party. At any time prior to the two (2) Business Day preceding the anticipated Closing Date (provided that if the Closing is scheduled to occur on December 31, 2014, no supplements or amendments may be provided pursuant to this Section 6.9 after December 26, 2014), Seller may supplement or amend a Schedule to this Agreement with respect

to matters arising after the date hereof that, if existing on the date hereof, would have been required to be described in such Schedule (each such supplement or amendment, a “Schedule Supplement”). Buyer shall have not less than five (5) Business Days to review such Schedule Supplement (the “Schedule Supplement Review Period”), and, if so requested by Buyer, the Closing Date shall be postponed if necessary to provide Buyer such period for review (it being understood that there shall not be more than one postponement of the Closing Date and that Seller shall not be permitted to provide any additional Schedule Supplements following delivery of written notice of a Schedule Supplement that causes the Closing Date to be postponed). If Buyer does not approve the Schedule Supplement, Buyer shall have the right to terminate this Agreement. If Buyer approves the Schedule Supplement, then the representations and warranties in Article 3 shall be deemed modified or amended by such Schedule Supplement for the purpose of determining the satisfaction of the conditions set forth in Section 8.2 or for purposes of determining whether Buyer is entitled to indemnification pursuant to Article 9. If Buyer does not approve the Schedule Supplement or exercise its right to terminate this Agreement prior to the end of the Schedule Supplement Review Period (as provided in the immediately preceding sentence), then this Agreement shall automatically terminate as of the expiration of the Schedule Supplement Review Period.

6.10 *Intercompany Agreements.* Except as set forth in Schedule 6.10, Sankaty and Seller shall, and shall cause their respective Affiliates to, take all actions as may be necessary (including executing one or more instruments evidencing such termination and one or more releases, in each case, in form and substance reasonably satisfactory to Buyer) to terminate the Intercompany Agreements prior to or concurrent with the Closing and to release the Company from any and all Liabilities arising in connection therewith, including any unpaid amount due under any management agreement between Sankaty and the Company as well as any outstanding debt owed by the Company to Seller, Sankaty or any of their respective Affiliates.

6.11 *Tax Matters.*

(a) ***Seller’s Liability for Taxes.*** Seller shall be liable for and indemnify Buyer for (i) all Taxes imposed on the Company or for which the Company is otherwise liable for any Pre-Closing Tax Period (including all Taxes of any member of an affiliated, consolidated combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Sections 1.1502-6, 1.1502-78 or any analogous or similar state, local or foreign Tax Law or regulation), (ii) Seller’s share of Transfer Taxes described in Section 6.11(h), (iii) all liability of the Company for Taxes of any other Person pursuant to any contractual agreement entered into by the Company before the Closing Date, (iv) all Taxes resulting from the Company ceasing to be a member of the affiliated group (within the meaning of Section 1504(a) of the Code) that includes Seller, (v) all Taxes attributable to any discharge of Indebtedness with respect to any Indebtedness owed by the Company to Seller, an Affiliate of Seller, or any other Person, (vi) all Taxes, except Section 338(h)(10) AMT and State Tax, imposed on the Company resulting from the making of any elections under Section 338(h)(10) of the Code (and any comparable provisions of state, local or foreign Tax Law), and (vii) Losses incurred by Buyer relating to any Taxes described in clause (i), (ii), (iii), (iv), (v) or (vi), provided, however, that Seller’s liability under the foregoing provisions of this Section shall be reduced as to any item to the extent that such item was reserved for in the Base Balance Sheet.

Seller shall include the income of the Company (including any deferred items triggered into income by Treasury Regulation Section 1.1502-13 and any excess loss account taken into income under Treasury Regulation Section 1.1502-19) on Seller's consolidated federal income Tax Returns for all periods through the Closing Date and pay any federal income Taxes attributable to such income.

(b) ***Buyer's Liability for Taxes.*** Buyer shall be liable for and indemnify Seller for (i) the Taxes of the Company for any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date, (ii) all U.S. federal alternative minimum taxes and state income taxes imposed on the Seller resulting from the making of any elections under Section 338(h)(10) of the Code (and any comparable provisions of state, local or foreign Tax Law)(the "Section 338(h)(10) AMT and State Tax") and (iii) Buyer's share of Transfer Taxes described in Section 6.11(h).

(c) ***Taxes for Straddle Period.*** With respect to any Tax that is payable with respect to a Straddle Period, the portion of such Tax that is allocable to the Pre-Closing Tax Period shall be deemed to equal (i) in the case of Taxes that are based upon or related to income or receipts, the amount which would be payable if the taxable year ended as of the close of business on the Closing Date, and (ii) in the case of other Taxes imposed on a periodic basis (including property Taxes), the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of calendar days in the period ending with the Closing Date and the denominator of which is the number of calendar days in the entire period.

(d) ***Tax Returns.***

(i) Seller shall file or cause to be filed when due (including all applicable extensions of the time to pay) all Tax Returns that are required to be filed by or with respect to the Company on or before the Closing Date and shall pay any Taxes due in respect of such Tax Returns, and Buyer shall file or cause to be filed when due all Tax Returns that are required to be filed by or with respect to the Company after the Closing Date (other than income Tax Returns with respect to periods for which a consolidated, unitary or combined income Tax Return of Seller includes the operations of the Company) and shall pay any Taxes due in respect of such Tax Returns.

(ii) Any Tax Return of the Company which is to be prepared by one party but which (i) could reasonably be expected to result in an indemnity obligation of the other party under Section 6.11(a) or Section 6.11(b) or (ii) relates to a Straddle Period, shall be provided to the other party for its review, reasonable comment, and consent (which shall not be unreasonably withheld) at least thirty (30) days prior to filing. Seller shall pay to Buyer the Taxes for which Seller is liable pursuant to Section 6.11(a) but which are payable with Tax Returns to be filed by Buyer pursuant to Section 6.11(d)(i). All such payments described in the preceding sentence shall be made within ten (10) days prior to the due date for the filing of such Tax Returns.

(iii) Notwithstanding anything to the contrary in this Agreement, Seller shall not file any amended Tax Return relating to the Company (or otherwise

change such Tax Returns or make an election) with respect to taxable periods ending on or prior to the Closing Date without the written consent of Buyer, not to be unreasonably withheld.

(iv) Except as required under applicable Law, subsequent to the Closing, Buyer shall not file or amend any Tax Return relating to the Company (or otherwise change such Tax Returns or make an election) with respect to taxable periods ending on or prior to the Closing Date without the written consent of Seller, not to be unreasonably withheld.

(e) ***Tax Indemnity Payments.***

(i) Buyer shall be entitled to recover any amount due under this Section 6.11 from the Escrow Fund to the extent of its availability, in accordance with the terms and conditions of the Escrow Agreement.

(ii) Any obligation of an indemnifying party to make payments under this Section 6.11 shall survive the Closing and shall remain in full force and effect until, and shall terminate on, the date that is eighteen (18) months after the Closing Date. No party shall have any obligation to make a payment under this Section 6.11 following the date that is eighteen (18) months after the Closing Date; provided, however, that if notice of any claim for indemnification under this Section 6.11 shall have been given prior to the date that is eighteen (18) months after the Closing Date, the indemnifying party's obligation to make such payment shall survive with respect to such indemnification claim until such claim is finally resolved.

(iii) Other than for fraud, an indemnifying party shall not be obligated to indemnify any indemnified party pursuant to this Section 6.11 for any amount in excess of the Escrow Fund.

(f) ***Termination of Tax Allocation Agreements.*** Any Tax allocation or sharing agreement or arrangement, whether or not written, that may have been entered into by Seller or any of its Affiliates on the one hand, and the Company, on the other hand, shall be terminated as to the Company as of the Closing Date, and no payments which are owed by or to the Company pursuant thereto shall be made thereunder. After the Closing Date, neither the Company, on the one hand, nor Seller and its Affiliates, on the other hand, shall have any further rights or Liabilities thereunder with respect to the other party or parties.

(g) ***Cooperation.*** Subject to Section 9 of the Agreement, Seller and Buyer shall cooperate in good faith, and shall cause their respective Affiliates, officers, employees, agents, auditors and representatives to cooperate in good faith, in connection with (i) the preparation and filing of all Tax Returns relating to the Company, (ii) the determination of Seller, Buyer or their respective Affiliates, as the case may be, of any liability for any Taxes relating to the Company, (iii) any audit, dispute or other examination or assessment by any Governmental Authority with respect to such Taxes, (iv) any judicial or administrative proceeding relating to liability for such Taxes, and (v) Buyer's determination whether to make elections under Section 338(h)(10) of the Code (and any comparable provisions of state, local or foreign Tax Law). Subject to Section 9 of the Agreement, Buyer and Seller agree to retain or cause to be retained all books and records with respect to Taxes relating to the Company until the applicable period for assessment under applicable Law (giving effect to all extensions or

waivers) has expired, and to abide by or cause the abidance with all record retention agreements entered into with any Governmental Authority. Buyer and Seller shall cooperate with each other in the conduct of any audit or other proceedings involving the Company for any Tax purposes.

(h) ***Transfer Taxes.*** All excise, sales, use, value added, transfer (including real property transfer or gains), stamp, documentary, filing, recordation and other similar Taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, resulting directly from the transactions contemplated by this Agreement (the “Transfer Taxes”), shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Seller. Notwithstanding Section 6.11(d), which shall not apply to Tax Returns relating to Transfer Taxes, any Tax Returns that must be filed in connection with Transfer Taxes shall be prepared and filed when due by the party primarily or customarily responsible under applicable Law for filing such Tax Returns, and such party shall provide such Tax Returns to the other party at least ten (10) Business Days prior to the date such Tax Returns are due to be filed. If either party is liable under Law for payment of such Transfer Taxes, the other party shall pay the amount of its portion of such Transfer Tax no later than seven (7) Business Days after receipt of a request for payment from the paying party. Buyer and Seller shall cooperate in the timely completion and filing of all such Tax Returns. Buyer and Seller shall reasonably cooperate to reduce or eliminate such Transfer Taxes to the extent permitted by applicable Law.

(i) ***Section 338(h)(10) Election.***

(i) At the request and direction of Buyer, Seller shall make joint elections with Buyer and file elections under Section 338(h)(10) of the Code (and any comparable provisions of state, local or foreign Tax Law) with respect to the purchase of the Company and the parties shall execute a Form 8023 (or successor form), with all attachments, with respect to each such purchase on or within 180 days of the Closing Date. The parties shall cooperate with each other to take all actions necessary and appropriate (including filing such additional forms, returns, elections, schedules and other documents as may be required) to effect and preserve each timely election in accordance with the provisions of Treasury Regulation § 1.338(h)(10)-1 (or any comparable provisions of state, local or foreign Tax Law) or any successor provisions. In connection with each such election, Seller shall prepare a draft Form 8883 (or successor form) and provide such draft Form 8883 to Buyer no later than ninety (90) days prior to the due date of such Form 8883. If, within thirty (30) days after the receipt of the draft Form 8883, Buyer notifies Seller in writing that Buyer disagrees with the draft Form 8883, then the parties shall attempt in good faith to resolve their disagreement within the twenty (20) days following Buyer’s notification to Seller of such disagreement. If Buyer does not so notify Seller within thirty (30) days of receipt of the draft Form 8883, or upon resolution of the disputed items by the parties the draft Form 8883 shall become the “Final Form 8883”. If the parties are unable to resolve their disagreement within the twenty (20) days following any such notification by Buyer, then the parties shall submit all such disputed items for resolution to the Accountants, whose decision shall be final and binding upon all Persons involved and whose fees and expenses shall be borne equally by the parties. The Form 8883 delivered by the Accountants shall be the “Final Form 8883”. The parties shall act in good faith to cause the Accountants to deliver the Final Form 8883 within twenty (20) days after such submission. Other than to the extent Buyer’s purchase price, as determined for federal income Tax purposes, differs from the

amount shown on the Final Form 8883, the parties shall (i) be bound by each such Final Form 8883 for purposes of determining any Taxes and (ii) prepare and file their Tax Returns on a basis consistent with each such Final Form 8883. The Purchase Price allocation pursuant to the Final Form 8883 shall be appropriately adjusted if and when any purchase price adjustments are made pursuant to 6.11(d)(iii) of this Agreement. No later than fifteen (15) days prior to the date such Form 8883 and any related documentation are required to be filed under the applicable Laws, Seller shall execute and deliver to Buyer the Final Form 8883.

(ii) If, at the request of Buyer, Seller makes joint elections with Buyer and files elections under Section 338(h)(10) of the Code (and any comparable provisions of state, local or foreign Tax Law) with respect to the purchase of the Company, Buyer and Seller (i) shall report the acquisition of the Company by Buyer in a manner consistent with the making of the Section 338(h)(10) election and (ii) shall not take a position in any Tax Return that is inconsistent with the Section 338(h)(10) election.

(j) ***Election to Avoid Tax Attribute Reduction.***

(i) Seller shall not elect to retain any net operating loss carryovers or capital loss carryovers of the Company. If any share of Company Capital Stock would be a “loss share” within the meaning of Treasury Regulation Section 1.1502-36(f)(7), determined without regard to any election under Treasury Regulation Section 1.1502-36(d)(6) and determined after taking into account the effects of all applicable rules of Law, including any adjustments under Treasury Regulation Section 1.1502-36(b), (c), or (d)(5)(iii), then Seller shall make a timely election under Treasury Regulation Section 1.1502-36(d)(6)(i)(A) (and any corresponding or similar provision of state, local or foreign income Tax Law) to reduce the basis in each such share in an amount sufficient to avoid completely any attribute reduction with respect to each such share and the Company. Seller agrees to provide a copy of such election to Buyer at least ten (10) days prior to Closing for Buyer’s review and comment, which comment shall not be unreasonably conditioned, withheld or delayed. Seller shall not make any election pursuant to Treasury Regulation Section 1.1502-36(d)(6)(i)(B) or Treasury Regulation Section 1.1502-36(d)(6)(i)(C) (relating to reattribution of Tax attributes) or Treasury Regulation Section 1.1502-36(d)(5) (relating to reattribution of limitations under Section 382 of the Code).

(ii) The Company Group shall timely make an election to relinquish the entire carryback period with respect to a net operating loss for any taxable year for which the election is available pursuant to Section 172(b)(3) of the Code (and any corresponding or similar provision of state, local or foreign income Tax Law, provided that such election is available).

7. Employee Matters.

7.1 *Employees; Benefits.*

(a) Subject to the terms and conditions of the Key Employee Employment Agreements, Buyer shall cause the Company, for the period commencing on the Closing Date and ending on the 180th day following the Closing Date, to maintain for the Persons employed by the Company at the Closing (i) salary no less than the salary in effect for

such Persons immediately prior to the Closing and (ii) benefits (excluding defined benefit pension benefits) that are substantially comparable in the aggregate to the benefits maintained for and provided to such Persons as a group immediately prior to the Closing; provided, that nothing herein shall restrict Buyer's ability to harmonize salary and benefits between the Company and Buyer. Notwithstanding the foregoing, nothing in this Section 7.1 shall create any rights in any Person that is not a party hereto.

(b) Buyer acknowledges that consummation of the transactions contemplated by this Agreement may constitute a change in control of the Company (to the extent such concept is applicable) for purposes of the Employee Benefit Plans.

(c) To the extent that service is relevant for purposes of eligibility or vesting (but not for purposes of calculation of any benefit or benefit accrual, other than vacation accrual or determination of severance benefits under any employee benefit plan, program or arrangement established or maintained by Buyer following the Closing Date for the benefit of Company Employees, such plan, program or arrangement shall credit such Company Employees for service for purposes of eligibility and vesting on or prior to the Closing Date that was recognized by the Company for purposes of Company Benefit Plans, programs or arrangements maintained by the Company. In addition, with respect to any welfare benefit plan (as defined in Section 3(1) of ERISA) established or maintained by Buyer following the Closing Date for the benefit of Company Employees, such plan shall waive any pre-existing condition exclusions or limitations, eligibility waiting periods or required physical examinations with respect to any Company Employee and their eligible dependents to the extent waived under the corresponding plan in which the applicable Company Employees participated immediately prior to the Closing Date and provide that any covered expenses incurred on or before the Closing Date by any Company Employee and their eligible dependents shall be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Closing Date.

(d) This Section 7.1 shall be binding upon and inure solely to the benefit of each of the parties hereto, and nothing in this Section 7.1, expressed or implied, is intended to confer upon any other Person (including any employees of independent contractors of the Company or any Affiliate of the Company) any rights or remedies of any nature whatsoever under or by reason of this Section 7.1 and no provision of this Section 7.1 will create any third party beneficiary rights in any current or former employee, officer, director or individual independent contractor of the Company or any Affiliate of the Company. This Section 7.1 shall not be considered, or deemed to be, an amendment to any Company Benefit Plan or any compensation or benefit plan, program, agreement or arrangement of the Buyer or any of its Affiliates except as otherwise required to implement the provisions of this Section 7.1. Without limiting the generality of the foregoing, (i) nothing in this Agreement shall be interpreted or construed to confer upon the Company Employees any right with respect to continuance of employment by the Company, or Buyer, nor shall this Agreement interfere in any way with the right of the Company or Buyer to terminate any employee's employment at any time and (ii) nothing in this Agreement shall interfere in any way with the right of Buyer to amend, terminate or otherwise discontinue any or all plans, practices or policies of Buyer in effect from time to time.

(e) The following actions shall be taken with respect to the Foto Fantasy Holdings, Inc. Stock Option Plan and the Incentive Compensation Plan no later than the day immediately preceding the Closing Date:

(i) The Company shall provide Buyer with evidence that the (x) Foto Fantasy Holdings, Inc. Stock Option Plan has been terminated (effective as of the Closing Date) pursuant to resolutions of the Board of Directors of Seller; and (y) Incentive Compensation Plan has been terminated (effective as of the Closing Date) pursuant to resolutions of the Board of Directors of the Company.

(ii) The form and substance of such resolutions shall be subject to review and approval of Buyer. In addition, the Company shall obtain consents from each (A) optionholder under the Foto Fantasy Holdings, Inc. Stock Option Plan regarding the termination of the awards thereunder, and (B) participant under the Incentive Compensation Plan regarding the termination of the units thereunder, in each case effective as of the Closing Date.

7.2 Officers' and Managers' Indemnification. The Company, Seller and Buyer agree that all rights to exculpation and indemnification existing in favor of, and all limitations on the personal Liability of, the members, managers, directors, officers and employees of the Company (the "Indemnified Persons") provided for in the Company's organizational documents, as in effect as of the date hereof with respect to matters occurring prior to and through the Closing, and specifically including the transactions contemplated hereby, shall continue in full force and effect for a period of six (6) years from the Closing; provided, however, that all rights to indemnification in respect of any claims (each a "Claim") asserted or made within such period shall continue until the disposition of such Claim. Following the Closing, Buyer shall not, and shall not permit the Company to, amend or modify the Company Certificate, except as required by Law, if the effect of such amendment or modification would be to lessen or otherwise adversely affect the indemnification rights of such Indemnified Persons as provided therein, and Buyer shall cause the Company to advance expenses to each such Indemnified Person in connection with any proceeding involving such Indemnified Person to the fullest extent so permitted upon receipt of any undertaking required by Law or in the Company's organizational documents. In the event that the Company transfers all or substantially all of their properties and assets to any Person, then and in each such case, proper provision shall be made so that the transferee of such properties or assets shall assume the obligations of the Company under this Section 7.2. Prior to the Closing, the Company shall purchase an extended reporting period endorsement under the Company's existing managers', directors' and officers' liability insurance coverage for the Company's managers, directors and officers in a form acceptable to the Seller which shall provide such managers, directors and officers with coverage for six (6) years following the Closing of not less than the existing coverage under, and have other terms not materially less favorable to, the insured persons than the managers', directors' and officers' liability insurance coverage presently maintained by the Company. All costs and expenses incurred in connection with purchasing an extended reporting period endorsement as described herein shall constitute Company Transaction Expenses. This Section 7.2 is intended to benefit each of the Indemnified Persons and their respective heirs and personal representatives, each whom shall be entitled to enforce the provisions hereof.

8. Conditions To Closing.

8.1 *Conditions to Obligations of Seller.*

The obligations of Seller to effect the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) All covenants contained in this Agreement to be complied with by Buyer on or before the Closing shall have been complied with in all material respects.

(b) Each of the representations and warranties of Buyer contained in Section 5 hereof shall be true and correct in all material respects as of the Closing Date (except for any of such representations and warranties that are qualified by materiality, including by reference to Material Adverse Effect, which shall be true in all respects) as though made on and as of such date, except to the extent that any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date; provided, however, that the representations and warranties set forth in Sections 5.1 and 5.2 (collectively, the “Buyer Fundamental Representations”) shall be true and correct in all respects as of the Closing Date as though made on and as of such date.

(c) Seller shall have received a certificate, signed by a duly authorized officer of Buyer and dated the Closing Date, to the effect that the conditions set forth in Section 8.1(a) and Section 8.1(b) above have been satisfied.

(d) No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) that is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting the consummation of such transactions in accordance with the terms of this Agreement.

(e) The Escrow Agreement shall have been executed and delivered by Buyer and the Escrow Agent.

8.2 *Conditions to Obligations of Buyer.*

The obligations of Buyer to effect the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) All covenants contained in this Agreement to be complied with by the Company and Seller on or before the Closing shall have been complied with in all material respects.

(b) Each of the representations and warranties of Seller contained in Section 3 and in Section 4 hereof shall be true and correct in all material respects as of the Closing Date (except for any of such representations and warranties that are qualified by materiality, including by reference to material adverse effect, which shall be true in all respects) as though made on and as of such date, except to the extent that any such representation and

warranty expressly relates to an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date; provided, however, that the representations and warranties set forth in Sections 3.1, 3.2, 3.8, 4.1, 4.2, and 4.5 of this Agreement (collectively, the “Seller Fundamental Representations”) shall be true and correct in all respects as of the Closing Date as though made on and as of such date.

(c) Buyer shall have received a certificate, signed by a duly authorized officer of each of Seller and the Company and dated the Closing Date, to the effect that the conditions set forth in Section 8.2(a) and Section 8.2(b) above have been satisfied.

(d) No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting consummation of such transactions in accordance with the terms of this Agreement.

(e) (i) The Company and Seller, as applicable, shall have sent notices (in form and substance reasonably acceptable to Buyer) to the third parties identified on Schedule 8.2(e) no later than the fifth (5th) day preceding the anticipated Closing Date; and (ii) none of Seller, the Company or any of their respective Affiliates shall have received notice by any such third party indicating such third party’s objection to the transactions contemplated hereby (it being understood that a request for additional information shall not be deemed an objection) or its intention to terminate its Contract with the Company.

(f) Since the date hereof, there shall not have occurred a Company Material Adverse Effect.

(g) Seller shall have delivered to Buyer evidences of termination or cancellation of each of the Intercompany Agreements and release of Buyer and its Affiliates (including the Company) from all Liability with respect thereto.

(h) Seller or the Company shall have delivered to Buyer the Closing Memorandum and such memorandum shall accurately reflect the amount of Indebtedness of the Company, the Intragroup Debt, the Company Transaction Expenses, the Transaction Bonuses, the Third Party Debt and the Third-Party Debt Excess, in each case as of the Closing, as reasonably determined by Buyer and Seller acting in good faith.

(i) Seller or the Company shall have delivered to Buyer, if and to the extent directed and specified by the Buyer, resignations of each director and officer of the Company who will not be continuing in such capacities following the Closing, which resignations shall be in form reasonably satisfactory to Buyer and shall become effective as of the Closing Date.

(j) The Escrow Agreement shall have been duly executed and delivered by Seller, the Company and the Escrow Agent.

(k) Each of the Key Employees shall have entered into his or her respective Key Employee Employment Agreements and each such agreement shall be in effect as of the Closing.

(l) Seller shall have made arrangements (reasonably satisfactory to Buyer) for the funding of any shortfall amount for which Seller may be responsible pursuant to clauses (ii), (iii) and (iv) of Section 2.2(c).

(m) The Company shall have no Indebtedness other than the Third-Party Debt and Buyer Indebtedness.

(n) On the Closing Date prior to the Closing, Sankaty shall, and shall have caused its applicable Affiliates to, have contributed any Related Party Indebtedness to Seller and Seller shall have contributed any such Indebtedness to the Company.

(o) Any and all security interests in any Company Intellectual Property Rights, including but not limited to the security agreements recorded with the United States Patent and Trademark Office at (i) Reel/Frame 1887/0411 in favor of Fleet Bank-NH; and (ii) Reel/Frame 2610/0137 in favor of Sovereign Bank, shall have been released and such release shall have been recorded with United States Patent and Trademark Office (it being understood, however, that such condition shall not apply to security interests recorded with respect to the Third-Party Debt in the event Buyer elects to retain the Third-Party Debt in place following the Closing).

8.3 Deliveries at Closing.

(a) At the Closing, Seller or the Company, as applicable, will deliver or cause to be delivered to Buyer or the Escrow Agent (as the case may be) the following:

(i) the certificate to be delivered pursuant to Section 8.2(c) hereof;

(ii) the certificates evidencing the Shares, duly endorsed in blank or accompanied by duly executed stock powers endorsed in blank;

(iii) the Escrow Agreement, duly executed by Seller and the Company and the other Ancillary Agreements to either Seller or the Company is a party, duly executed by Seller and/or the Company, as applicable;

(iv) if and to the extent directed and specified by Buyer, resignations, effective as of the Closing Date, of each director and officer of the Company who will not be continuing in such capacities following the Closing;

(v) the Third Party Debt Payoff Letter, together with termination statements or similar documents evidencing the termination of all Encumbrances relating to such Indebtedness effective upon the payment of the Third Party Debt Payoff Amount;

(vi) a certificate of good standing for the Company issued by the Secretary of State of Delaware dated as of a recent date;

(vii) copies of the notices delivered pursuant to Section 8.2(e)(i) and any responses received from the addresses of such notices;

(viii) a certificate from Seller dated as of the Closing Date certifying that Seller is not a foreign Person for purposes of Code Section 1445, in form and substance satisfying the requirements of Treasury Regulations Section 1.1445-2(b)(2) and satisfactory to Buyer;

(ix) a copy of a completed election acceptable to Buyer pursuant to Treasury Regulation Sections 1.1502-36(d)(6)(i)(A), 1.1502-36(e)(5) and Section 6.11(j)(ii);

(x) a duly executed contribution agreement evidencing the contributions contemplated under Section 8.2(n); and

(xi) such other customary instruments of transfer, assumptions, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer will deliver or cause to be delivered to Seller or the Escrow Agent (as the case may be) the following:

(i) the Seller Closing Amount by wire transfer of immediately available funds to the account specified in writing by Seller in accordance with Section 2.2(b)(v);

(ii) the certificate to be delivered pursuant to Section 8.1(c) hereof; and

(iii) the Escrow Agreement and the other Ancillary Agreements duly executed by Buyer, and the delivery of the Escrow Fund to the Escrow Agent.

9. Survival of Representations and Warranties; Indemnification.

9.1 *Survival.* Subject to the limitations and other provisions of this Agreement, the representations and warranties of the parties hereto contained herein shall survive the Closing and shall remain in full force and effect until, and shall terminate on, the date that is eighteen (18) months after the Closing Date (the “Indemnification Cut-Off Date”), except that: (i) the representations and warranties set forth in Section 3.8 (Taxes) shall survive the Closing until the expiration of the applicable statute of limitations for the matters described in such representations and warranties, provided that a party seeking indemnification shall have thirty (30) days following the expiration of the applicable statute of limitations in which file an indemnity claim relating to a claim that occurred prior to the expiration of the applicable statute of limitations for the matters described in such representations and warranties; and (ii) the Seller Fundamental Representations and the Buyer Fundamental Representations (except for the representations and warranties set forth in Section 3.8 (Taxes)) shall survive the Closing

indefinitely. No party shall have any obligation under this Section 9 with respect to any representations and warranties following the applicable Indemnification Cut-Off Date, except to the extent such obligation relates to a representation or warranty that survives the Indemnification Cut-Off Date pursuant to clauses (i) or (ii) of the preceding sentence; provided, however, that if notice of any claim for indemnification under Section 9.2 or Section 9.3 hereof shall have been given in accordance with the terms of this Agreement prior to the applicable Indemnification Cut-Off Date, the representations and warranties that are the subject of such indemnification claim shall survive with respect to such indemnification claim until such claim is finally resolved. The covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing for the period provided in such covenants and agreements, if any, or, if later, until fully performed.

9.2 Indemnification by Seller.

(a) Seller agrees, subject to the other terms and conditions of this Agreement, to indemnify Buyer, its Affiliates (including the Company) and each of their respective directors, officers, shareholders, partners, agents and employees (each a “Buyer Indemnified Party”) against and hold them harmless to the extent of any Losses resulting from, arising out of or incurred in connection with (i) any breach or inaccuracy of any representation or warranty of the Company or Seller contained in Section 3 or in Section 4 of this Agreement, (ii) any nonfulfillment, violation or breach of any covenant or agreement of the Company or Seller contained in this Agreement and (iii) any amount of Indebtedness (exclusive of the Buyer Indebtedness) of the Company as of the Closing, Transaction Bonuses or Company Transaction Expenses to the extent not set forth in the Closing Memorandum and taken into account in the calculation of the Seller Closing Amount.

(b) The indemnification obligations of Seller pursuant to Section 9.2(a) shall be limited as follows:

(i) Other than for fraud, intentional breach or breach or inaccuracy of any Seller Fundamental Representation, Seller shall have no obligation to provide any indemnification under clauses (i) and (ii) of Section 9.2(a) until the aggregate dollar amount of all Losses that would otherwise be indemnifiable thereunder exceeds \$100,000 (the “Threshold Amount”), and then only to the extent of the amount of Losses in excess of the Threshold Amount; provided, however, that no Losses relating to or arising out of an individual claim (or aggregated to the extent the amounts of all claims and Losses arise from substantially similar or the same or similar facts) shall be included in determining if the Threshold Amount has been exceeded unless and until such Losses exceed the amount of Five Thousand Dollars (\$10,000).

(ii) Other than for fraud, intentional breach or breach or inaccuracy of any Seller Fundamental Representation or any representation set forth in Section 3.8, Seller shall not be obligated to indemnify any Buyer Indemnified Party pursuant to clauses (i) or (ii) of Section 9.2(a) for any amount of indemnifiable Losses in excess of the Escrow Fund.

(iii) The Buyer Indemnified Parties shall recover the amount of any Losses indemnifiable pursuant to Section 9.2(a) from the Escrow Fund to the extent of its

availability. With respect to Losses resulting from fraud, intentional breach, breach or inaccuracy of any Seller Fundamental Representation or based on clause (iii) of Section 9.2(a), in the event the Escrow Fund has been released to Seller or to the extent it is insufficient to fully discharge Seller' indemnification obligations with respect to any such Losses, the Buyer Indemnified Parties shall be entitled to seek recourse from Seller for the amount of any such Losses not recoverable from the Escrow Fund subject to the limitations specified in this Section 9.2.

(c) Payments by Seller pursuant to clauses (i) and (ii) of Section 9.2(a) shall be further limited to the amount of any Liability that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by Buyer Indemnified Parties from any third party with respect thereto, net of all costs and expenses incurred in connection with securing or obtaining such proceeds (including increased premiums); provided, however, that neither Buyer nor any other applicable Buyer Indemnified Party shall have any obligation to seek to collect any Losses from insurance policies or other applicable sources of recovery prior to being entitled to indemnification hereunder. If a Buyer Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Losses, subsequent to an indemnification payment by Seller, then such Buyer Indemnified Party shall promptly reimburse Seller for any indemnification payment made by Seller with respect to such Losses up to the amount received by the Buyer Indemnified Party, net of all costs and expenses incurred in connection with securing or obtaining such amount (including increased premiums).

(d) A Buyer Indemnified Party shall give Seller written notice of any claim, assertion, event or proceeding by or in respect of a third party (a "Third-Party Claim") as to which such Buyer Indemnified Party may request indemnification hereunder (including Section 6.11(a)) or as to which the Threshold Amount may be applied (each such notice, a "Claim Notice") as soon as it is practicable and in any event within thirty (30) days of the time that such Buyer Indemnified Party learns of such Third-Party Claim; provided, however, that the failure to so notify Seller shall not affect rights to indemnification hereunder except to the extent that Seller is materially prejudiced by such failure. Seller shall have thirty (30) days (or such lesser number of days as set forth in the Claim Notice as may be required by court proceeding in the event of a litigated matter) after receipt of the Claim Notice (the "Notice Period") to notify the Buyer Indemnified Party that it desires to defend the Buyer Indemnified Party against such Third-Party Claim. In the event that Seller notifies the Buyer Indemnified Party within the Notice Period that it desires to defend the Buyer Indemnified Party against a Third-Party Claim, Seller shall have the right to direct, through counsel of its own choosing, the defense of any such Third-Party Claim at its own expense; provided, however, that Seller shall not be entitled to assume control of such defense (which shall be controlled by the Buyer Indemnified Party) and shall pay the fees and expenses of counsel retained by Buyer or the Buyer Indemnified Party if (i) the claim for indemnification relates to or arises in connection with any criminal or regulatory proceeding, action, indictment, allegation or investigation, (ii) the claim seeks an injunction or equitable relief against the Buyer Indemnified Party (or against any Company) or (iv) if adversely determined, the claim would reasonably be expected to result in Losses exceeding twice the amount of the balance of the Escrow Fund. If Seller assumes the defense of any such Third-Party Claim, Seller shall consult with the Buyer Indemnified Party for the purpose of allowing the Buyer Indemnified Party to participate in such defense and to employ counsel of its choosing, but in such case the expenses of the Buyer Indemnified Party shall be paid by the

Buyer Indemnified Party (except that Seller shall pay the reasonable fees and expenses of counsel employed by the Buyer Indemnified Party, if the participation of the Buyer Indemnified Party in the defense of a Third-Party Claim is requested by Seller or if employment of the same counsel by Seller and the Buyer Indemnified Party would create an actual or potential conflict of interest for such counsel). A Buyer Indemnified Party shall provide and shall cause the Company to provide, as applicable, Seller and counsel with access to its records and personnel relating to any such Third-Party Claim during normal business hours and shall otherwise cooperate with Seller in the defense or settlement thereof. If Seller elects to direct the defense of any such Third-Party Claim, the Buyer Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such Third-Party Claim unless (x) Seller consents in writing to such payment, (y) Seller withdraws from the defense of such asserted Third-Party Claim or (z) final judgment from which no appeal may be taken by or on behalf of Seller is entered against the Buyer Indemnified Party for such Third-Party Claim. If Seller has assumed the defense of a Third-Party Claim, Seller shall not, without the prior written consent of the Buyer Indemnified Party admit any Liability with respect to, or pay, settle, compromise or discharge such Third-Party Claim; provided, however, that Seller may pay, settle, compromise or discharge such a Third-Party Claim without the written consent of the Buyer Indemnified Party if such settlement (1) includes a complete and unconditional release of the Buyer Indemnified Party from all Liability in respect of such Third-Party Claim, (2) does not subject the Buyer Indemnified Party to any injunctive relief or other equitable remedy, (3) does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Buyer Indemnified Party and (4) does not contemplate any monetary Liability of the Buyer Indemnified Party that will not be promptly paid or reimbursed by Seller.

(e) If Seller (i) elects not to defend the Buyer Indemnified Party against a Third-Party Claim, whether by not giving the Buyer Indemnified Party timely notice of its desire to so defend or otherwise, (ii) is not entitled to assume the defense of a Third-Party Claim or (iii) fails to defend or if, after commencing or undertaking any such defense, fails to prosecute or withdraw from such defense, the Buyer Indemnified Party shall have the right to undertake the defense or settlement thereof, at Seller's expense. If the Buyer Indemnified Party assumes the defense of any such Third-Party Claim pursuant to this Section 9.2(e) and proposes to settle such Third-Party Claim prior to a final judgment thereon or to forego any appeal with respect thereto, then the Buyer Indemnified Party shall give Seller prompt written notice thereof, it being understood that the Buyer Indemnified party shall not admit any Liability with respect to, or settle, compromise or discharge, such Third-Party Claim without Seller's prior written consent (not to be unreasonably withheld, conditioned or delayed).

(f) Anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of Buyer or a Buyer Indemnified Party, after the consummation of the transactions contemplated hereby, to rescind this Agreement or any of the transactions contemplated hereby.

(g) Neither the Company nor Seller shall have any Liability under any provision of this Agreement for any (i) exemplary or punitive damages (other than exemplary or punitive damages recovered by third parties in connection with a Third-Party Claim), (ii) any Losses to the extent not the probable and reasonably foreseeable result of any breach by Seller or the Company of a representation and warranty or covenant contained in this Agreement

(provided that this clause (ii) shall not apply to any Losses that are recovered by third parties in connection with a Third-Party Claim), or (iii) any Losses solely attributable to diminution of value or lost profits to the extent constituting Losses in excess of the difference between the value of what Buyer received in the transactions contemplated by this Agreement and the value of what Buyer should have received in the transactions contemplated by the Agreement if there had been no breach of the representation and warranty or covenant by Seller or the Company for which breach the Buyer Indemnified Party is seeking indemnification. Buyer and each Buyer Indemnified Party shall take all commercially reasonable steps to mitigate Losses for which indemnification may be claimed by them pursuant to this Agreement upon and after becoming aware of any event that could reasonably be expected to give rise to any such Losses.

(h) Any Liability for indemnification under this Section 9.2 shall be determined without duplication of recovery by reason of the state of facts giving rise to such Liability constituting a breach of more than one representation, warranty, covenant or agreement.

9.3 Indemnification by Buyer.

(a) Buyer agrees, subject to the other terms and conditions of this Agreement, to indemnify Seller and its heirs, personal representatives, successors and assigns (each a “Seller Indemnified Party”) against and hold them harmless from all Losses resulting from (i) any breach or inaccuracy of any representation or warranty of Buyer contained in Section 5 of this Agreement (provided, that, in determining (x) whether any such representation or warranty was true and correct as of any particular date and (y) the amount of any Losses in respect of breach or inaccuracy of any of any such representation or warranty, any qualification or limitation as to materiality (whether by reference to material adverse effect or otherwise) contained in such representation or warranty shall be disregarded) and (ii) any nonfulfillment, violation or breach of any covenant or agreement of Buyer contained in this Agreement.

(b) Payments by Buyer pursuant to Section 9.3(a) shall be further limited to the amount of any Liability that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by Seller Indemnified Parties from any third party with respect thereto, net of all costs and expenses incurred in connection with securing or obtaining such proceeds (including increased premiums); provided, however, that neither Seller nor any other applicable Seller Indemnified Party shall have any obligation to seek to collect any Losses from insurance policies or other applicable sources of recovery prior to being entitled to indemnification hereunder. If the Seller Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Losses, subsequent to an indemnification payment by Buyer, then such Seller Indemnified Party shall promptly reimburse Buyer for any payment made by Buyer with respect to such Losses up to the amount received by the Seller Indemnified Party, net of all costs and expenses incurred in connection with securing or obtaining such amount (including increased premiums).

(c) A Seller Indemnified Party shall provide a Claim Notice to Buyer with respect to any Third-Party Claim as to which such Seller Indemnified Party may request indemnification hereunder (including Section 6.11(b)) as soon as is practicable and in any event within thirty (30) days of the time that such Seller Indemnified Party learns of such Third-Party

Claim; provided, however, that the failure to so notify Buyer shall not affect rights to indemnification hereunder except to the extent that Buyer is materially prejudiced by such failure. Buyer shall have until the end of the applicable Notice Period to notify the Seller Indemnified Party that it desires to defend the Seller Indemnified Party against such Third-Party Claim. In the event that Buyer notifies the Seller Indemnified Party within the Notice Period that it desires to defend the Seller Indemnified Party against a Third-Party Claim, Buyer shall have the right to direct, through counsel of its own choosing, the defense of any such Third-Party Claim at its own expense; provided, however, that Buyer shall not be entitled to assume control of such defense (which shall be controlled by the Seller Indemnified Party) and shall pay the fees and expenses of counsel retained by Seller or the Seller Indemnified Party if (i) the claim for indemnification relates to or arises in connection with any criminal or regulatory proceeding, action, indictment, allegation or investigation or (ii) the claim seeks an injunction or equitable relief against the Seller Indemnified Party. If Buyer assumes the defense of any such Third-Party Claim, Buyer shall consult with the Seller Indemnified Party for the purpose of allowing the Seller Indemnified Party to participate in such defense and to employ counsel of its choosing, but in such case the expenses of the Seller Indemnified Party shall be paid by the Seller Indemnified Party (except that Buyer shall pay the reasonable fees and expenses of counsel employed by the Seller Indemnified Party if the participation of the Seller Indemnified Party in the defense of a Third-Party Claim is requested by Buyer or if employment of the same counsel by Buyer and the Seller Indemnified Party would create an actual or potential conflict of interest for such counsel). A Seller Indemnified Party shall provide Buyer and counsel with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise cooperate with Buyer in the defense or settlement of a Third-Party Claim. If Buyer elects to direct the defense of any such Third-Party Claim, the Seller Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such Third-Party Claim unless (x) Buyer consents in writing to such payment, (y) Buyer withdraws from the defense of such asserted Third-Party Claim or (z) final judgment from which no appeal may be taken by or on behalf of Buyer is entered against Seller Indemnified Party for such Third-Party Claim. If Buyer has assumed the defense of a Third-Party Claim, Buyer shall not, without the prior written consent of the Seller Indemnified Party admit any Liability with respect to, or pay, settle, compromise or discharge such Third-Party Claim; provided, however, that Buyer may pay, settle, compromise or discharge such a Third-Party Claim without the written consent of the Seller Indemnified Party if such settlement (1) includes a complete and unconditional release of the Seller Indemnified Party from all Liability in respect of such Third-Party Claim, (2) does not subject the Seller Indemnified Party to any injunctive relief or other equitable remedy and (3) does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Seller Indemnified Party.

(d) If Buyer (i) elects not to defend the Seller Indemnified Party against a Third-Party Claim, whether by not giving the Seller Indemnified Party timely notice of its desire to so defend or otherwise, (ii) is not entitled to assume the defense of a Third-Party Claim, or (iii) fails to defend or if, after commencing or undertaking any such defense, fails to prosecute or withdraws from such defense, the Seller Indemnified Party shall have the right to undertake the defense or settlement thereof, at Buyer's expense. If the Seller Indemnified Party assumes the defense of any such Third-Party Claim pursuant to this Section 9.3(d) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Seller Indemnified Party shall give Buyer prompt written notice thereof,

it being understood that the Seller Indemnified party shall not admit any Liability with respect to, or settle, compromise or discharge, such Third-Party Claim without Buyer's prior written consent (not to be unreasonably withheld, conditioned or delayed).

(e) Anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of Seller, after the consummation of the transactions contemplated by this Agreement, to rescind this Agreement or any of the transactions contemplated hereby.

(f) Buyer shall not have any Liability under any provision of this Agreement for any (i) exemplary or punitive damages (other than exemplary or punitive damages recovered by third parties in connection with a Third-Party Claim) or (ii) any Losses to the extent not the probable and reasonably foreseeable result of any breach by Buyer of a representation and warranty or covenant contained in this Agreement (provided that this clause (ii) shall not apply to any Losses that are recovered by third parties in connection with a Third-Party Claim). Seller and each Seller Indemnified Party shall take all commercially reasonable steps to mitigate Losses for which indemnification may be claimed by them pursuant to this Agreement upon and after becoming aware of any event that could reasonably be expected to give rise to any such Losses.

(g) Any Liability for indemnification under this Section 9.3 shall be determined without duplication of recovery by reason of the state of facts giving rise to such Liability constituting a breach of more than one representation, warranty, covenant or agreement.

9.4 Treatment of Indemnity Payments. All payments made by Seller or Buyer, as the case may be, to or for the benefit of the other parties pursuant to Section 6.11 or this Section 9 shall be treated as adjustments to the Purchase Price for Tax purposes, unless they are required to treat such payments otherwise by applicable Law.

9.5 Known Breach of Representations and Warranties. The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of, or compliance with, any such representation, warranty, covenant or agreement. The waiver of any condition based on the accuracy of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and agreements.

9.6 Remedies Exclusive. Except in cases of fraud or as otherwise specifically provided in this Agreement, from and after the Closing, the rights of the parties to indemnification relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this Section 9, and such indemnification rights shall be the exclusive monetary remedies (including equitable remedies that involve monetary payment, such as restitution or disgorgement, other than specific performance to enforce any payment or performance due hereunder) of the parties hereto subsequent to the Closing Date in connection

with any breach of a representation or warranty, or non-performance, partial or total, of any covenant or agreement contained herein.

9.7 No Right of Contribution. None of Seller or any of its Affiliates shall have any right of contribution against the Company with respect to any inaccuracy, breach or failure to timely perform any of Seller's or the Company's representations, warranties, covenants or agreements contained in this Agreement or in any Ancillary Agreement.

10. Termination.

10.1 Termination. This Agreement may be terminated:

(a) at any time, by the mutual written consent of Seller, the Company and Buyer;

(b) by the Company or Seller, if the Company and Seller are not then in material breach of any term of this Agreement, upon written notice to Buyer, upon a material breach of any representation, warranty or covenant of Buyer contained in this Agreement, provided that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by the Company or Seller to Buyer;

(c) by Buyer, if Buyer is not then in material breach of any term of this Agreement, upon written notice to the Company and Seller, upon a material breach of any representation, warranty or covenant of the Company or Seller contained in this Agreement, provided that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by Buyer to the Company and Seller;

(d) by Buyer, the Company or Seller at any time after March 19, 2015, if the Closing has not occurred as of such date and the party seeking termination is not then in material breach of any of the terms of this Agreement;

(e) by Buyer, the Company or Seller in the event of the issuance of a final, non-appealable Governmental order, the enactment of any statute, or the promulgation of any rule or regulation by any Governmental Authority, in each case, restraining or prohibiting the consummation of the transactions contemplated by this Agreement; or

(f) by Buyer as provided in Section 6.9.

10.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 10.1, this Agreement shall forthwith become void and there shall be no further Liability or obligations hereunder on the part of any party hereto or their respective Affiliates except for the obligations of the parties pursuant to this Section 10.2 and Sections 6.3, 6.7 and 11.2; provided, however, that nothing herein shall relieve the parties hereto from Liability for any fraud or willful misconduct or any intentional breach of this Agreement existing at the time of such termination.

10.3 Waiver. At any time prior to the Closing, Buyer or Seller may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b)

waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (c) waive compliance with any of the agreements of the other party or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party.

11. General Provisions.

11.1 Notices. All notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given if delivered personally, sent by overnight courier (providing proof of delivery), or via facsimile to the parties at the following addresses (or at such other address for a party as specified by like notice):

if to the Company prior to the Closing, to:

Foto Fantasy, Inc.
8A Industrial Way
Salem, NH 03079
Attn: Dale Valvo, President
Facsimile:

with copy to:

Hinckley, Allen & Snyder, LLP
28 State Street
Boston, MA 02109
Attn: Michael E. Kushnir, Esq.
Facsimile: 617-378-4317

if to Seller:

Sankaty Advisors
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attn: Brett L'Esperance
Facsimile: 617-652-3881

with copy to:

Hinckley, Allen & Snyder, LLP
28 State Street
Boston, MA 02109

Attn: Michael E. Kushnir, Esq.
Facsimile: 617-378-4317

If to Buyer and, following the Closing, the
Company, to:

DNP Imagingcomm America Corporation
4524 Enterprise Drive, N.W.
Concord, NC 28027
Attn: President
Facsimile: 704-784-7195

with a copy to:

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attn: Michael O. Braun
Facsimile: 212-903-3676

11.2 Fees and Expenses. Except as provided otherwise herein, each of Buyer, on the one hand, and the Company (on behalf of the Company and Seller) on the other hand, shall bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement.

11.3 Interpretation. When a reference is made in this Agreement to a Section, Schedule or Exhibit, such reference will be to a Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “shall” and “will” mean “must”, and “shall” and “will” have equal force and effect and express an obligation. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

11.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

11.5 Amendments. This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing duly and validly executed by Buyer, the Company and Seller, or in the case of a waiver, the party waiving compliance.

11.6 Entire Agreement; Severability. This Agreement (including the exhibits, schedules, documents and instruments referred to herein) and the Confidentiality Agreement constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of Law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

11.7 Third Party Beneficiaries. Except as expressly provided in this Agreement, each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

11.8 Governing Law. This Agreement will be governed by, and construed in accordance with, the internal Laws of the State of Delaware regardless of the Laws that might otherwise govern under applicable principles of conflict of Laws.

11.9 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by operation of Law or otherwise by the parties hereto without the prior written consent of the Company, Seller and Buyer. Any assignment in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

11.10 Consent to Jurisdiction. Each of the parties hereby consents to personal jurisdiction, service of process and venue in the federal or state courts of the Commonwealth of Massachusetts for any claim, suit or proceeding arising under this Agreement, or in the case of a Third-Party Claim subject to indemnification hereunder, in the court where such claim is brought.

11.11 Dispute Resolution. Any dispute arising out of or relating to this Agreement or the breach, termination or validity hereof shall be finally settled by arbitration conducted expeditiously in accordance with the Center for Public Resources Rules for Non-administered Arbitration of Business Disputes (the "CPR Rules"). The Center for Public Resources shall appoint a neutral advisor from its National CPR Panel. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§1-16, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of

arbitration shall be New York, New York. Such proceedings shall be administered by the neutral advisor in accordance with the CPR Rules as he/she deems appropriate.

Each of Buyer, the Company and Seller (i) hereby unconditionally and irrevocably submits to the jurisdiction of the Southern District of New York or the courts of the State of New York, in the city of New York and Borough of Manhattan for the purpose of enforcing the award or decision in any such proceeding and (ii) hereby waives, and agrees not to assert in any civil action to enforce the award, any claim that it is not subject personally to the jurisdiction of the above-named court, that its property is exempt or immune from attachment or execution, that the civil action is brought in an inconvenient forum, that the venue of the civil action is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives and agrees not to seek any review by any court of any other jurisdiction which may be called upon to grant an enforcement of the judgment of any such court. Each of Buyer, the Company and Seller hereby consents to service of process by registered mail at the address to which notices are to be given. Each of Buyer, the Company and Seller agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other parties hereto. Final judgment against Buyer, the Company or Seller in any such action, suit or proceeding may be enforced in other jurisdictions by suit, action or proceeding on the judgment, or in any other manner provided by or pursuant to the laws of such other jurisdiction; provided, however, that any party may at its option bring suit, or institute other judicial proceedings, in any state or federal court of the United States or of any country or place where the other parties or their assets, may be found.

11.12 Mutual Drafting. The parties hereto are sophisticated and have been represented by attorneys throughout the transactions contemplated hereby who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of Laws or rules relating to the interpretation of Contracts against the drafter of any particular clause should be applied to this Agreement or any agreement or instrument executed in connection herewith, and therefore waive their effects.

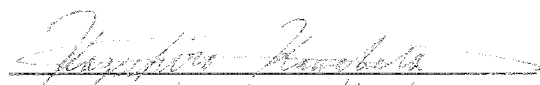
11.13 Remedies. It is specifically understood and agreed that any breach of the provisions of this Agreement or any other agreement executed and delivered pursuant to this Agreement by any party hereto will result in irreparable injury to the other parties hereto, that the remedy at Law alone will be an inadequate remedy for such breach, and that, in addition to any other remedies which they may have, such other parties may enforce their respective rights by actions for specific performance (to the extent permitted by Law).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Purchase and Sale Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

BUYER

**DNP IMAGINGCOMM AMERICA
CORPORATION**


By: 
Name: Kazutaro Karabata
Title: President

[Signature Page to Purchase and Sale Agreement]

**TRADEMARK
REEL: 007136 FRAME: 0630**

SELLER

FOTO FANTASY HOLDINGS, INC.

By: 
Name: Dale V. Vetro
Title: President

[Signature Page to Purchase and Sale Agreement]

COMPANY

FOTO FANTASTY, INC.

By: Dale Valvo
Name: Dale Valvo
Title: President

[Signature Page to Purchase and Sale Agreement]

TRADEMARK
REEL: 007136 FRAME: 0632

Exhibit A

Form of Employment Agreement

EXECUTIVE EMPLOYMENT AGREEMENT

This Agreement Regarding Employment, Non-Competition and Confidentiality and any other matters (this Agreement) is made in Rockingham County, New Hampshire on this ____ day of _____, 20____ between Foto Fantasy Inc. d/b/a Innovative Foto, as employer (Employer or Company), and [], as employee (Executive).

RECITALS

1. Employer and Executive have agreed to enter into an at-will employment relationship on terms set forth below following DNP Imagingcomm America Corporation's (DNP) purchase of the Company;

2. Employer has requested that, as a condition of obtaining employment and other valuable consideration, that Executive enter into this Agreement. Accordingly, Executive signs this Agreement in exchange for the below referenced consideration which he would not otherwise have received.

TERMS OF AGREEMENT

I. At-Will Employment and Title

Employer shall employ Executive in New Hampshire in the position of[]. Executive acknowledges that he is employed at-will, for no definite duration, and that either he or Employer may terminate this employment for any legal reason, with or without cause and/or notice. Additionally, the Executive's employment shall terminate upon his death.

II. Compensation

a. Salary

Employer shall compensate employee by paying him an annual salary in the amount of \$[], less all legally applicable withholdings which shall be paid according to Employer's established payroll periods and practices.

b. Benefits

- i. Incentive, Savings and Retirement Plans. Executive will be permitted to participate in the Company's 401K plan and other incentive, savings and retirement plans, as adopted from time to time by the Employer, that are tax-qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and all plans that are supplemental to any such tax-qualified plans, in each case to the extent that such plans are applicable generally to other senior executives of the Company and are approved by the Employer.
- ii. Welfare Benefit Plans. The Executive and the Executive's immediate family are eligible for all benefits the Company provides to its employees under welfare benefit plans, practices, policies and programs provided by the Company (including, without limitation, medical, prescription, dental, vision, disability, salary continuance, group life and supplemental group life, accidental death and travel accident insurance plans and programs) to the extent applicable

generally to other senior executives of the Company and as approved by the Employer (collectively, the “Welfare Benefit Plans”). The Company will contribute to payment of the Executive’s premiums for these Welfare Benefit Plans at the same rate or in the same amounts as it contributed toward premium payments for its other employees.

- iii. Expenses. Subject to the requirements of the business expense reimbursement policies and procedures of the Company as in effect from time to time that are approved by the Employer, the Executive is authorized to incur, and the Company will reimburse the Executive for, reasonable out-of-pocket expenses in the course of performing his duties under this Agreement including without limitation, reasonable business meals, entertainment, travel, and cellular phone expenses.
- iv. Vacation and Holidays. The Company will provide to the Executive paid vacation in accordance with the plans, policies, programs and practices of the Company, providing not less than **twenty (20)** business days’ vacation per year, and all holidays as recognized holidays stipulated in the Employee Handbook as of the date of this Agreement during which times Executive’s applicable compensation shall be paid in full. The Executive can accrue up to **ten (10)** paid unused vacation days that shall accrue to the next calendar year, however, no additional compensation shall be paid to Executive for

any accrued vacation days except upon termination. In no case will the Company pay the Executive for accrued unused vacation in excess of **thirty (30)** days.

- v. Any such reimbursement that would constitute nonqualified deferred compensation subject to Section 409A of the Internal Revenue Code, as amended (including the regulations thereunder, "Section 409A"), shall be subject to the following additional rules: (i) no reimbursement of any such expenses shall affect Executive's right to reimbursement of any other such expense in any other taxable year; (ii) reimbursement of the expense shall be made, if at all, not later than the end of the calendar year following the calendar year in which the expense was incurred; and (iii) the right to reimbursement shall not be subject to liquidation or exchange for any other benefit.

c. Performance Bonus

Executive will be eligible to receive performance bonuses during the term of this Agreement up to thirty percent (30%) of his then-current annual Salary (the "Bonus"). The performance bonus shall be based on the Company's bonus plan that will be similar to those of the Company's affiliates based on actual performance of the Company against performance targets established by the Company's board of directors with the reasonable input of the Executive.

Executive shall be evaluated for the performance bonus every six months in April and October of each year of employment. In the event that Executive earns a performance bonus based

on the criteria set forth in this paragraph II (c), Employer shall pay the performance bonus on its last pay day of the month in April and October.

The payment of any Bonus pursuant to this Section II(c) shall be made in accordance with the normal payroll practices of the Company, less required deductions for state and federal withholding tax, social security and other employment taxes and authorized payroll deductions.

d. Severance Payment

i. Termination without Cause –

a. In the event Employer terminates the employment of Executive during the first year of his employment by Employer without Cause (as hereinafter defined), Employer shall pay Executive according to its regular payroll practices, in twenty-six equal installments beginning on the date of termination and ending on the one year anniversary of the termination a Severance Benefit equal to the total amount of one year of Executive's annual salary for the year in which he is terminated less all legally applicable withholdings.

b. In the event Employer terminates the employment of Executive during the second year of his employment without Cause, Employer shall pay Executive according to its regular payroll practices, in twenty-six equal installments beginning on the date of termination and ending on the one year anniversary of the termination a Severance Benefit equal to

the total amount of seventy five percent (75%) of his annual salary in the year in which he is terminated less all legally applicable withholdings.

- c. In the event Employer terminates the employment of Executive during the third year of his employment for reasons without Cause, Employer shall pay Executive according to its regular payroll practices, in twenty-six equal installments beginning on the date of termination and ending on the one year anniversary of the termination a Severance Benefit equal to the total amount of fifty percent (50%) of his annual salary in the year in which he is terminated less all legally applicable withholdings.
- d. For purposes of this provision, the term "Cause" shall mean
 - (i) Executive's failure or refusal to comply with reasonable directives of the Employer's Board of Directors; or (ii) dishonesty, fraud, embezzlement or misappropriation of funds involving assets of the Employer, its customers, suppliers, or any of their affiliates; or (iii) indictment or charge of Executive by applicable governmental authorities with, or being convicted of, any felony criminal offense; (iv) the willful and repeated breach or habitual neglect by Executive of his duties under this Agreement or his duties as an

Executive of Employer; or (v) material breach of this Agreement by the Executive which is not remedied by the Executive within 30 days after notice of breach thereof from the Company.

(i) Transfer

ii. In the event Employer, during Executive's first year of employment by Employer, requires Executive to work in a facility that is greater than 30 miles from the facility he worked in at the time of the execution of this agreement, and Executive does not agree to the Employer's reassignment of his work location, Executive may terminate his employment by providing notice to the Employer within ninety (90) days of such reassignment. Employer shall pay Executive according to its regular payroll practices in twenty-six (26) equal installments beginning on the date of termination and ending on the one year anniversary of the termination, a Severance Benefit equal to the total amount of one year of Executive's annual salary for the year in which he is terminated less all legally applicable withholdings.

iii. In the event Employer, during Executive's second year of employment by Employer, requires Executive to work in a facility that is greater than 30 miles from the facility he worked in at the time of the execution of this agreement, and Executive does not agree to the Employer's reassignment of his work location, Executive may

terminate his employment by providing notice to the Employer within ninety (90) days of such reassignment, and Employer shall pay Executive according to its regular payroll practices, in twenty six (26) equal installments, beginning on the date of termination and ending on the one year anniversary of the termination, a Severance Benefit equal to the total amount of seventy five percent (75%) of his annual salary in the year in which he is terminated less all legally applicable withholdings.

- iv. In the event Employer, during Executive's third year of employment by Employer, requires Executive to work in a facility greater than 30 miles from the facility he worked in at the time of the execution of this agreement, and employee does not agree to the Employer's reassignment of his work locations, Executive may terminate his employment by providing notice to the Employer within ninety (90) days of such reassignment, and Employer shall pay Executive according to its regular payroll practices, in twenty six (26) equal installments, beginning on the date of termination and ending on the one year anniversary of the termination, a Severance Benefit equal to the total amount of fifty percent (50%) of his annual salary in the year he is terminated less all legally applicable withholdings.
- v. Any Severance Benefit provided for in this paragraph II(d) shall be paid to Executive in the form of salary continuation beginning on the

date of termination and ending on the one year anniversary of Executive's termination. Except as provided in this paragraph II(d), Executive shall not be entitled to a Severance Benefit regardless of the reasons for his termination or which party elects to terminate the employment.

e. Retirement Payment

Employer shall pay Executive a Retirement Payment in the event that Executive elects to terminate his employment after July 1, 2017. The Retirement Payment shall be an amount equal to the Executive's annual salary for the year 2017. The Retirement Payment shall be paid according to the Employer's regular payroll practices in twenty-six (26) equal installments beginning on the date of termination and ending on the one year anniversary of the termination.

The payment of any amounts under this section II(e) shall be made in accordance with the normal payroll practices of the Company, less legally required deductions for state and federal withholding tax, social security, and other employment taxes and other authorized deductions. In the event Executive's employment is terminated by Employer for Cause at any time, Executive shall not be entitled to any Retirement Payment provided for in this section II(e).

III. Restrictive Covenants

In consideration of employment and other benefits contained in this Agreement, all of which Executive agrees are of sufficient value to warrant these covenants, the parties agree to the following restrictive covenants:

A. During the Employment Term and for a period of twelve (12) months from the date of termination of employment, Executive hereby agrees, unless he has obtained written consent from the Board of Directors to refrain from:

(i) Directly carrying on or engaging in a business which competes with that of the Company at the time this Agreement terminates; and

(ii) Owning, managing, operating, controlling, being employed in a competitive capacity by a business in competition with Employer, working for, participating in or being connected in any manner with the ownership, management, operation or control of a business that directly competes with that of the Company at the time this Agreement terminates (provided, however, that nothing herein prevents or restrains Executive from owning or controlling less than 1% of the outstanding shares of voting stock of any publicly traded company that directly competes with the business of the Company at the time this Agreement terminates), in either case anywhere in the State of New Hampshire or in any other State of the United States or any other country where the Company engages in business on the date of the termination of employment; and

(iii) Either directly or indirectly soliciting clients, customers, and/or employees of the Company, including soliciting any employee of the Company to participate in or assist with the formation or operations of any business that competes with that the Company at the

time this Agreement terminates or with respect to the possible future employment of such other employee by any such business.

Nothing in this Paragraph III(A) prohibits Executive from employment with a competitor that is not directly competitive with Employer's business.

B. For purposes of this Section, a "business which directly competes with that of the Company" is defined to mean a business involving digital photo booths of any type and any other business in which the Employer is engaged during Executive's employment or at the time the employment is terminated by either party.

C. Executive acknowledges that he will derive significant value from the Company's agreement to provide him with Confidential Information of the Company and/or DNP's Confidential Information that will enable him to optimize the performance of his duties for the Company. Executive further acknowledges and agrees that his fulfillment of the obligations contained in this Agreement, including without limitation his obligation not to use or disclose the Company's Confidential Information and/or DNP's Confidential Information other than for the Company's benefit and his obligation not to compete, are both reasonable and necessary to protect the Company's legitimate business interests which include Confidential Information and/or DNP's Confidential Information, customer relationships and, consequently, to preserve the value and goodwill of the Company. Executive further acknowledges that the time, geographic and activity scope limitations of his non-competition obligation are reasonable, especially in light of the Company's desire to protect its Confidential Information and/or the DNP's Confidential Information, and that Executive will not be precluded from gainful employment if Executive is required not to compete with the Company as described above.

D. The parties hereto each agree that Section III(A) imposes a reasonable restraint on the Executive in light of the activities and business of the Company which is conducted globally, and that such restraint is intended only to protect the goodwill and other legitimate business interests of the Company and does so more narrowly than would be justified by the geographic scope of Employer's business activities. Executive agrees that this non-competition agreement is reasonable in its scope of restrictions and is enforceable. The Executive acknowledges and agrees that the consideration given by the Company under this Agreement, including the disclosure to Executive of the Company's Confidential Information and/or DNP Confidential Information as provided under this Agreement, gives rise to the Company's interest in restraining and prohibiting the Executive from engaging in the prohibited activities described in Sections III and IV. Executive further agrees that the limitations imposed upon Executive in this non-competition agreement as to time, geographic area and scope of activity prohibited are reasonable and do not impose a greater restraint than is necessary to protect the goodwill and other legitimate business interests of the Company. It is the desire and intent of each of the parties that the provisions of Sections III and IV shall be enforced to the fullest extent permissible under the laws and public policies applied in the State of New Hampshire. Accordingly, if any particular portion of Sections III and IV shall be adjudicated to be invalid or unenforceable, Sections III and IV shall be deemed amended (i) to reform the particular portion to provide for such maximum restrictions as will be valid and enforceable or, if that is not possible, then (ii) to delete therefrom only the portions thus adjudicated to be invalid or unenforceable. Sections III and IV shall inure to the benefit of any successor to the Company.

IV. Confidentiality

A. For the purposes of this Agreement, the term “Confidential Information” shall mean information of any nature, in any form, and from any source which at the time or times concerned is not generally known or available to the public or to persons engaged in business similar to that conducted or contemplated by the Company, and includes, without limitation, customer lists or information relating to clients or customers, trade secrets, processes, inventions, discoveries, developments, modifications, improvements, ideas, know-how, techniques, designs, data, programs, processes, formulae, code and all other work products marking or pricing strategies, financial information, marketing efforts, internal cost and profit information, information related to Company personnel and other confidential and non-public information relating to the Company, DNP, their employees, affiliates, clients, and customers. Executive agrees that he will not, either during the Employment Term or at any time thereafter, disclose, use, or appropriate for his own use or the use of others or disclose to any unauthorized person, firm or corporation any Confidential Information, and Executive confirms that such information constitutes the exclusive property of the Company. Executive shall return all tangible evidence of such Confidential Information to the Company prior to or at the termination of his employment.

V. Employer’s Right To Obtain An Injunction

Executive acknowledges that Employer will suffer material and irreparable harm and will have no adequate legal remedies sufficient to protect its rights under the preceding paragraphs other than by securing an injunction (a court order prohibiting Executive from violating this Agreement). Accordingly, Executive agrees that Employer is entitled to enforce this Agreement by obtaining a temporary restraining order and a preliminary and permanent injunction and any other appropriate

equitable relief. Executive and the Company agree that the Company will be irreparably harmed by breach or threatened breach of Paragraphs III and IV. Accordingly, Executive consents, in addition to the right of arbitration contained in Paragraph VIII of this Agreement, that the Company, at its discretion may seek and obtain injunctive and other equitable relief from a court of law prior to and in furtherance of arbitration of a dispute as contemplated by this Agreement. Nothing contained in this Paragraph, however, shall prohibit Employer from pursuing any remedies in addition to injunctive relief, including recovery of damages. In the event Executive breaches the provisions of Paragraph III, the period of non-competition shall begin to run in full from the date that Executive's competition is enjoined by a court or otherwise ceases.

VI. Rights and Obligations of Executive Upon Termination.

- (i) Upon the termination of Executive's employment, regardless of the reason or cause, in addition to the Severance Benefits and Retirement Payments (if applicable), on the date of the termination of Executive's employment, Executive shall be paid his base salary due (and accrued vacation pay, if any) up to the date of termination and any bonus earned through such termination date, if any, under any then existing bonus plan.
- (ii) "Disability" shall mean the inability or incapacity (by reason of a medically determinable physical or mental impairment) of the Executive to perform the duties and responsibilities related to his job or position with the Company, with or without a reasonable accommodation, for a period of at least ninety (90) days, or Executive otherwise becoming legally incapacitated. If the Executive suffers a Disability, the Company may terminate this Agreement. In the event of a termination under this

Section the Executive shall be entitled to all rights and benefits that the Executive may have under the employee benefit plans and programs of the Company, in accordance with the terms and conditions of such plans and programs.

VII. Entire Agreement And Counterparts

This Agreement is the entire Agreement between Employer and Executive with respect to the subject matter hereof, and may not be changed except in writing signed by the party against whom enforcement of this Agreement, as so changed, is sought. Further, this Agreement entirely supersedes, replaces and vacates any prior agreements, verbal and non-verbal Executive entered with Employer. This Agreement may be multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.

VIII. Arbitration

A. Binding Effect. Except as provided in Section V of this Agreement, any and all controversies, claims or disputes relating to the provisions or obligations under this Agreement, or with respect to the employment or termination thereof of Executive by the Company, shall be submitted to binding arbitration in accordance with the provisions of applicable law of the State of New Hampshire, as from time to time amended. Arbitration proceedings, including the selection of an arbitrator, shall be conducted pursuant to the commercial rules, regulations and procedures from time to time in effect as promulgated by the American Arbitration Association. Except as provided in Section V and Section XII below, the parties agree that arbitration shall be the sole remedy of both parties for resolving any and all disputes related to this Agreement or the employment or termination thereof of Executive by the Company whether based on contract or tort or otherwise. The arbitration will be conducted in New Hampshire.

B. Notice; Time Limitation. Both the Company and Executive agree that the aggrieved party must give written notice of any claim to the other party within ninety (90) days of the date the aggrieved party first has knowledge of the event giving rise to the claim; otherwise the claim shall be void and deemed waived even if there is a federal or state statute of limitations which would have given more time to pursue the claim. The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. The notice shall be sent to the other party in accordance with Section XIV, below.

C. Representation, Expenses. Either party may be represented by an attorney or other representative selected by such party. All expenses in connection with such dispute shall be borne by the party incurring such expenses and in accordance with the commercial rules of the American Arbitration Association.

This Agreement to arbitrate shall not apply to claims for Worker's Compensation or Unemployment Compensation.

IX. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of Employer, its successors executors, administrators and other representatives.

X. Applicable Law

This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire (other than the rules governing conflicts of laws) applicable to contracts entered into and to be performed entirely within that state.

XI. Choice of Forum

In the event Employer brings an action to obtain injunctive or other equitable relief to enforce this Agreement, Executive consents to the personal jurisdiction and venue of either the courts of general jurisdiction of the United States, or New Hampshire as selected by Employer.

XII. Sufficiency of Consideration

Employer and Executive agree that the consideration given for this Agreement in exchange for Executive's promises is valuable and sufficient and is acknowledged by the Executive's signature below.

XIII. Severability

The invalidity of any term or provision of this Agreement shall not invalidate or otherwise affect any other term or provision of this Agreement.

XIV. Notices

All notices contemplated by this Agreement shall be deemed delivered in person or when mailed, by certified mail, addressed as follows:

- A. If to the Company: to the principal business office of the Company.
- B. If to the Executive: to the home address of the Executive as specified in the Company's records.

XV. Section 409A

To the extent applicable, it is intended that this Agreement and any payment made hereunder shall comply with the requirements of (or an exemption or exclusion from) Section 409A, and any ambiguities in this Agreement will be interpreted accordingly. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the

payment of any amounts or benefits upon or following a termination of employment unless such termination constitutes a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment,” or like terms shall mean “separation from service.” For purposes of Section 409A, Executive’s right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

In Witness Whereof, Employer and Executive have executed this Agreement as of the day and year first above written.

DNP Imagingcomm America Corporation

Dated: _____

Executive Signature

Company Witness

Print Name

Print Name

Citibank Preferred Custody Services

Agreement
Between
Citibank, N. A.
as "Escrow Agent"
and

DNP Imagingcomm America Corporation
("Buyer")

and

Foto Fantasy Holdings, Inc
("Seller")

[•]
(Account Number)

Citibank Escrow Agent Custody Account

THIS ESCROW AGREEMENT is dated December [31], 2014 (together with all schedules and/or exhibits attached hereto, all of the terms and conditions of which are incorporated herein by reference, in each case as amended and/or supplemented from time to time in accordance with the terms hereof, the “**Escrow Agreement**”) by and among DNP Imagingcomm America Corporation, a Delaware corporation (“**Buyer**”), Foto Fantasy Holdings, Inc., a Delaware corporation (“**Seller**”) and Citibank, N.A. (the “**Escrow Agent**”). Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Purchase Agreement (as hereinafter defined).

Recitals

WHEREAS, Buyer, Foto Fantasy, Inc. d/b/a Innovative Foto, a Delaware corporation (the “**Company**”), and Seller have entered into a Purchase and Sale Agreement, dated as of December [19], 2014 (the “**Purchase Agreement**”), pursuant to which Buyer will purchase all of the outstanding equity interests in the Company from Seller;

WHEREAS, this Escrow Agreement is entered into pursuant to the terms of the Purchase Agreement; and

WHEREAS, Buyer, Seller and the Escrow Agent desire to establish the terms and conditions by which the escrow account will be established and maintained.

The above-named parties appoint said Escrow Agent with the duties and responsibilities and upon the terms and conditions provided in Schedule A and Schedule B annexed hereto and made a part hereof.

ARTICLE FIRST: The above-named parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent:

- a) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.
- b) For the avoidance of doubt, the Escrow Agent shall have no interest in the escrowed property deposited hereunder, shall serve as escrow holder only with respect thereto, and shall only have possession thereof.
- c) The Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by any other party to this Escrow Agreement without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Escrow Agent may act in reliance upon any signature reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

- d) Each of the parties, jointly and severally, agrees to reimburse the Escrow Agent on demand for, and to indemnify and hold the Escrow Agent harmless against and with respect to, any and all loss, liability, damage or expense (including, but without limitation, attorneys' fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder or in connection herewith, except to the extent such loss, liability, damage or expense arises from its willful misconduct or gross negligence as adjudicated by a court of competent jurisdiction.
- e) The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel. Each of the parties, jointly and severally, agrees to reimburse the Escrow Agent on demand for such legal fees, disbursements and expenses.
- f) The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property.
- g) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Schedule A annexed hereto, which may include deposits in Citibank and mutual funds advised, serviced or made available by Citibank or its affiliates even though Citibank or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

The parties to this Escrow Agreement acknowledge that non-deposit investment products are not obligations of, or guaranteed, by Citibank/Citigroup nor any of its affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested. Only deposits in the United States are subject to FDIC insurance.

- h) The Escrow Agent shall have no obligation to invest or reinvest the property held in escrow if all or a portion of such property is deposited with the Escrow Agent after 11:00 AM Eastern Time on the day of deposit. Instructions to invest or reinvest that are received after 11:00 AM Eastern Time will be treated as if received on the following business day in New York. The Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to distribute amounts from the escrow property pursuant to the terms of this Escrow Agreement. Requests or instructions received after 11:00 AM Eastern Time by the Escrow Agent to liquidate all or any portion of the escrowed property will be treated as if received on the following business day in New York. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such

investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Escrow Agreement.

- i) In the event of any disagreement between/among any of the parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the Escrow, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (a) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (b) those differences shall have been resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days' notice to the other parties of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.
- j) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer securities or certify ownership thereof to tax or other governmental authorities.
- k) Notice to the parties shall be given as provided in Schedule A annexed hereto.

ARTICLE SECOND: The Escrow Agent shall make payments of income earned on the escrowed property as provided in Schedule A annexed hereto. Each such payee shall provide to the Escrow Agent an appropriate W-9 form for tax identification number certification or a W-8 form for nonresident alien certification. The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the escrowed property.

ARTICLE THIRD: The Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 30 calendar days' written notice to the parties to the Escrow Agreement herein. Any such resignation shall terminate all obligations and duties of the Escrow Agent hereunder. On the effective date of such resignation, the Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents to any successor Escrow Agent agreeable to the parties, subject to this Escrow Agreement herein. If a successor Escrow Agent has not been appointed prior to the expiration of 30 calendar days following the date of the notice of such resignation, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

Buyer and Seller may remove the Escrow Agent in respect of this Escrow Agreement with 30 days' written notice signed jointly.

ARTICLE FOURTH: The Escrow Agent shall receive the fees provided in Schedule B annexed hereto.

ARTICLE FIFTH: Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto.

ARTICLE SIXTH: In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call back to the person or persons designated in Schedule A annexed hereto, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing actually received and acknowledged by the Escrow Agent. The parties agree to notify the Escrow Agent of any errors, delays or other problems within 30 calendar days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Escrow Agent's error, the Escrow Agent's sole obligation is to pay or refund such amounts as may be required by applicable law. In no event shall the Escrow Agent be responsible for any incidental or consequential damages or expenses in connection with the instruction. Any claim for interest payable will be at the Escrow Agent's published savings account rate in effect in New York, New York.

ARTICLE SEVENTH: This Escrow Agreement shall be governed by the law of the State of New York in all respects, without regard to the conflicts of law rules thereof. The parties hereto irrevocably and unconditionally submit to the jurisdiction of a federal or state court located in the Borough of Manhattan, City, County and State of New York, in connection with any proceedings commenced regarding this Escrow Agreement, including but not limited to, any interpleader proceeding or proceeding for the appointment of a successor escrow agent the Escrow Agent may commence pursuant to this Escrow Agreement, and all parties irrevocably submit to the jurisdiction of such courts for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue of inconvenient forum.

ARTICLE EIGHTH: This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. Facsimile signatures on counterparts of this Escrow Agreement shall be deemed original signatures with all rights accruing thereto.

ARTICLE NINTH: The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any

governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

ARTICLE TENTH: Except for in connection with this Escrow Agreement, the agreements contemplated by this Escrow Agreement, any deliveries hereunder or any dispute arising from this Escrow Agreement, no printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Escrow Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

ARTICLE ELEVENTH: This Escrow Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Escrow Agreement is intended to or shall confer upon any person not a party hereto or their respective successors and assigns, any rights or remedies under or by reason of this Escrow Agreement

ARTICLE TWELFTH: Neither this Escrow Agreement nor any of the rights, interests or obligations hereunder shall be assigned by the parties hereto, in whole or in part (by operation of law or otherwise), without the prior written consent of the other parties and any attempts to make such assignment without such consent shall be null and void.

[SIGNATURE PAGE TO FOLLOW]

In witness whereof the parties have executed this Escrow Agreement as of the date first above written.

CITIBANK, N.A.

as Escrow Agent

By: _____
(Signature)

Title: _____

Date: December 31, 2014

DNP IMAGINGCOMM AMERICA CORPORATION

By: _____
(Signature)

Title: _____

Date: December 31, 2014

FOTO FANTASY HOLDINGS, INC.

By: _____
(Signature)

Title: _____

Date: December 31, 2014

Schedule A

This "**Schedule A**" is the Schedule A referred to in that certain escrow agreement (the "**Escrow Agreement**") dated December 31, 2014, by and among DNP Imagingcomm America Corporation, a Delaware corporation ("**Buyer**"), Foto Fantasy Holdings, Inc., a Delaware corporation ("**Seller**") and Citibank, N.A. (the "**Escrow Agent**").

WHEREAS, Buyer, Foto Fantasy, Inc. d/b/a Innovative Foto, a Delaware corporation (the "**Company**") and Seller have entered into a Purchase and Sale Agreement, dated as of December [19], 2014 (the "**Purchase Agreement**"), pursuant to which Buyer will acquire all of the outstanding equity interests in the Company from Seller as of the date hereof. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Purchase Agreement;

WHEREAS, pursuant to the Purchase Agreement, Seller and Buyer have agreed to establish an escrow account for purposes of providing a source of satisfaction for indemnification claims of any Buyer Indemnified Party; and

WHEREAS, the parties hereto desire to arrange for such escrow account and appoint the Escrow Agent as escrow agent in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, Buyer, Seller and the Escrow Agent agree as follows:

I. DESCRIPTION OF TRANSACTION

The parties hereto hereby appoint Citibank, N.A. as the escrow agent for the Escrowed Funds (as hereinafter defined) and direct the Escrow Agent, to open and maintain an escrow account (the "**Escrow Account**") upon the terms and conditions set forth in this Escrow Agreement. Citibank, N.A. hereby accepts such appointment as the escrow agent for the Escrowed Funds and agrees to open and maintain the Escrow Account and to act as the escrow agent for the Escrowed Funds, in each case upon the terms and conditions set forth in this Escrow Agreement.

Promptly upon execution of this Escrow Agreement, Buyer shall deposit, via wire transfer of immediately available funds to the Escrow Account, an amount equal to \$1,540,000 (the "**Escrow Amount**"). The amount of all deposits in the Escrow Account, plus all interest, dividends and other distributions and payments thereon received by the Escrow Agent, less any property and/or funds distributed or paid in accordance with this Escrow Agreement, are collectively referred to herein as the "**Escrowed Funds**." The Escrow Agent shall have no duty to solicit the delivery of any property into the Escrow Account.

The Escrow Agent is not a party to any other provisions, covenants or agreements as may exist between and among the other parties hereto and shall not distribute or release the Escrowed Funds except in accordance with the express terms and conditions of this Escrow Agreement.

II. INVESTMENT INSTRUCTIONS

Unless otherwise instructed in writing pursuant to the joint written instructions of Buyer and Seller, the Escrow Agent shall invest and reinvest the Escrowed Funds in a non-interest bearing transaction deposit account, FDIC insured to the applicable limits. The Escrowed Funds shall at all times remain available for distribution in accordance with Section III and Section V below.

III. DISBURSEMENTS FROM THE ESCROWED FUNDS

The Escrowed Funds shall only be distributed and released as follows (or as set forth in Section V):

(a) If a Buyer Indemnified Party has made an indemnification claim pursuant to Section 6.11 or Section 9.2 or of the Purchase Agreement, Buyer and the applicable Buyer Indemnified Party may execute and deliver to the Escrow Agent, with a copy to Seller (delivered the same day and in the same manner as delivered to the Escrow Agent) (an “**Indemnification Claim Notice**”), directing the Escrow Agent to pay to the applicable Buyer Indemnified Party the amount of such indemnification claim, which such notice shall include the wire transfer instructions of the applicable Buyer Indemnified Party. The Indemnification Claim Notice provided by Buyer and a Buyer Indemnified Party shall contain in reasonable detail, the basis for its indemnification claim under the Purchase Agreement.

(b) The Escrow Agent shall hold any Indemnification Claim Notice delivered to it by Buyer and a Buyer Indemnified Party pursuant to Section III(a), without taking any action, for thirty (30) calendar days (such period, the “**Objection Period**”), during which time Seller may deliver to the Escrow Agent, with a copy delivered to Buyer and the applicable Buyer Indemnified Party (delivered the same day and in the same manner as delivered to the Escrow Agent), written notice (an “**Objection Notice**”) of Seller’s good faith objection to such Indemnification Claim Notice. Any Objection Notice must state in reasonable detail the basis for the Seller’s objection to the Indemnification Claim Notice in question. Upon the earlier of the (A) Escrow Agent’s failure to receive an Objection Notice from Seller within the Objection Period, or (B) the Escrow Agent’s receipt of a Joint Payout Direction (as defined in Section III(c) below) corresponding to all or a portion of the amount specified in the applicable Indemnification Claim Notice, the Escrow Agent shall be authorized and directed, without further notice, to promptly release from the Escrow Account and deliver to the applicable Buyer Indemnified Party specified in the Indemnification Claim Notice payment of the applicable portion of the Escrowed Funds by check or wire transfer of immediately available funds as soon as practicable.

(c) If, within the Objection Period, Seller delivers an Objection Notice in respect of a Indemnification Claim Notice, the Escrow Agent shall continue to hold the portion of the Escrowed Funds being claimed under such Indemnification Claim Notice, or such lesser amount (if any), that is the subject of a dispute in such Objection Notice, until the Escrow Agent receives (i) a Joint Payout Direction stating that the disagreement forming the basis of the Objection Notice has been resolved and directing the Escrow Agent to release the portion of the Escrowed Funds specified in such Joint Payout Direction, or (ii) a nonappealable judgment, order or decree of a court of competent jurisdiction or a final non-appealable arbitration decision as to the appropriate payment of the applicable portion of the Escrowed Funds. A “**Joint Payout**

Direction” shall mean a written direction delivered to the Escrow Agent jointly executed by Seller, Buyer and the applicable Buyer Indemnified Party directing the Escrow Agent to pay to the applicable Buyer Indemnified Party such portion of the Escrowed Funds as may be provided in such Joint Payout Direction. Upon its receipt of a Joint Payout Direction, the Escrow Agent shall release from Escrow Account and pay out the portion of the Escrowed Funds specified in such Joint Payout Direction in the manner specified in the Joint Payout Direction (which such written notice shall include the wire transfer instructions of the applicable party).

(d) Except as set forth in clauses (b) and (c) above or in Section V below, the Escrow Agent shall retain the Escrowed Funds in the Escrow Account until it is presented with joint written instructions signed by Buyer and Seller. Upon receipt of such instructions, the Escrow Agent shall disburse the amount of the Escrowed Funds specified in such notice by wire transfer of immediately available funds as directed in such notice as soon as practicable thereafter. There may be more than one such notice.

IV. TAX INFORMATION

(a) Seller and Buyer agree that, unless otherwise specified in this Agreement, any earnings on the Escrow Funds during a calendar year period shall be treated as the income of the Buyer and shall be reported on an annual basis by the Escrow Agent on the appropriate United States Internal Revenue Service (“IRS”) Form 1099 (or IRS Form 1042-S), as required pursuant to the Internal Revenue Code of 1986, as amended (“Code”) and the regulations thereunder. The Escrow Agent shall withhold any taxes that it is required to withhold and shall timely remit any such taxes to the appropriate tax authorities. Any income tax returns or reports required to be prepared and filed in respect of the Escrowed Funds shall be prepared and filed by the applicable party; provided, however, that the Escrow Agent shall be responsible for reporting all interest to the IRS and filing all IRS 1099s and other similar information statements that are required to be filed under applicable law. In addition, any tax or other payments required to be made by any party pursuant to any such tax return or filing shall be timely paid by such party. The Escrow Agent shall have no responsibility for such payment unless required by law in accordance with applicable withholding requirements. Any tax returns required to be prepared and filed with respect to interest accrued on the Escrow Amount (other than IRS Form 1099 and other similar information statements) will be prepared and filed by Buyer, and the Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return with respect to any such interest (other than IRS Form 1099s and other similar information statements).

(b) The Seller and Buyer shall upon the execution of this Agreement provide the Escrow Agent with a duly completed and properly executed IRS Form W-9 (or original applicable IRS Form W-8, in the case of a non-U.S. person) along with any supporting documentation certifying such party’s tax status for U.S. tax information reporting purposes and tax identification number. In the event the payee is not a party to this Agreement, the Seller and Buyer shall provide the Escrow Agent with the applicable duly completed and properly executed IRS Form along with any required supporting documentation from such payee prior to payment being made. The Seller and Buyer understand that, in the event valid U.S. tax forms or other required supporting documentation are not provided to the Escrow Agent, the tax law may require withholding of tax on any earnings, proceeds or distributions from the Escrow Funds and further, such withholdings will be taken from the Escrow Funds and deposited with the IRS in

the manner prescribed for the Escrow Agent to perform its reporting obligations under the Code, the Foreign Account Tax Compliance Act and the Foreign Investment in Real Property Tax Act and any other applicable law or regulation.

(c) The Seller and Buyer and the Escrow Agent agree that the Escrow Agent will not be responsible for providing tax reporting and withholding for payments which are for compensation for services performed by an employee or independent contractor.

(d) The Escrow Agent's rights under this Section shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent.

V. TERMINATION OF THE ESCROW ACCOUNT

Within five (5) Business Days following the twelve (12) month anniversary of the date hereof (the "**First Release Date**"), the Escrow Agent shall distribute from the Escrowed Funds to Seller, by wire transfer of immediately available funds in accordance with the payment instructions set forth in Section VI(b), an amount (only if a positive number; if the resulting calculation is negative then no funds shall be released) equal to (i) fifty percent (50%) of the then available Escrowed Funds, *less* (ii) the aggregate amount of indemnification claims with respect to which Seller has delivered an Objection Notice that have not been resolved as of the First Release Date (which amounts shall continue to be held by the Escrow Agent pursuant to Section III(c)), *less* (iii) any unpaid amounts that are then payable to any Buyer Indemnified Party in accordance with Section III, *less* (iv) the aggregate amount of indemnification claims submitted by Buyer pursuant to Indemnification Claim Notices with respect to which (A) the Objection Period has not yet expired as of the First Release Date and (B) Seller has not delivered an Objection Notice prior to the expiration of the applicable Objection Period. Within five (5) Business Days following the eighteen (18) month anniversary of the date hereof (the "**Final Release Date**"), the Escrow Agent shall distribute from the Escrowed Funds to Seller, by wire transfer of immediately available funds in accordance with the payment instructions set forth in Section VI(b), an amount (only if a positive number; if the resulting calculation is negative then no funds shall be released) equal to (i) the remaining amount of the Escrowed Funds on the Final Release Date, *less* (ii) the aggregate amount of indemnification claims with respect to which Seller has delivered an Objection Notice that have not been resolved as of the Final Release Date (which amounts shall continue to be held by the Escrow Agent pursuant to Section III(c)), *less* (iii) any unpaid amounts that are then payable to any Buyer Indemnified Party in accordance with Section III, *less* (iv) the aggregate amount of indemnification claims submitted by Buyer pursuant to Indemnification Claim Notices with respect to which (A) the Objection Period has not yet expired as of the Final Release Date and (B) Seller has not delivered an Objection Notice prior to the expiration of the applicable Objection Period.

This Escrow Agreement, the duties of the Escrow Agent and the Escrow Account shall automatically terminate upon the payment in full by the Escrow Agent of the Escrowed Funds as directed herein.

VI. NOTICES; WIRING INSTRUCTIONS

(a) Any notice or other communication required or permitted to be delivered to any party under this Escrow Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties):

If to Buyer:

DNP Imagingcomm America Corporation
4524 Enterprise Drive, N.W.
Concord, NC 28027
Attn: President
Facsimile: 704-784-7195

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

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attn: Michael O. Braun
Facsimile: 212-903-3676
Email: mbraun@mofo.com

If to Seller:

Sankaty Advisors
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attn: Brett L'Esperance
Facsimile: 617-652-3881

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

Hinckley, Allen & Snyder, LLP
28 State Street
Boston, MA 02109
Attn: Michael E. Kushnir, Esq.
Facsimile: 617-378-4317

If to the Escrow Agent:

Citibank, N.A
c/o Citi Private Bank

Preferred Custody Services

Attn: Ms. Kerry McDonough
153 East 53rd Street, 21st Floor
New York, NY 10022

Telephone: 212-783-7110
Facsimile: 212-783-7131

(b) Any funds to be paid to or by the Escrow Agent hereunder shall be sent by wire transfer pursuant to the following instructions (or by pursuant to such instruction as may have been specified in Joint Payout Direction or otherwise given in advance and in writing to or by the Escrow Agent, as the case may be, in accordance with Section VI(a) above):

If to Buyer:

[•]

If to Seller:

[•]

If to the Escrow Agent:

Citibank, N.A.

ABA #: 021000089

For Credit to: 37432464

Name of Account: PBG Concentration Account

F/F/C to: 25D-xxxxxx-768 (Citi to provide_)

Account Name: DNP Imagingcomm America Corporation

Attn: Jonathan Romeo (212-783-6380)

VII. ACCOUNT STATEMENTS AND ADVICES

Unless instructed otherwise in writing by the party in question, the Escrow Agent shall prepare monthly account statements for the Escrow Account and deliver such statements to all parties listed in the "Notices" section herein. All such parties shall also receive notices for all transactions in the Escrow Account as any such transactions occur.

VIII. AUTHORIZED PERSONS

For purposes of sending and receiving instructions or directions hereunder, all such instructions or directions shall be, and the Escrow Agent may conclusively rely upon such instructions or directions, delivered and executed (x) jointly or singly by each of the representatives of Seller designated on Part I of Annex A attached hereto (as such Annex A may be updated from time to time by written notice to the Escrow Agent) with respect to instructions permitted to be given by Seller and (y) by representatives of Buyer designated on Part II of Annex A attached hereto (as such Annex A may be updated from time to time by written notice to the Escrow Agent), with respect to instructions permitted to be given by Buyer. The specimen signatures of each representative of Seller and each representative of Buyer designated on Annex A are attached hereto as Annex B and Annex C, respectively. The above persons shall also be the designated callback authorized individuals to be notified by the Escrow Agent, upon the release of all or a portion of the Escrowed Funds from the Escrow Account.

IX. FEE INFORMATION

Buyer shall pay the Escrow Agent's compensation as set forth on Schedule B for its services as escrow agent hereunder. Buyer agrees to promptly pay the Escrow Agent, upon request from the Escrow Agent, such compensation.

X. LIMITATION ON RIGHTS TO ESCROWED FUNDS

No party hereto shall have any right, title or interest in or to, or possession of, the Escrowed Funds and therefore shall not have the ability to pledge, convey, hypothecate or grant as security all or any portion of the Escrowed Funds, unless and until such Escrowed Funds have been released pursuant to Section III or Section V above. Accordingly, the Escrow Agent shall be in sole possession of the Escrowed Funds and shall not act as custodian of the parties under this Escrow Agreement for the purposes of perfecting a security interest therein, and no creditor of any of the parties shall have any right to have or to hold or otherwise attach or seize all or any portion of the Escrowed Funds as collateral for any obligation and shall not be able to obtain a security interest in any of the Escrowed Funds unless and until such Escrowed Funds have been released pursuant to Section III or Section V above.

XI. NO WAIVER

No failure or delay by any party hereto (including the Escrow Agent) in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any right of further exercise or the exercise of any other right, power or privilege.

XII. SEVERABILITY

Each party hereto (including the Escrow Agent) agrees that (a) the provisions of this Escrow Agreement shall be severable in the event that for any reason whatsoever the provisions hereof are invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions that are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions, but are valid and enforceable and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by law, so long as the economic or legal substance of the transactions contemplated by this Escrow Agreement is not affected in any manner materially adverse to any party hereto (including the Escrow Agent).

XIII. RELEASES ON NON-BUSINESS DAYS

In the event that a release of Escrowed Funds hereunder is required to be made on a date that is not a Business Day, such release may be made on the next succeeding Business Day with the same force and effect as if made when required.

XIV. CONFLICT

Each party hereto recognizes that the Escrow Agent and its affiliates may engage in transactions and/or businesses (x) with the other party hereto (other than in connection with this Escrow Agreement) or (y) adverse to such party or in which parties adverse to such party may have interests. Nothing in this Escrow Agreement shall (i) preclude the other party hereto or the Escrow Agent and any of its affiliates from engaging in such transactions or businesses, or (ii) obligate the other party hereto or the Escrow Agent and any of its affiliates to (a) disclose such transactions and/or businesses to the parties, or (b) account for any profit made or payment received in, or as a part of, such transactions and/or businesses. Nothing herein shall be deemed to (i) give rise to a partnership or joint venture or (ii) establish a fiduciary or similar relationship, among the parties hereto.

ANNEX A

Part II - Designated Representatives of Seller

Important - Please add Name /Contact information for each person listed (business phone & cell phone info needed)

- 1.
- 2.

Part II - Designated Representatives of Buyer

Important - Please add Name /Contact information for each person listed (business phone & cell phone info needed)

- 1.
- 2.

ANNEX B

ANNEX C

Schedule B

ESCROW AGENT FEE SCHEDULE

Exhibit C

Closing Memorandum

Dated: December [__], 2014

Pursuant to Section 2.2(b) of that certain Purchase and Sale Agreement, dated December 19, 2014 (the “Agreement”), by and among Foto Fantasy, Inc. d/b/a Innovative Foto, Foto Fantasy Holdings, Inc. (“Seller”) and DNP Imagingcomm America Corporation (“Buyer”), Seller hereby provides to Buyer the information set forth in this Closing Memorandum for purposes of the calculations and payments contemplated under the Agreement. Capitalized terms used in this Closing Memorandum but not defined herein shall have the meaning ascribed to such terms in the Agreement.

- Indebtedness of the Company as of the Closing: [\$]
- Company Transaction Expenses: [\$]
- Transaction Bonuses: [\$]
- Third Party Debt: [\$]
- Third-Party Debt Excess: [\$]
- Intragroup Debt: [\$]
- Wire Transfer Information: [to be provided]
 - Seller:
 - RBS Citizens National Association:
 - Carl Annese:
 - Dale R. Valvo
 - S.R. Group, LLC:
 - [Others]

IN WITNESS WHEREOF, the undersigned has executed this Closing Memorandum on the date first written above.

FOTO FANTASY HOLDINGS, INC.

By: _____

Name: _____

Title: _____

DISCLOSURE SCHEDULES

NOTES TO SCHEDULES

These Disclosure Schedules (the “Disclosure Schedules”) are delivered by Foto Fantasy, Inc. d/b/a Innovative Foto, a Delaware corporation (the “Company”), and Foto Fantasy Holdings, Inc. (the “Seller”), to DNP Imagingcomm America Corporation, a Delaware corporation (the “Buyer”), in connection with that certain Purchase and Sale Agreement (the “Agreement”), dated as of December 19, 2014, by and among the Buyer, the Company and the Seller.

1. Capitalized terms used in these Disclosure Schedules but not defined herein shall have the meaning ascribed to such terms in the Agreement.
2. Headings and captions used in these Disclosure Schedules are for convenience of reference only and shall in no way modify or effect, or be considered in construing or interpreting any information provided herein.
3. References to an attached “Exhibit” to a Schedule incorporate by reference the contents of the referenced “Exhibit” into the Schedule to which such “Exhibit” is attached.
4. Notwithstanding anything to the contrary contained in the Agreement or in any of the Disclosure Schedules but except as specifically designated herein, any information disclosed on one Schedule shall be deemed to be disclosed in all Schedules to the extent that it would be reasonably apparent to the Buyer that such information is applicable to such other Schedule based upon a plain reading of such Schedule and not on any information not specifically included in such Schedule.
5. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Company or the Seller in the Agreement or that such information is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Company or the Seller.

Schedule 3.2

Capitalization

1. Secured Senior Subordinated Note and Warrant Purchase Agreement dated as of November 19, 2004 (as amended, the “Sankaty Note Purchase Agreement”), by and among the Company and Capital Resource Lenders III, L.P., Capital Resource Partners IV, L.P., Sankaty Credit Opportunities, L.P., Sankaty High Yield Partners, II, L.P., Sankaty High Yield Partners III, L.P., and RGIP, LLC (collectively, the “Purchasers”). The Sankaty Note Purchase Agreement will be terminated at or prior to the Closing.

Schedule 3.3

Company Conflicts

(x) Violations, Conflicts, Breaches or Defaults of Contracts

1. Reference is made to the disclosure set forth on Schedule 3.6(a).
2. Reference is made to the disclosures set forth on Schedule 3.6(b).
3. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2).
4. Reference is made to the disclosures set forth on Schedule 3.2.

(y) Fees, Penalties or Other Payments

1. Reference is made to the disclosures set forth in Schedule 3.9(f).

(z) Creation of Encumbrances

None.

Schedule 3.4

Financial Statements

1. Reference is made to Exhibit 3.4(a) attached hereto for the Audited Financial Statements of the Company as of December 31, 2012.
2. Reference is made to Exhibit 3.4(b) attached hereto for the Audited Financial Statements of the Company as of December 31, 2013.
3. Reference is made to Exhibit 3.4(c) attached hereto for the unaudited balance sheet of the Company as of September 30, 2014.
4. Reference is made to Exhibit 3.4(d) attached hereto for the unaudited profit and loss statement of the Company for the nine (9) month period ending September 30, 2014.

Schedule 3.5

Absence of Certain Changes

(a) Changes in the Authorized or Issued Capital Stock

None.

(b) Grants of Options, Rights to Purchase or Other Similar Rights

None.

(c) Purchases, Redemptions or other Acquisitions of Capital Stock

None.

(d) Declarations or Payments of Dividends or Management Fees to Sankaty

None.

(e) New Compensation Arrangements

1. Reference is made to the Transaction Bonus Agreements disclosed on Schedule 3.9(a)(13).
2. Reference is made to the Separation and Release Agreement disclosed on Schedule 3.9(a)(14).

(f) Damage to Assets or Property

None.

(g) Indebtedness

1. Reference is made to the Senior Subordinated Notes disclosed on Schedule 3.12(a)(1).
2. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2), including that certain Ninth Amendment to Loan and Security Agreement (All Assets), dated October 24, 2014.

(h) Acquisitions or Dispositions of Assets Outside the Ordinary Course

None.

(i) Creation of Encumbrances

1. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2), including that certain Supplement to Notice of Grant of Security Interest, dated October 24, 2014.

(j) **Settlements**

None.

(k) **Material Change in Accounting Methods**

None.

(l) **Material Decrease in Net Working Capital**

None.

(m) **Change in Cash Overdraft Practices**

1. The Company is currently cutting and issuing checks contemporaneous with issuing payments.

(n) **Agreements to do any of the actions in (a) – (m)**

1. Reference is made to the disclosures in (a) – (m) above.

Schedule 3.6(a)

Government Consents

1. Reference is made to Exhibit 3.6(a) attached hereto for a list of the state and local business licenses and permits held by the Company. Certain of the licenses and permits provide that a change in control requires the Company to obtain the consent of, or provide notice to, the governmental authority issuing said license or permit. The Company does not intend to obtain the consent of, or provide notice to, such governmental authorities, provided that, to the knowledge of Seller, failure to obtain such consent of, or provide notice to, the governmental authority issuing said license or permit, would not, individually or in the aggregate, have a Material Adverse Effect or a material adverse effect on the ability of the Company or Seller to perform its obligations under the Agreement.

Schedule 3.6(b)

Third-Party Consents

1. Reference is made to the Salem Lease disclosed on Schedule 3.10(a)(1). The consummation of the transaction under the Agreement is deemed an assignment of the Salem Lease, requiring the prior written consent of the Salem Landlord, unless as of the effective date of the assignment the Purchaser has a net worth equal to or greater than Ten Million Dollars.
2. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2). The Company is required to obtain the consent of Citizens prior to the consummation of the transaction under the Agreement. The Company will obtain the consent of Citizens prior to the Closing.
3. Reference is made to Exhibit 3.6(b)(3) attached hereto for a list of all of the Company's customers (collectively, the "Customers"). Each of the Customers has written or oral operating leases or other agreements with the Company (collectively, the "Customer Agreements"). Many of the Customer Agreements require the Company to obtain the consent of, or provide notice to, such Customer in connection with the consummation of the transaction under the Agreement. Except for the Customers listed on Schedule 8.2(e) (Required Notices) that will be sent notices by the Company in accordance with Section 8.2(e) of the Agreement, the Company does not intend to obtain the consent of, or provide notice to, any such Customers, provided that failure to obtain the consent of, or provide notice to, such Customers would not, individually or in the aggregate, have a Material Adverse Effect or a material adverse effect on the ability of the Company or Seller to perform its obligations under the Agreement and the Ancillary Agreements to which it is a party.
4. Reference is made to the disclosures set forth on Schedule 3.2.
5. Reference is made to the Epson Agreement disclosed on Schedule 3.12(f)(6). The consummation of the transaction under the Agreement is deemed an assignment of the Epson Agreement, requiring the prior written consent of Epson. The Company will obtain the consent of Epson prior to the Closing.

Schedule 3.7

Litigation

1. Inspector's Report issued by the New Hampshire Department of Labor (the "NH DOL") with respect to an inspection conducted between November 12, 2014 and December 10, 2014 (the "DOL Inspection Report"), which noted the following violations: (a) failure to maintain complete documentation showing eligibility to work for two persons; (b) failure to pay eleven employees for rest periods of less than 20 minutes; (c) improper classification of one person providing services for the Company as an independent contractor when such person should have been classified as an employee; (d) failure to have a suitable arrangement made for the cashing of checks by employees at no cost to the employees; (e) failure to have time records with entries that were altered signed or initialed by the employee whose records were altered; and (f) failure to have time records for two persons whom the Company classified as independent contractors. In connection with the DOL Inspection Report, the Company has been ordered to repay certain employees an aggregate amount of \$979.19. The disclosures set forth in this paragraph are provided only for informational purposes and shall not be deemed to modify in any way the representations and warranties of Seller set forth in the Agreement, including with respect to the indemnification rights of any Buyer Indemnified Party under Section 6.11 or Article 9 of the Agreement.
2. Letter dated May 28, 2014 from Steven N. Ainbinder, legal counsel for Issey Kaufman, a minor ("Kaufman"), alleging that one of the Company's photo booths located in the Dolphin Mall in Miami Dade, Florida, injured Kaufman. The Company forwarded the claim to its insurer, Chubb Group, under Claim No. 040514042474. Chubb Group is currently handling the claim.

Schedule 3.8(a)(ii)

Taxes; Accrual

None.

Schedule 3.8(a)(vii)

Taxes; Tax Returns; Affiliated Group

1. The Company has only filed tax returns as part of an affiliated group with Seller.

Schedule 3.8(a)(x)

Taxes; Foreign Jurisdictions

None.

Schedule 3.8(a)(xiv)

Taxes; Net Operating Loss

1. Reference is made to the disclosure set forth on Schedule 3.8(a)(xv), which reflects a reduction in net operating loss pursuant to Section 382 of the Code in an amount equal to \$9,082,986. This amount was calculated based on a high level assessment performed in connection with the 2008 recapitalization of the Company. Based on such high level assessment, it was determined that approximately \$9,082,986 of the Company's net operating loss carryforwards would expire unutilized and the remainder of the net operating loss carryforwards would be subject to annual limitations as estimated. A formal study has not been performed by the Company to assess whether any changes occurred before or after the 2008 recapitalization of the Company or whether any changes have occurred on a look through basis to the owners of the funds during the Company's history.
2. Reference is made to the disclosure set forth on Schedule 3.8(a)(xv), which reflects a reduction in net operating loss in an amount equal to \$22,073,267. This amount was calculated based on a high level assessment performed in connection with the 2008 recapitalization of the Company. Based upon such high level assessment, it was determined that approximately \$22,073,267 in debt was discharged, and because the Company was insolvent at the time of discharge, the Company excluded such debt discharge from income under Section 108 of the Code.

Schedule 3.8(a)(xv)

Loss Carryforwards and Credits

The following table sets forth the net operating loss generated by the Company since 1994, including the net operating loss carryforward as of December 31, 2014, based on an estimated net operating loss generated in 2014, without taking into account gain and/or loss as a result of the consummation of the transaction under the Agreement. This Schedule 3.8(a)(xv) is qualified in its entirety by the disclosures set forth on Schedule 3.8(a)(xiv).

Year Generated		Expiration	Amount of Net Operating Loss
1994		2009	
1995		2010	
1996		2011	
1997		2012	
1998		2018	
1999		2019	
2000		2020	\$7,742,960
2001		2021	\$14,763,602
2002		2022	\$531,159
2003		2023	\$3,125,039
2004		2024	\$2,934,627
2005		2025	\$3,188,868
2006		2026	\$4,475,679
2007		2027	\$2,984,795
2008		2028	\$2,894,520
2009		2029	\$5,762,247
2010		2030	\$3,520,830
2011		2031	\$2,685,640
2012		2032	\$2,919,798
2013		2033	\$2,625,806
Insolvency reduction	10/30/2008	2000 & 2001	(\$22,073,267)
382 Limitation	10/30/2008	10/30/2008	(\$9,082,986)
Total Carryforward Available as of 12/31/2013			\$28,999,317
Amount Expired			
Amount Utilized			
Estimated NOL Amount Generated in 2014 w/o transaction gain/loss			\$2,128,594
Total Estimated Carryforward Available as of 12/31/2014			\$31,127,911

Schedule 3.9(a)

Employee Benefit Plans

1. Amended and Restated Employment Agreement, dated December 28, 2011, between the Company and Carl A. Annese.
2. Amended and Restated Employment Agreement, dated December 28, 2011, between the Company and Casey Cammann.
3. Amended and Restated Employment Agreement, dated December 28, 2011, between the Company and Stephen White.
4. Employment Agreement, dated March 1, 2012, between the Company and Gerardo San Pietro.
5. Employment Agreement, dated December 28, 2011, between the Company and Michael Swatko
6. Employment Agreement, dated December 28, 2011, between the Company and Peter Boyle.
7. Second Amended and Restated Employment Agreement, dated December 28, 2011, between the Company and Dale R. Valvo.
8. Deferral Agreement, dated August 25, 2014, between the Company and Dale R. Valvo.
9. Foto Fantasy Holdings, Inc. Stock Option Plan, dated October 30, 2008 (the “Seller Stock Option Plan”). The Seller Stock Option Plan will be terminated for no consideration immediately prior to the Closing.
10. Incentive Stock Option Agreements (collectively, the “Seller Stock Option Agreements”), dated October 30, 2008, as amended by those certain First Amendments dated December 28, 2011, between the Seller and each of the below parties, pursuant to which the Seller has issued the following options for the purchase of the Seller’s common stock:

<u>Name</u>	<u>Number of Options</u>	<u>Option Price</u>
Carl Annese	223,774	\$0.25
Carl Annese	53,128	\$0.50
Casey Cammann	223,774	\$0.25
Casey Cammann	53,128	\$0.50
Steven White	381,535	\$0.25
Steven White	90,981	\$0.50
Dale R. Valvo	976,776	\$0.25
Dale R. Valvo	233,099	\$0.50

The Seller Stock Option Agreements will be terminated for no consideration immediately prior to the Closing.

11. Foto Fantasy, Inc. Incentive Compensation Plan, effective as of December 28, 2011 (the “Incentive Compensation Plan”). The Incentive Compensation Plan will be terminated for no consideration immediately prior to the Closing.

12. Incentive Compensation Unit Grants (collectively, the “Incentive Compensation Unit Grants”), dated March 1, 2012 for Gerardo San Pietro and November 30, 2011 for the others named below, between the Company and each of the below parties, pursuant to which the Company has issued the following incentive compensation units:

<u>Name</u>	<u>Incentive Compensation Units</u>
Carl Annese	1.75
Casey Cammann	1.75
Steven White	1.75
Dale R. Valvo	3.25
Peter Boyle	0.50
Michael Swatko	0.50
Gerardo San Pietro	0.50

The Incentive Compensation Unit Grants will be terminated for no consideration immediately prior to the Closing.

13. Transaction Bonus Agreements, dated October 24, 2014 (collectively, the “Transaction Bonus Agreements”), between the Company and each of the below parties, pursuant to which, on the Closing Date, the Company will, subject to the Company’s withholding obligations (if any), pay the following transaction bonuses:

<u>Name</u>	<u>Amount of Transaction Bonus</u>
Carl Annese	\$50,000.00
Dale R. Valvo	\$50,000.00
S.R. Group, LLC	\$250,000.00

14. Separation and Release Agreement, dated December 7, 2014, between Raffy Dersarkissian and the Company (the “Separation and Release Agreement”). As of the date hereof, the Company has not received an executed copy of the Separation and Release Agreement from Mr. Dersarkissian.
15. Individual Incentive Plan, dated August 23, 2012, between the Company and Elizabeth Granados (the “Granados Incentive Plan”).
16. Foto Fantasy, Inc. Proposed EBITDA Bonus Plan for Year 2014. The Company will not meet the goals established under the Bonus Plan for 2014, and thus the Company will not make any payments under the Bonus Plan for performance during 2014.
17. Foto Fantasy Retirement Savings & Security Plan, Plan No. 001, effective January 1, 1997, amended effective as of May 1, 2013, as maintained by Fidelity Management Trust Company (the “401(k) Plan”), including, without limitation, the following documents (collectively, the “401(k) Plan Documents”):
- Volume Submitter Defined Contribution Plan (Profit Sharing/401(k) Plan), A Fidelity Volume Submitter Plan, Adoption Agreement No. 001 for use with Fidelity Basic Plan Document No. 14.
 - Summary Plan Description, Foto Fantasy Retirement Savings & Security Plan.
 - Fidelity Advisor 401(k) Retirement Plan Service Agreement, effective as of May 1, 2013.

18. The Company maintains the following insurance policies with Union Security Insurance Company, Policy No. G 5,370,805:
- i. Group Term Life Insurance – Noncontributory.
 - ii. Group Voluntary Life Insurance – Noncontributory.
 - iii. Group Term Life Insurance – Contributory.
 - iv. Group Term Life Insurance for Dependents – Contributory.
 - v. Group Accidental Death and Dismemberment Insurance – Contributory.
 - vi. Group Accidental Death and Dismemberment Insurance – Noncontributory.
 - vii. Group Voluntary Accidental Death and Dismemberment Insurance – Noncontributory.
 - viii. Group Short Term Disability Insurance – Noncontributory, Non-occupational.
 - ix. Group Long Term Disability Insurance – Noncontributory.
 - x. Group Long Term Disability Insurance – Contributory.
19. Group Dental Insurance, Policy No. 223737, with Sun Life Assurance Company of Canada.
20. Group Health Policy, Group No. GA5P7838NM, Health Plan: BM – N, with United Healthcare Insurance Company.
21. Foto Fantasy Inc. Health Reimbursement Arrangement Plan, Plan No. 501, with United Healthcare Benefits Services.
22. Innovative Foto Cafeteria Plan, as amended December 23, 2013.
23. Foto Fantasy Inc. Policies and Procedures Manual & Safety Manual, as revised September 2011, and all policies identified therein.
24. Safety Program (revised November 2011).
25. Term Life Insurance Policy No. 8346939 for insured Dale Robert Valvo with Genworth Life and Annuity Insurance Company.

Schedule 3.9(f)

Change-in-Control Payments

1. Reference is made to the Employment Agreements disclosed on Schedule 3.9(a)(1)-(6). The Employment Agreements provide that in the event the applicable employee's employment with the Company is terminated without cause, the Company is required to pay such employee a severance benefit equal to six (6) months of the employee's then current annual base salary, plus one (1) month of the employee's base salary for each year the employee has been employed by the Company in excess of five (5) years, provided the total severance shall not exceed twelve (12) months of the employee's annual base salary. Further, such severance payment is automatically increased to an amount equal to twelve (12) months of the employee's then current annual base salary if, as a result of the consummation of the transaction under the Agreement: (a) the employee's employment with the Company is terminated as a result of the elimination of the employee's position resulting from a Sale Transaction (as defined in the employment agreements) or (b) the terms and conditions of the employee's employment with the Company are materially modified as a result of a Sale Transaction.
2. Reference is made to the Second Amended and Restated Employment Agreement disclosed on Schedule 3.9(a)(7). The Employment Agreement provides that in the event the Company terminates Dale R. Valvo's employment without cause, the Company is required to pay Mr. Valvo a severance benefit equal to one (1) year of his then current base annual salary.
3. Reference is made to the Deferral Agreement disclosed on Schedule 3.9(a)(8). The Deferral Agreement provides that upon consummation of the transaction under the Agreement, the Company is required to pay Dale R. Valvo a lump sum payment equal to the portion of his annual base salary that has been deferred since the effective date of the Deferral Agreement.
4. Reference is made the Incentive Compensation Plan disclosed on Schedule 3.9(a)(11) and the Incentive Compensation Unit Grants disclosed on Schedule 3.9(a)(12). Pursuant to the terms of the Incentive Compensation Plan, any unvested Compensation Units held by participants automatically vest upon the Closing and become payable within thirty (30) days thereafter. However, the Incentive Compensation Plan (including all Incentive Compensation Unit Grants) will be terminated for no consideration immediately prior to the Closing and no amounts will be payable thereunder.
5. Reference is made to the Transaction Bonus Agreements disclosed on Schedule 3.9(a)(13). Pursuant to the terms of the Transaction Bonus Agreements, on the Closing Date, the Company is required, subject to the Company's withholding obligations (if any), to pay transaction bonuses to the following persons in the amounts set forth opposite their name:

<u>Name</u>	<u>Amount of Bonus</u>
Carl Annese	\$50,000.00
Dale R. Valvo	\$50,000.00
S.R. Group, LLC	\$250,000.00

6. Reference is made to the Senior Subordinated Notes disclosed on Schedule 3.12(a)(1). Pursuant to the terms of the Senior Subordinated Notes, on the Closing Date, the entire original principal amount set forth below becomes due and payable by the Company:

<u>Name</u>	<u>Original Principal Amount</u>
Carl Annese	\$50,000.00
Dale R. Valvo	\$50,000.00
S.R. Group, LLC	\$250,000.00

The obligations of the Company to the above persons under the Senior Subordinated Notes will be satisfied by the Company at the Closing.

7. Reference is made to the Granados Incentive Plan disclosed on Schedule 3.9(a)(15). Pursuant to the terms of the Granados Incentive Plan, annual compensation is payable in January of each year; however, upon sale of the Company, compensation accrued on the Company's financial statements to-date in the amount equal to \$15,000.00 becomes due and payable.

Schedule 3.10(a)

Leased Real Property

1. Lease, dated June 25, 2007 (“Salem Lease”), between the Company (as Tenant) and Brooks Properties I, LLC (as Landlord) (the “Salem Landlord”), for the premises located at 8A Industrial Way, Salem, Massachusetts consisting of approximately 30,000 square feet.
2. Month-to-Month Rental Agreement, dated October 21, 2014, between the Company (as Tenant) and Brooks Properties I, LLC (as Landlord), for the premises located at 8B Industrial Way, Unit 4, Salem, Massachusetts consisting of approximately 1200 square feet of storage space.
3. California Self Storage Rental Agreement, dated March 5, 2012, between the Company and Associated Storage Miramar (as Landlord), for the 200 square foot self-storage space, Space No. H067, located at 9434 Kearney Mesa Road, San Diego, California.
4. The Company, in the ordinary course of business, enters into license or lease agreements with respect to the location of its photo booths. Reference is made to the Customer Agreements disclosed in Schedule 3.6(b)(3).

Schedule 3.10(b)


Other Real Property Utilized by the Company

None.


Schedule 3.10(c)

Personal Property; Encumbrances

1. UCC Financing Statement No. 20112849936, filed with the Delaware Secretary of State on July 22, 2011. The Secured Party is RBS Citizens, National Association. The Collateral is "All Assets." This UCC will be terminated at or soon after the Closing in connection with the Company satisfying in full its obligations to RBS Citizens, National Association.
2. UCC Financing Statement No. 20120222650, filed with the Delaware Secretary of State on January 18, 2012. The Secured Party is Key Equipment Finance Inc. The Collateral is "1-HP Designjet L26500 61" Printer, 1-Onyx Upgrade." This UCC is a Permitted Encumbrance under the Agreement and will not be terminated.
3. UCC Financing Statement No. 20130726720, filed with the Delaware Secretary of State on February 25, 2013. The Secured Party is DNP IMS America Corporation. The Collateral is for "all right, title and interest of the Debtor in and to the Debtor's equipment purchased from the Secured Party, including without limitation all DNP DS40 color printers purchased from the Secured Party..." This UCC is a Permitted Encumbrance under the Agreement and will not be terminated.
4. Letter Agreement, dated February 12, 2013 (the "Letter Agreement"), among DNP IMS America Corporation ("DNP"), RBS Citizens, National Association ("Citizens") and Santaky Credit Opportunities, Grantor Trust ("Sankaty"), pursuant to which the parties agree that DNP's purchase money security interest in all DNP DS40 color printers has priority over the liens held by Citizens and Santaky.
5. Collateral Assignment of Marks, undated, but notarized on March 8, 1999, recorded in the United States Patent and Trademark Office on March 29, 1999. The Secured Party is Fleet Bank - NH. The Collateral consists of the following trademarks, and will not be terminated on or prior to the Closing Date:

<u>Trademark</u>	<u>Reg. No.</u>
THE PORTRAIT STUDIO	2288575
FANTASY ENTERTAINMENT	2131346
FOTO FANTASY (and Design) 	2004296
FOTO FANTASY (Cl. 42)	2002920

6. Trademark Security Agreement dated September 20, 2002, recorded in the United States Patent and Trademark Office on October 23, 2002. The Secured Party is Sovereign Bank. The Collateral consists of the following trademarks, and will be terminated on or prior to the Closing Date:

<u>Trademark</u>	<u>Reg. No.</u>
FOTO FANTASY (Cl. 9)	2769186
FOTOFUN	2409979
THE PORTRAIT STUDIO	2288575
FANTASY ENTERTAINMENT	2131346
FOTO FANTASY (and Design) 	2004296
FOTO FANTASY (Cl. 42)	2002920

7. Notice of Grant of Security Interest in Intellectual Property dated July 21, 2011, as amended by that certain Supplement to Security Agreement, dated October 24, 2014 (the "Notice of Grant"), recorded in the United States Patent and Trademark Office and the United States Copyright Office on July 25, 2011. Secured Party is RBS Citizens National Association. The Collateral consists of all of the Company's intellectual property as set forth on Schedule A, Schedule B and Schedule C of the Notice of Grant. The Notice of Grant will be terminated at or soon after the Closing in connection with the Company satisfying in full its obligations to RBS Citizens, National Association.

Schedule 3.11(a)

Compliance with Law; Employees Terminable With Costs

1. Reference is made to the DOL Inspection Report and the corresponding disclosure set forth in Schedule 3.7(1). The disclosures set forth in this paragraph are provided only for informational purposes and shall not be deemed to modify in any way the representations and warranties of Seller set forth in the Agreement, including with respect to the indemnification rights of any Buyer Indemnified Party under Section 6.11 or Article 9 of the Agreement.
2. Reference is made to the disclosures set forth in Schedule 3.9(f)(1)-(2).
3. The Company engages independent contractors throughout the country. The Company has not performed a review of each state's regulations relating to independent contractor classifications. The disclosure set forth in this paragraph is provided only for informational purposes and shall not be deemed to modify in any way the representations and warranties of Seller set forth in the Agreement, including with respect to the indemnification rights of any Buyer Indemnified Party under Section 6.11 or Article 9 of the Agreement.

Schedule 3.11(b)

Collective Bargaining

None.

Schedule 3.11(c)(1)

Employees

1. Reference is made to Exhibit 3.11(c)(1) attached hereto for a list of the active employees of the Company as of November 25, 2014, and may be subject to change in the event of a hiring or termination prior to the Closing Date. For each such employee, Exhibit 3.11(c)(1) lists his or her: (a) name, (b) department, (c) location, (d) title, (e) date of hire, (f) classification as full-time, part-time, (g) classification as exempt or non-exempt, (h) hourly rate of compensation or base salary, and (i) accrued but unused vacation expressed both in terms of the number of days and the dollar value of such days.

Schedule 3.11(c)(2)

Independent Contractors

1. Reference is made to Exhibit 3.11(c)(2) attached hereto for a list of the Company's independent contractors as of November 26, 2014, and may be subject to change in the event of ordinary course changes prior to the Closing Date. For each such independent contractor, Exhibit 3.11(c)(2) lists his or her: (a) name, (b) the name of any third-party vendor, if the independent contractor provides service through a third-party vendor, (c) commencement date, (d) the commission rate, which is a percentage of net sales generated by the photo booth(s) set forth in the "Asset" column, and (e) monthly compensation fee, if any

Schedule 3.12

Contracts and Commitments

(a) Contracts relating to Indebtedness

1. Senior Subordinated Notes (the “Senior Subordinated Notes”) issued on October 24, 2014 to the following persons in the amounts set forth opposite their name:

<u>Name</u>	<u>Original Principal Amount</u>
Carl Annese	\$50,000.00
Dale R. Valvo	\$50,000.00
S.R. Group, LLC	\$250,000.00

2. Loan from Citizens Bank, National Association (f/k/a RBS Citizens, N.A.) (“Citizens”) to the Company, dated July 21, 2011, as amended (the “Loan”), which consist of the following documents and instruments (collectively, the “Citizens Loan Documents”).
- i. Loan and Security Agreement (All Assets) dated July 21, 2011, as amended by that certain First Amendment to Loan and Security Agreement (All Assets) dated February 1, 2012, that certain Second Amendment to Loan and Security Agreement (All Assets) dated July 27, 2012, that certain Third Amendment to Loan and Security Agreement (All Assets) dated November 26, 2012, that certain Fourth Amendment to Loan and Security Agreement (All Assets) dated June 28, 2013, that certain Fifth Amendment to Loan and Security Agreement (All Assets) dated November 22, 2013, that certain Sixth Amendment to Loan and Security Agreement (All Assets) dated February 18, 2014, that certain Seventh Amendment to Loan and Security Agreement (All Assets) dated April 8, 2014, that certain Eighth Amendment to Loan and Security Agreement (All Assets) dated May 13, 2014 and that certain Ninth Amendment to Loan and Security Agreement (All Assets) dated October 24, 2014.
 - ii. Revolving Note, dated July 21, 2011, made by the Company payable to Citizens in the original maximum principal amount of \$5,000,000 (and later increased to \$5,500,000), as amended by that certain First Amendment and Allonge to Revolving Note, dated November 22, 2013, that certain Second Amendment and Allonge to Revolving Note, dated February 18, 2014, that certain Third Amendment and Allonge to Revolving Note, dated April 8, 2014.
 - iii. Term Note, dated July 21, 2011, made by the Company payable to Citizens in the original principal amount of \$5,000,000.00.
 - iv. Equipment Note, dated June 28, 2013, made by the Company payable to Citizens in the original principal amount of \$500,000.00.
 - v. Equipment Note, dated April 18, 2014, made by the Company payable to Citizens in the original principal amount of \$1,000,000.00.
 - vi. Collateral Assignment of Licensees Rights, dated July 21, 2011, granted by the Company in favor of Citizens.

- vii. Notice of Grant of Security Interest in Intellectual Property dated July 21, 2011 granted by the Company in favor of Citizens, as amended by that certain Supplement to Security Agreement, dated October 24, 2014.
- viii. ISDA Master Agreement, dated July 11, 2011, by and between the Company and Citizens, as confirmed by that certain confirmation letter, dated July 1, 2013, regarding Referenced No. CBD19064 (collectively, the “Swap Agreement”).
- ix. Amended and Restated Subordination Agreement, dated as of April 8, 2014, by and among Sankaty Credit Opportunities Grantor Trust, Citizens and the Company, as ratified by that certain Ratification of Subordination Agreement, dated October 24, 2014.
- x. Subordination Agreement, dated as of October 24, 2014, among Carl Annese, Citizens and the Company.
- xi. Subordination Agreement, dated as of October 24, 2014, among Dale R. Valvo, Citizens and the Company.
- xii. Subordination Agreement, dated as of October 24, 2014, among S.R. Group, LLC, Citizens and the Company.

The obligations of the Company to Citizens under the Citizens Loan Documents will be satisfied at the Closing, and the Company will have no liability in respect thereof.

- 3. The Company has issued the following Secured Senior Subordinated Notes (the “Sankaty Notes”) to Sankaty Credit Opportunities Grantor Trust (“Sankaty”):
 - i. The Amended and Restated Secured Senior Subordinated Note, dated as of July 21, 2011, (Restated New Money Note No. 1), in the original principal amount of \$6,965,164.60, made by the Company to Sankaty Credit Opportunities, L.P., which note is currently held by Sankaty.
 - ii. Secured Senior Subordinated Note (Restated New Money Note No. 2), dated as of September 27, 2012, in the original principal amount of \$500,000.00, made by the Company to Sankaty.
 - iii. Secured Senior Subordinated Note (Restated New Money Note No. 3), dated as of April 18, 2014, in the original principal amount of \$250,000.00, made by the Company to Sankaty.

The obligations of the Company to Sankaty under the Sankaty Notes will be satisfied at the Closing.

- 4. Reference is made to the Sankaty Note Purchase Agreement disclosed on Schedule 3.2(1).

(b) Partnership/Joint Venture Contracts

None.

(c) Non-Competition Contracts

1. Sales and Distribution Agreement (“Paparazzi Agreement”), dated April 1, 2013, between the Company and Paparazzi Studios, Pty., Ltd. (“Paparazzi”). Pursuant to the terms of the Paparazzi Agreement, the Company gives Paparazzi the exclusive right to sell certain photo booths in Australia, and the Company is prohibited from selling such photo booths in Australia, except to existing customers of the Company in Australia. In addition, pursuant to the terms of the Paparazzi Agreement, Paparazzi is permitted to sell (subject to certain terms and conditions) the Company’s photo booths directly to VA Management, PTY. LTD., and the Company agrees not to sell photo booths directly to VA Management, PTY. LTD.
2. Reference is made to the Employment Agreements disclosed on Schedule 3.9(a)(1)-(6), each of which contain a non-competition provision that prohibits the employee from competing with the Company for a period of one (1) year following termination of employment with the Company.
3. Reference is made to the Employment Agreement disclosed on Schedule 3.9(a)(7), which contains a non-competition provision that prohibits the employee from competing with the Company for a period of two (2) years following termination of employment with the Company.

(d) Employment Contracts

1. Reference is made to the Employment Agreements disclosed on Schedule 3.9(a)(1)-(8).

(e) Labor Contracts

None.

(f) Contracts with Annual Payments by the Company in Excess of \$75,000

1. Internal Use Agreement, dated as of September 1, 2011, between the Company and DNP Photo Imaging America Corporation, as amended by that certain First Amendment, dated September 1, 2011, and that certain Second Amendment, effective as of February 15, 2013 (the “DNP Agreement”).
2. Management Agreement, dated October 30, 2008, between the Company and Sankaty Advisors, LLC (the “Management Agreement”). The Management Agreement will be terminated at or prior to the Closing.
3. Reference is made to the Salem Lease disclosed on Schedule 3.10(a)(1).
4. Reference is made to the Employment Agreements disclosed on Schedule 3.9(a)(1)-(8).
5. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2).
6. License and Supply Agreement, dated as of June 28, 2011, between the Company and Epson America, Inc. (“Epson”), as amended by amendments dated November 8, 2011, May 25, 2012 and November 28, 2014 (the “Epson Agreement”).

(g) Contracts relating to the Acquisition of any Operating Business, Material Assets or any Capital Stock

None.

(h) Contracts relating to the Disposition of Company Assets

None.

(i) Sales, Distribution, Marketing or Similar Contract with Annual Payments to the Company in excess of \$150,000

1. Reference is made to the Paparazzi Agreement disclosed on Schedule 3.12(c)(1).
2. Reference is made to the Customer Agreements disclosed on Schedule 3.6(b)(3), some of which provide for annual payments to the Company in excess of \$150,000.

(j) Change-in-control Contracts with Employees

1. Reference is made to the disclosures set forth on Schedule 3.9(f).

(k) Contracts in which the Company Loans Money to Employees, Officers or Directors

None.

(l) Settlement Agreements that Occurred in the Last 3 Years

None.

(m)(i) Contract in which the Company Licenses Intellectual Property from a Third-Party

1. Reference is made to the DNP Agreement listed in Schedule 3.12(f)(1).
2. Reference is made to the Customer Agreements disclosed on Schedule 3.6(b)(3), most of which provide the Company with a limited license to display certain trademarks and/or other intellectual property of such Customers on the Company's photo booths that are located on the premises of such Customers.
3. Reference is made to the Epson Agreement disclosed on Schedule 3.12(f)(6).

(m)(ii) Contracts in which the Company Licenses Intellectual Property to a Third-Party

None.

(n) Contracts Incorporating Company Intellectual Property

1. Reference is made to the Customer Agreements disclosed on Schedule 3.6(b)(3), pursuant to all of which, the Customers have access to the Company's photo booths that incorporate the Company's Intellectual Property.

(o) Contracts with Seller or any of Seller's Affiliates, Directors or Officers that Survive Closing

None.

(p) Other Material Contracts

1. Premium Advantage Agreement No. 25051351, dated July 15, 2010, between the Company and Konica Minolta Premier Finance, a program of Konica Minolta Business Solutions U.S.A., Inc.
2. Reference is made to the Lease Agreement disclosed on Schedule 3.10(a)(2).

Schedule 3.13(a)

Company Registered IP

Issued Patents:

Country	Patent No.	Issue Date	Name of Patent	Owner
U.S.	6,385,628	5-7-2002	Method for Simulating the Creation if an Artist's Drawing or Painting of a Caricature, and Device for Accomplishing Same	Foto Fantasy, Inc.
U.S.	6,021,417	2-1-2000	Method of Stimulating the Creation of an Artist's Drawing or Painting, and Device for Accomplishing Same	Foto Fantasy, Inc.

Pending Patents:

Country	Application Serial No.	Filing Date	Title	Owner	Status
U.S.	13/668,201	11-2-2012	Apparatus, System And Method For Capturing And Compositing An Image Using A Light Emitting Backdrop	Foto Fantasy, Inc.	Pending

U.S. Registered Copyrights:

Registration No.	Registration Date	Title	Owner
TX0005318243	6-25-2001	Portrait Studio : version 1.2	Foto Fantasy, Inc. d.b.a. Fantasy Entertainment
TX0005318242	6-25-2001	Portrait Studio : version .9	Foto Fantasy, Inc. d.b.a. Fantasy Entertainment

U.S. Trademarks:

Mark	Application No./Date	Registration No./Date	Status	Owner
INNOVATIVE FOTO	85506205	4345110	Section 8 & 15 Due: June 4, 2019	Foto Fantasy, Inc.
FOTO FANTASY	December 30, 2011	June 4, 2013		
	78114248	2769186	Renewal Due: September 30, 2023	Foto Fantasy, Inc.
	March 12, 2002	September 30, 2003		
BLABABOOTH	77836642	3820785	Section 8 & 15 Due: July 20, 2016	Foto Fantasy, Inc.
	September 28, 2009	July 20, 2010		
EVENTURE	77491899	3743014	Section 8 & 15 Due: January 26, 2016	Foto Fantasy, Inc.
	June 5, 2008	January 26, 2010		
FOTOFUN	75641166	2409979	Renewal Due: December 5, 2020	Foto Fantasy, Inc.
	February 16, 1999	December 5, 2000		
THE PORTRAIT STUDIO	75415315	2288575	Renewal Due: October 26, 2019	Foto Fantasy, Inc.
	January 8, 1998	October 26, 1999		

Mark	Application No./Date	Registration No./Date	Status	Owner
FANTASY ENTERTAINMENT	75166634 September 16, 1996	2131346 January 20, 1998	Renewal Due: January 20, 2018	Foto Fantasy, Inc.
FOTO FANTASY	74732610 September 21, 1995	2002920 September 24, 1996	Renewal Due: September 24, 2016	Foto Fantasy, Inc.
FOTO FANTASY & design	74732609 September 21, 1995	2004296 October 1, 1996	Renewal Due: October 1, 2016	Foto Fantasy, Inc.
EVENTURE	8933673 (European Community) March 8, 2010	8933673 August 24, 2010	Renewal Due: March 8, 2020	Foto Fantasy, Inc.
THE PORTRAIT STUDIO	2318459 (European Community) July 27, 2001	2318459 November 18, 2004	Renewal Due: July 27, 2021	Foto Fantasy, Inc.
BLABABOOTH	8933749 (European Community) March 8, 2010	8933749 October 19, 2010	Renewal Due: March 8, 2010	Foto Fantasy, Inc.

Domain Names:

1. Reference is made to Exhibit 3.13(a) attached hereto for a list of domain names owned by the Company. For each such domain name, Exhibit 3.13(a) lists (a) the registrar, (b) jurisdiction of registrar, (c) registration term and (d) owner.

Schedule 3.13(b)

Intellectual Property; Encumbrances; Oral Contracts

1. Reference is made to items 1, 5, 6 and 7 set forth on Schedule 3.10(c).

Schedule 3.13(c)

Licensed Intellectual Property

1. Reference is made to the Contracts disclosed on Schedule 3.12(m)(i).

Schedule 3.13(g)

Intellectual Property; Consents

1. Reference is made to the Customer Agreements disclosed on Schedule 3.6(b)(3), some of which provide the Company with a limited license to display certain trademarks or other intellectual property of such Customers on the Company's photo booths that are located on the premises of such Customers. Many of the Customer Agreements require the Company to obtain the consent of, or provide notice to, such Customers in connection with the consummation of the transaction under the Agreement. Except for the Customers listed on Schedule 8.2(e) (Required Notices) that will be sent notices by the Company in accordance with Section 8.2(e) of the Agreement, the Company does not intend to obtain the consent of, or provide notice to, such Customers.
2. Reference is made to the Epson Agreement disclosed on Schedule 3.12(f)(6). The consummation of the transaction under the Agreement is deemed an assignment of the Epson Agreement, requiring the prior written consent of Epson. The Company will obtain the consent of Epson prior to the Closing.

Schedule 3.13(h)

Intellectual Property; Open Source or Copyleft Open Source

1. Fedora – a modular Linux operating system. The Company uses Fedora without modifying the source, in accordance with Feroda’s license. The Company uses Fedora in our photo booths as the operating system for the photo booth. The Company also uses Fedora on some internal development workstations and on some internal servers.
2. Redmine – a flexible project management web application, which is open source and is released under the terms of the GNU General Public License v2 (GPL). The Company uses Redmine as a tool for project management, primarily for feature tracking, change tracking and bug tracking.

Schedule 3.15

Insurance Coverage

Policies

1. Reference is made to Exhibit 3.15 attached hereto for a summary of the Company's insurance policies.
2. In connection with the Closing, the Company will not continue its Directors & Officers Insurance policy, and the Company will purchase an extended reporting period endorsement under the Company's existing Directors & Officers Insurance policy, which shall provide coverage for six (6) years following the Closing.

Denial of Claims

None.

Schedule 3.16(a)

Compliance with Laws

1. Reference is made to the DOL Inspection Report and the corresponding disclosure set forth in Schedule 3.7(1). The disclosures set forth in this paragraph are provided only for informational purposes and shall not be deemed to modify in any way the representations and warranties of Seller set forth in the Agreement, including with respect to the indemnification rights of any Buyer Indemnified Party under Section 6.11 or Article 9 of the Agreement.
2. Reference is made to the disclosure set forth in Schedule 3.11(a)(3). The disclosures set forth in this paragraph are provided only for informational purposes and shall not be deemed to modify in any way the representations and warranties of Seller set forth in the Agreement, including with respect to the indemnification rights of any Buyer Indemnified Party under Section 6.11 or Article 9 of the Agreement.

Schedule 3.17

Undisclosed Liabilities

1. Reference is made to the Deferral Agreement disclosed on Schedule 3.9(a)(8). The Deferral Agreement provides that upon consummation of the transaction under the Agreement, the Company is required to pay Dale R. Valvo a lump sum payment equal to the portion of his annual base salary that has been deferred since the effective date of the Deferral Agreement. This liability is not disclosed on the Company's Financial Statements.

Schedule 3.18(a)

Bank Accounts

1. Reference is made to Exhibit 3.18(a) attached hereto for a list of the bank accounts maintained by the Company as of November 25, 2014.

Schedule 3.18(b)

List of Names of all Persons holding Power of Attorney

None.

Schedule 3.19

Accounts Receivable

None.

Schedule 3.20(a)

Material Customers and Suppliers

**Material Customers
(as of September, 2014)**

1. Simon Properties
2. General Growth Property
3. Cinemark USA, Inc
4. Walt Disney World Company
5. CBL And Associates Management, Inc.
6. Urban Outfitters Corporate
7. Simon/Mills Corp.
8. Westfield Corporation Inc.
9. Macerich Company
10. Landrys Restaurants Incorporated
11. Carmike Cinema Incorporated
12. Rouse (Rouse Properties)
13. Starwood Retail Properties
14. Busch Entertainment Corp
15. Cedar Fair, LP
16. Jones Lang Lasalle Americas, Inc.
17. Forever 21 Corporate
18. Mars Retail Group
19. Preit Services, LLC
20. Glimcher (ATC Glimcher, Inc.)

**Material Suppliers
(as of September, 2014)**

DNP IMS America Corp
UPS
WEI Worldcom Exchange
Brooks Properties I
Epson America Inc.
Advantec Computer
Wausau Coated Products
Plastic Supply Co.
Verizon Wireless
Sterling
Metal Works, Inc.
Lexjet
STI
Ken-Mar, LLC
Stephen Gould Corporation
Sprint
Atlas Precision Met
Innova Art Ltd
Garvin Industries
Image 4

Schedule 3.21

Transactions with Affiliates

1. Reference is made to the Management Agreement disclosed on Schedule 3.12(f)(2). The Management Agreement will be terminated at or prior to the Closing.
2. Reference is made to the Sankaty Notes disclosed on Schedule 3.12(a)(3). The obligations of the Company to Sankaty under the Sankaty Notes will be satisfied at the Closing.
3. Reference is made to the Sankaty Note Purchase Agreement disclosed on Schedule 3.2(1). The Sankaty Note Purchase Agreement will be terminated at or prior to the Closing.
4. Reference is made to the Transaction Bonus Agreements disclosed on Schedule 3.9(a)(13).
5. Reference is made to the Deferral Agreement disclosed on Schedule 3.9(a)(8).
6. Reference is made to the Second Amended and Restated Employment Agreement disclosed on Schedule 3.9(a)(7).

Schedule 4.3

Seller Conflicts

1. Reference is made to the Citizens Loan Documents disclosed on Schedule 3.12(a)(2).

Schedule 6.1

Conduct of Business Prior to Closing

1. The Company is currently cutting and issuing checks contemporaneous with issuing payments.

Schedule 6.10

Intercompany Agreements Surviving Closing

None.

Schedule 8.2(e)

Required Notices

1. Walt Disney World Company
2. Busch Entertainment Corp
3. Cedar Fair, Inc.
4. Sea World